THE

CODE OF ALABAMA,

ADOPTED BY ACT OF THE GENERAL ASSEMBLY OF THE STATE OF ALABAMA, APPROVED

FEBRUARY 16, 1897,

ENTITLED "AN ACT TO ADOPT A CODE OF LAWS FOR THE STATE OF ALABAMA,"

WITH SUCH STATUTES PASSED AT THE SESSION OF 1896-97, AS ARE REQUIRED TO BE INCORPORATED THEREIN BY ACT APPROVED FEBRUARY 17, 1897; AND WITH CITATIONS TO THE DECISIONS OF THE SUPREME COURT OF THE STATE CONSTRUING OR MENTIONING THE STATUTES.

IN TWO VOLUMES.

VOL. I.

PREPARED BY

WILLIAM L. MARTIN,

COMMISSIONER.

ATLANTA, GEORGIA:
THE FOOTE & DAVIES COMPANY,
PRINTERS AND BINDERS.
1897.

Entered according to Act of Congress, in the year 1897, by
JOSEPH F. JOHNSTON, as Governor of the State of Alabama, for the use of said State,
In the Office of the Librarian of Congress, at Washington, D. C.

CERTIFICATE OF THE COMMISSIONER.

I, WILLIAM L. MARTIN, the Commissioner appointed under the provisions of an act of the General Assembly of Alabama approved February 18, 1895, entitled "An act to provide for the revision, codification, digesting and promulgation of the statutes of this state, both civil and criminal," and, under the provisions of an act of the General Assembly of Alabama approved February 17, 1897, entitled "An act to provide for the publication and distribution of the Code of Alabama," charged with the duty of supervising the publication of the Code of Alabama adopted by an act of the General Assembly of Alabama approved February 16, 1897, entitled "An act to adopt a code of laws for the State of Alabama," do hereby certify that I have compared the Code, as printed, with the original manuscript as adopted by the General Assembly, and that the Code, as printed, is the same as adopted by the General Assembly.

WILLIAM L. MARTIN,
Commissioner.

EXPLANATORY.

This codification of statutes—so much as comes from the original manuscript now on file in the office of the secretary of state—was prepared under the provisions of an act approved February 18, 1895, entitled "An act to provide for the revision, codification, digesting and promulgation of the statutes of this state, both civil and criminal" (Pamphlet Acts 1894–95, pp. 1001–1004). The arrangement, except as hereinafter explained, is in pursuance of the provisions of that act. The act approved February 16, 1897, adopting the Code (page 1, *post*), and the act approved February 17, 1897, providing for its publication and distribution (pages 1–5, *post*), show what further statutes were directed to be incorporated into the Code as published. The amendments made by the joint committee of the two houses appointed to examine the Code were, by that committee, actually written into the manuscript; while the amendments made to the chapter on "Taxation" by the joint committee appointed to revise the revenue system were, as recited in the adopting act, shown by their report to the two houses and spread upon the journals. The publication act, in section three, among other directions to the Commissioner, said: "He shall substitute for any section, as shown on the manuscript, the same section as amended by any act passed at the present session of the general assembly as fully and completely as though such sections had been originally written into the manuscript, with marginal notes showing the date of such amendment and the page of the pamphlet acts where found. He shall also incorporate all other acts of a general and public nature passed at the present session of the general assembly, and which affect or repeal sections of the Code as adopted, and shall omit all repealed sections. The Commissioner must give to each new section a number, prefix thereto an appropriate head-line, and, if it shall be deemed necessary, he may renumber the sections as shown by the manuscript, and in that event must change all cross-references accordingly." These provisions devolved on the Commissioner the duty of adjusting the Code, as published, to the legislation of the session, a labor attended with some difficulty. It was, of course, found necessary to renumber the sections and to change the cross-references accordingly, the new numbers beginning with section 405 of the Code as published.

The act of February 18, 1895, clearly made it the duty of the Commissioner to codify—not compile—the statutes; to supply apparent legislative omission so as to perfect and harmonize the subject in hand. This duty the Commissioner endeavored to perform as well as time would permit, though with great caution; and with rare exceptions, his suggested changes met the sanction of the joint committee and the general assembly. But of legislative acts passed at the session at which the Code was adopted, the Commissioner was without authority to do more than print them in the body of the Code, at what was supposed to be their appropriate places. In some instances

this was found impracticable, and the statutes were printed in foot-notes. In other instances the Commissioner thought best to retain the original statute and print the new matter in a foot-note, leaving to the courts the duty of determining the extent of the repeal—notably the act relating to the admission of attorneys to practice law.

The marginal references show the origin of statutes since the Code of 1886, including those of the last session.

The parenthetical numbers, which are brought forward in obedience to the requirement of section six of the act of February 18, 1895, show the number which the section bore in the Codes of 1886, 1876, 1867, and 1852, in the order here set forth, a ( ) indicating that the section was not contained in an intermediate Code. It must be observed, however, that the Code of 1852 contained no criminal statutes, and that a fifth parenthetical number in the Criminal Code has reference to the Penal Code of 1866; also, that the lettered parenthetical numbers contained in the Code of 1867, were intended, as explained by the Commissioner, to refer to new sections, hence no notice has been taken of them.

The absence of both marginal reference and parenthetical number indicates that the section was supplied by the Commissioner and adopted with the Code.

The Commissioner did not deem himself instructed or authorized to write into the original manuscript any changes therein wrought by the amendments of the revenue committee or by legislative acts. The original manuscript remains as adopted by the general assembly, the changes above referred to being actually incorporated in the printed Code only. Therefore the matter of the published text, when not found in the original manuscript, will be found in the acts or amendments above referred to. So much of the manuscript as is omitted from the publication is, in the judgment of the Commissioner, repealed by legislative action at the last session.

The Code as adopted contained 5613 sections (two being lettered), while the Code as printed contains 5632. From section 405, where the renumbering began, to the end, the identity of sections must be ascertained by parenthetical numbers, marginal references or subject-matter.

The appendix printed at the end of the second volume is in compliance with section three of the publication act. The annotations to the constitution of 1875 and to the Civil Code are of the decisions of the supreme court from Minor to 112 Alabama, while those to the Criminal Code are from Minor to 113 Alabama.

The acts of the last session known as the "tax commission law" and the "coal-oil inspection law" were not thought to be embraced in the directions to the Commissioner above quoted, and, therefore, are not incorporated in the Code.

TABLE OF CONTENTS.

VOL. I.

PRELIMINARY MATTER.

	PAGES
Act adopting the Code	1
Act providing for the publication and distribution of the Code	1–5
Constitution of the United States and the amendments thereto	6–26
Analytical index to the Constitution of the United States	27–59
Constitution of the State of Alabama, 1875	60–106
Sections 905 and 906 of the Revised Statutes of the United States relating to the authentication of public acts, judicial proceedings and office records	107, 108

THE CIVIL CODE.

		SECTIONS
CHAPTER 1.	GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE	1–11
CHAPTER 2.	ACTIONS AND PARTIES	12–44
CHAPTER 3.	ADMINISTRATION OF ESTATES.	
ARTICLE 1.	Grant of letters testamentary and of administration	45–79
2.	Appointment of non-residents as executors and administrators, and special provisions in relation to them	80–89
3.	Removal, resignation and requiring additional bonds of executors and administrators; appointment of administrators de bonis non; proceedings on discovery of will after grant of letters	90–114
4.	Collection of decedent's personal property; inventory and appraisement thereof; notice of appointment	115–124
5.	Payment and settlement of debts; presentation of claims	125–141
6.	Sale of personal property for payment of debts, and for distribution	142–153
7.	Renting and sale of real estate for payment of debts, and for division	154–187
8.	Sale and partition of partnership lands in which a decedent had an interest as partner	188–200
9.	Settlements and distributions	201–258

CHAPTER 3.—*Continued.* SECTIONS

ARTICLE 10. Payment of legacies, and partial distribution before final settlement 259–277
11. Keeping estates together 278–289
12. Insolvent estates 290–329
13. Suits by and against executors and administrators, and enforcement of judgments and decrees; administrators ad litem; authority of foreign executors and administrators to sue for, and recover or receive property 330–363

CHAPTER 4.—ADOPTION OF CHILDREN 364–367

CHAPTER 5.—AGRICULTURE.

ARTICLE 1. Qualification, duties and salary of the commissioner and his clerks 368–377
2. Provisions regulating the sale of fertilizers 378–395
3. Funds of the department of agriculture 396, 397
4. Agricultural experiment stations and schools 398–415
5. Farmers' institutes and agricultural fairs 416–418

CHAPTER 6.—ALIENS 419

CHAPTER 7.—ANIMALS 420–425

CHAPTER 8.—APPEALS.

ARTICLE 1. Appeals from judgments, decrees and orders 426–435
2. Manner and time of taking appeals 436–456
3. Special provisions as to appeals from probate court. 457–469
4. Proceedings in supreme court on appeal 470–480
5. Appeals from justices of the peace and proceedings thereon 481–495

CHAPTER 9.—APPRENTICES 496–507

CHAPTER 10.—ARBITRATION AND AWARD 508–523

CHAPTER 11.—ATTACHMENTS.

ARTICLE 1. Issue of attachments 524–539
2. In what manner and on what property executed 540–554
3. Replevy of property 555–557
4. Ancillary attachments 558–560
5. Pleadings, trial, judgment and execution 561–570
6. Attachments issued by justices of the peace 571–578

CHAPTER 12.—ATTORNEYS AT LAW 579–611

CHAPTER 13.—BILLS OF EXCEPTIONS 612–622

CHAPTER 14.—BOUNDARIES OF THE STATE 623–625

CHAPTER 15.—CESSIONS TO THE UNITED STATES 626–629

CHAPTER 16.—CHANCERY COURTS.

ARTICLE 1. Chancery divisions and districts; times and places of holding courts; special terms 630–637
2. Jurisdiction of courts of chancery; powers of chancellors; salary; penalty for failing to hold courts; special chancellors and their compensation 638–652
3. Registers of the chancery court; their qualification, duties and powers 653–668
4. Cases of which chancery courts take cognizance; pleadings; process; limitations; venue 669–703

SECTIONS

CHAPTER 16.—*Continued.*

ARTICLE 5. Amendments; exceptions; filing papers; serving notices; examination of parties; making answer a cross-bill; revivor of suit by a defendant 704–722
6. Evidence in chancery; how taken; commissioners; witnesses 723–740
7. References to the register; exceptions 741–745
8. Decrees pro confesso and final decrees without personal service 746–759
9. Bills of review, ne exeat, equitable attachments, garnishments and writs of seizure 760–783
10. Injunctions 784–798
11. Receivers 799–804
12. Bills to correct errors in settlements in the probate court 805–808
13. Bills to compel the determination of claims to lands and to quiet title 809–813
14. Creditors' bills 814–823
15. Issues out of chancery 824–828
16. Relieving infants of disabilities of non-age 829–835
17. Protection of estates of intemperate persons 836–843
18. Call of the docket; hearing of causes; rendition, lien, effect and enforcement of decrees; costs 844–863
19. Rules of practice adopted by the supreme court, and by chancellors, recognized 864, 865

CHAPTER 17.—CHANGE-BILLS 866–868

CHAPTER 18.—CHOSES IN ACTION 869–896

CHAPTER 19.—CIRCUIT COURTS.

ARTICLE 1. Judicial circuits, and times and places of holding circuit courts; special and adjourned terms 897–917
2. Jurisdiction of circuit courts; powers of circuit judges; salary; penalty for failing to hold courts; special judges and their compensation 918–930
3. Clerks of the circuit court; their qualifications, duties and powers; other provisions relating to their office 931–943

CHAPTER 20.—CITY COURTS 944, 945

CHAPTER 21.—COLLATERAL SECURITIES; PLEDGES 946–950

CHAPTER 22.—COMMISSIONERS' COURTS 951–967

CHAPTER 23.—COMMISSIONERS OF DEEDS 968

CHAPTER 24.—CONGRESSIONAL DISTRICTS 969, 970

CHAPTER 25.—CONSTABLES 971–980

CHAPTER 26.—CONVEYANCES AND LOANS.

ARTICLE 1. Who may make conveyances for the alienation of lands; how made 981–984
2. Registration, acknowledgment and probate 985–1004
3. Protection to creditors and purchasers against dormant conveyances and loans 1005–1018
4. General provisions relating to the construction of conveyances 1019–1063
5. Mortgages of unplanted crops 1064
6. Satisfaction of mortgages and vendor's liens 1065–1068
7. Perfecting imperfect titles 1069–1072

SECTIONS

CHAPTER 27.—CORONERS 1073–1084

CHAPTER 28.—CORPORATIONS.

ARTICLE 1. Banks and banking 1085–1098
2. Insurance companies; life, accident, fire, marine... 1099–1115
3. Mutual aid associations 1116–1121
4. Building and loan associations 1122–1138
5. Mining, quarrying and manufacturing companies... 1139–1155
6. Railroad companies 1156–1187
7. Street-railway companies 1188–1204
8. Macadamized, turnpike and other toll-road companies 1205–1243
9. Telegraph companies 1244–1246
10. Navigation companies 1247–1250
11. Corporations not specially provided for 1251–1260
12. General provisions 1261–1286
13. Charter fees required of domestic corporations 1287–1290
14. Dissolution of business corporations 1291–1301
15. Corporations not of a business character 1302–1315
16. Conditions upon which foreign corporations are permitted to do business in the state 1316–1324

CHAPTER 29.—COSTS AND FEES.

ARTICLE 1. Taxation and retaxation of costs 1325–1346
2. Security for costs 1347–1352
3. General rules applicable to all fees, civil or criminal. 1353–1370
4. Fees of officers 1371–1380
5. Fees of jurors and witnesses 1381–1388

CHAPTER 30.—COTTON 1389–1395

CHAPTER 31.—COUNTIES 1396–1425

CHAPTER 32.—COUNTY TREASURER 1426–1436

CHAPTER 33.—DEFAMATION 1437–1443

CHAPTER 34.—DENTISTS 1444–1452

CHAPTER 35.—DESCENTS AND DISTRIBUTIONS.

ARTICLE 1. Descents 1453–1462
2. Advancements 1463–1473

CHAPTER 36.—DETINUE 1474–1484

CHAPTER 37.—DIVORCE AND ALIMONY 1485–1503

CHAPTER 38.—DOWER.

ARTICLE 1. In what dower consists, and how relinquished 1504–1514
2. Assignment of dower 1515–1528

CHAPTER 39.—EJECTMENT 1529–1555

CHAPTER 40.—ELECTIONS.

ARTICLE 1. Electors 1556–1559
2. Registration 1560–1572
3. General elections; what officers elected, and when 1573–1579
4. Precincts, polling-places and boxes 1580–1587
5. Officers of election; their appointment and duties.. 1588–1597
6. Special elections 1598–1604
7. The ballot 1605–1615

CHAPTER 40.—*Continued.* SECTIONS

ARTICLE 8. Conduct of the election 1616–1636
9. Counting the vote; making returns; declaring the result 1637–1649
10. Certificates of election 1650–1652
11. Electors for president and vice-president; representatives in congress 1653–1658
12. Elections in new counties 1659–1661
13. Elections on amendments to the constitution 1662–1664
14. Penalty for failing to make returns 1665, 1666
15. Contesting elections; provisions common to all contests 1667–1671
16. Contesting elections of state officers 1672–1685
17. Contesting elections of members of the general assembly, chancellor, circuit judge, any office filled by the vote of a single county, justice of the peace or constable 1686–1703

CHAPTER 41.—EMBALMERS 1704–1711

CHAPTER 42.—EMINENT DOMAIN.

ARTICLE 1. Condemnation of lands for public uses 1712–1726
2. Erection of dams for mills, gins or factories 1727–1748

CHAPTER 43.—EMPLOYER AND EMPLOYE 1749–1751

CHAPTER 44.—ESCHEATS 1752–1760

CHAPTER 45.—ESTRAYS AND ANIMALS RUNNING AT LARGE.

ARTICLE 1. Estrays 1761–1789
2. Stallions and jackasses running at large 1790, 1791

CHAPTER 46.—EVIDENCE.

ARTICLE 1. General rules 1792–1823
2. Procuring testimony by subpœna 1824–1832
3. Procuring testimony by deposition 1833–1849
4. Examination of parties by interrogatories 1850–1858
5. Requiring the production of books and writings 1859, 1860
6. Proceedings to perpetuate testimony 1861–1875

CHAPTER 47.—EXAMINERS OF PUBLIC ACCOUNTS 1876–1879

CHAPTER 48.—EXECUTIONS.

ARTICLE 1. Form of executions; by whom and when issued 1880–1889
2. Property subject to execution 1890, 1891
3. Lien of executions 1892–1895
4. Levy, sale, and return; venditioni exponas; conveyance 1896–1915
5. Forthcoming bonds and executions thereon 1916–1919
6. Registration of judgments and decrees, and executions thereon 1920–1923
7. Revivor of judgments and executions thereon 1924–1931
8. Executions issued by justices of the peace 1932–1952

CHAPTER 49.—EXECUTIVE DEPARTMENT.

ARTICLE 1. Governor 1953–1973
2. Secretary of state 1974–1992
3. State auditor 1993–2012
4. State treasurer 2013–2026
5. Attorney-general 2027–2032

CHAPTER 50.—Exemptions. SECTIONS

Article 1. Exemptions from levy and sale under process..... 2033–2040
2. Claim and contest of exemptions..... 2041–2068
3. Exemptions from administration and the payment of debts..... 2069–2077
4. Setting apart exemptions to widow and minor children..... 2078–2103
5. Waiver of exemptions..... 2104–2109

CHAPTER 51.—Fences..... 2110–2123

CHAPTER 52.—Forcible Entry and Unlawful Detainer..... 2124–2149

CHAPTER 53.—Frauds and Perjuries.

Article 1. The prevention of frauds and perjuries..... 2150–2158
2. Contracts in consideration of not bidding for public lands..... 2159–2162
3. Gambling and wagering contracts..... 2163–2169
4. Contracts made on Sunday..... 2170

CHAPTER 54.—Garnishments.

Article 1. Garnishment defined; when and how issued and dissolved..... 2171–2186
2. Answer of garnishee and proceedings thereon..... 2187–2207
3. Garnishments issued by justices of the peace..... 2208–2212

CHAPTER 55.—General Assembly..... 2213–2240

CHAPTER 56.—Geological Survey..... 2241–2246

CHAPTER 57.—Guardian and Ward.

Article 1. Appointment of guardians of minors..... 2247–2254
2. Appointment of guardians of persons of unsound mind..... 2255–2271
3. Bonds of guardians; rights of sureties..... 2272–2284
4. Duty and authority of guardians; lease and sale of property; maintenance; reinvestment..... 2285–2337
5. Settlements of guardians..... 2338–2351
6. Compelling settlements of guardians..... 2352–2361
7. Resignation and removal of guardians..... 2362–2367
8. Removal of person or property of ward from one county to another..... 2368–2373
9. Removal of person or property of ward to another state..... 2374–2386
10. Judge of probate custodian of funds of minor, or of person of unsound mind, not exceeding one hundred dollars; disbursement of same..... 2387–2391

CHAPTER 58.—Health and Quarantine..... 2392–2442

CHAPTER 59.—Highways.

Article 1. Public roads..... 2443–2495
2. Private roads..... 2496, 2497
3. Bridges, causeways and ferries..... 2498–2514
4. Watercourses..... 2515–2519

CHAPTER 60.—Husband and Wife..... 2520–2537

CHAPTER 61.—Innkeepers..... 2538–2543

CHAPTER 62.—Insane Hospital..... 2544–2574

SECTIONS

CHAPTER 63.—INSURANCE COMPANIES.
ARTICLE 1. The department of insurance, and provisions regulating the business of insurance generally 2575–2613
2. Provisions for the protection of local agents of foreign companies 2614–2618
3. Provisions designed to prevent tariff associations to fix rates of insurance 2619–2621
4. Fire-insurance patrol 2622–2625

CHAPTER 64.—INTEREST AND USURY 2626–2632

CHAPTER 65.—INTERPLEADER AT LAW 2633–2635

CHAPTER 66.—JUDICIAL POWER; RECORDS; SUBSTITUTION 2636–2653

CHAPTER 67.—JURORS AND JURIES 2654–2657

CHAPTER 68.—JUSTICES OF THE PEACE.
ARTICLE 1. Term of office, and general jurisdiction 2658–2665
2. General rules of procedure 2666–2686
3. Trial by jury 2687–2694

CHAPTER 69.—LANDS OF THE STATE.
ARTICLE 1. Salt springs 2695–2698
2. Grants by the state 2699–2702

CHAPTER 70.—LANDLORD AND TENANT.
ARTICLE 1. Landlord's lien for rent of farm-lands and advances. 2703–2715
2. Landlord's lien for rent of storehouses and other buildings 2716–2721
3. Use and occupation 2722

CHAPTER 71.—LIENS.
ARTICLE 1. Mechanics and material-men 2723–2752
2. Blacksmiths and wood-workmen 2753–2757
3. On ships, steamboats and other water-craft 2758, 2759
4. Tenants in common 2760, 2761
5. Agricultural superintendents and laborers, and railroad employes 2762–2773
6. Livery-stable keepers 2774, 2775
7. Owners of stallions, jacks, bulls, rams, he-goats and boars 2776–2779
8. For stumpage 2780–2783
9. Owners of booms and bulkheads 2784–2787
10. Public ginners 2788–2792

CHAPTER 72.—LIMITATION OF ACTIONS.
ARTICLE 1. Time in which suits must be brought 2793–2802
2. General rules 2803–2824

CHAPTER 73.—MANDAMUS, PROHIBITION, CERTIORARI AND OTHER REMEDIAL WRITS OF A SUPERVISORY NATURE 2825–2833

CHAPTER 74.—MARKS AND BRANDS 2834–2836

CHAPTER 75.—MARRIAGE 2837–2851

CHAPTER 76.—MILITIA 2852–2896

CHAPTER 77.—MILLS AND MILLERS 2897, 2898

CHAPTER 78.—MINES AND MINING 2899–2936

CHAPTER 79.—Municipal Corporations. SECTIONS

Article 1. Incorporation and powers of towns..... 2937–2967
2. Provisions applicable to all cities and towns..... 2968–2973

CHAPTER 80.—Navigation.

Article 1. Duties of harbor-master and port-wardens of Mobile. 2974–2991
2. Pilots and pilotage..... 2992–3013
3. Ships and seamen..... 3014–3020

CHAPTER 81.—Notaries Public.

Article 1. Commercial notaries..... 3021–3033
2. Notaries ex officio justices of the peace..... 3034–3039

CHAPTER 82.—Notices..... 3040–3051

CHAPTER 83.—Offices and Officers.

Article 1. Terms of executive and judicial officers defined; installation..... 3052–3055
2. Persons ineligible to office; residence and commission; filling vacancies..... 3056–3061
3. Oaths of office..... 3062–3069
4. Official bonds..... 3070–3091
5. Bonds by guarantee companies..... 3092–3109
6. Requiring certain public officers to give additional and new sureties in certain cases..... 3110–3123
7. The discharge of sureties on official bonds in certain cases..... 3124–3132
8. Proceedings to compel the delivery of books, papers, property and money by public officers to successors..... 3133–3139
9. Vacating office, death, resignation, insanity, removal..... 3140–3152
10. Salaries of officers; when payable..... 3153, 3154

CHAPTER 84.—Oysters..... 3155–3160

CHAPTER 85.—Partition.

Article 1. Partition of property generally..... 3161–3187
2. Partition of crops..... 3188–3206

CHAPTER 86.—Partnerships, Limited..... 3207–3231

CHAPTER 87.—Paupers..... 3232–3241

CHAPTER 88.—Pawnbrokers..... 3242–3247

CHAPTER 89.—Pharmacists..... 3248–3259

CHAPTER 90.—Physicians..... 3260–3267

CHAPTER 91.—Pleading and Practice.

Article 1. The summons..... 3268–3284
2. General rules of pleading..... 3285–3290
3. The complaint and other pleadings..... 3291–3306
4. Trial-term; general rules of practice..... 3307–3318
5. Trial without jury and demurrer to evidence..... 3319–3325
6. The charge to the jury..... 3326–3329
7. Amendments to pleadings before and after judgment..... 3330–3334
8. Notice of motions to set aside or satisfy judgments, or to amend nunc pro tunc..... 3335–3340

SECTIONS

CHAPTER 91.—*Continued.*
ARTICLE 9. New trial on release found within two years; rehearing in four months 3341–3351
10. Forms of pleadings in civil cases 3352, 3353

CHAPTER 92.—PROBATE COURTS 3354–3384

CHAPTER 93.—PUBLIC PRINTING 3385–3416

CHAPTER 94.—QUO WARRANTO, ACTIONS IN NATURE OF 3417–3439

CHAPTER 95.—RAILROADS.
ARTICLE 1. Regulations affecting public safety 3440–3450
2. Regulations affecting the convenience of passengers .. 3451–3458
3. Commercial regulations 3459–3474
4. Regulations affecting live stock 3475–3480

CHAPTER 96.—RAILROAD COMMISSIONERS 3481–3504

CHAPTER 97.—REDEMPTION OF REAL ESTATE 3505–3519

CHAPTER 98.—RETAILERS 3520–3524

CHAPTER 99.—SALVAGE 3525–3538

CHAPTER 100.—SCHOOLS.
ARTICLE 1. Public-school fund 3539, 3540
2. General designation of officers 3541
3. Superintendent of education 3542–3549
4. County superintendents 3550–3559
5. Township trustees 3560–3575
6. Teachers 3576–3582
7. Boards of education; teachers' institutes 3583–3593
8. Districts; schools; scholastic periods 3594–3600
9. Apportionment of school fund; disbursement 3601–3623
10. Township corporations 3624
11. School lands; lease and sale 3625–3660
12. Lease and sale of school indemnity lands 3661–3666
13. University of Alabama 3667–3685
14. Agricultural and Mechanical College of Alabama .. 3686–3697
15. Alabama Institute for the Deaf 3698–3711
16. Alabama Academy for the Blind 3712–3719
17. Alabama School for Negro Deaf Mutes and Blind .. 3720–3726

CHAPTER 101.—SEAL OF THE STATE 3727

CHAPTER 102.—SET-OFF AND RECOUPMENT 3728–3734

CHAPTER 103.—SHERIFFS 3735–3748

CHAPTER 104.—SOVEREIGNTY AND JURISDICTION OF THE STATE 3749–3752

CHAPTER 105.—SUITS BY THE STATE 3753–3762

CHAPTER 106.—SUMMARY JUDGMENTS.
ARTICLE 1. General rules 3763–3767
2. Proceedings against sheriffs, coroners and other executive officers 3768–3781
3. Proceedings in favor of sheriffs or coroners 3782, 3783
4. Proceedings against clerks and registers 3784–3799
5. Proceedings against judges of probate, tax-collectors, tax-assessors, county treasurers, and other persons receiving money for counties 3800–3803

CHAPTER 106.—*Continued.* SECTIONS

ARTICLE 6. Proceedings for and against county superintendents of education 3804–3809
7. Proceedings against attorneys at law 3810, 3811
8. Proceedings before justices of the peace 3812–3824

CHAPTER 107.—SUPREME COURT.

ARTICLE 1. The supreme court and its justices 3825–3841
2. The secretary of the supreme court 3842–3844
3. The marshal and librarian of the supreme court ... 3845–3855
4. The clerk of the supreme court 3856–3863
5. The reporter and reports 3864–3874

CHAPTER 108.—SURETIES 3875–3888

CHAPTER 109.—SURVEYORS AND SURVEYS.

ARTICLE 1. Appointment and qualification of county surveyors; duties and compensation 3889–3898
2. Town surveys, plats, etc 3899–3905

CHAPTER 110.—TAXATION.

ARTICLE 1. Definition of terms 3906
2. Exemptions from taxation 3907–3909
3. Subjects, rates, maturity and lien of taxes 3910–3921
4. Tax-assessor; election, qualification and compensation; deputies 3922–3929
5. Assessments; when and how made; duties of taxpayer and assessor; filing lists and books of assessment and notice thereof; when assessor suspended 3930–3963
6. Assessments against railroad and telegraph companies; state board of assessment, its powers and duties 3964–3976
7. Powers and duties of the court of county commissioners, and duties of judge of probate touching assessments; levy of county taxes 3977–3992
8. Tax-collector; election, qualification and compensation; deputies 3993–4002
9. Collecting, reporting and paying over taxes; interest; escaped taxes; errors; insolvencies; litigated taxes; settlements; when collector suspended 4003–4045
10. Sale of lands for payment of taxes; docket, notice, decree and conduct of sale; certificate and deed to purchaser 4046–4077
11. Rights and remedies of purchasers of land at tax sale; statute of limitations 4078–4089
12. Redemption of lands sold for taxes; sales by the state 4090–4105
13. Canceling erroneous sales and refunding purchase-money 4106–4108
14. General duties of auditor in supervising the enforcement of the revenue laws; miscellaneous provisions 4109–4121
15. License-taxes; from whom and for what businesses required; prices; county levy 4122, 4123
16. Issue and expiration of licenses; blanks and forms; records, payments and reports; refunding license-money 4124–4136

SECTIONS

CHAPTER 111.—TREES 4137–4140

CHAPTER 112.—TRIAL OF RIGHT OF PROPERTY 4141–4151

CHAPTER 113.—TRUSTS AND TRUSTEES.
ARTICLE 1. Express trusts for payment or security of debts... 4152–4173
2. Investment, removal, and liability of trust estates. 4174–4187
3. Resignation, appointment and removal of trustees. 4188-4204

CHAPTER 114.—VENUE.
ARTICLE 1. Venue of actions 4205–4209
2. Change of venue 4210–4216

CHAPTER 115.—WATER-CRAFT 4217

CHAPTER 116.—WAREHOUSEMEN AND COMMON CARRIERS 4218–4229

CHAPTER 117.—WEIGHTS AND MEASURES 4230–4240

CHAPTER 118.—WILLS.
ARTICLE 1. General provisions 4241–4262
2. Execution and probate of wills 4263–4286
3. Contesting the validity of wills 4287–4300

RULES OF COURT AND PRACTICE.

PAGES

General rules 1185, 1186
Rules of practice in the supreme court 1187–1195
Rules of practice in the circuit and inferior courts of common-law jurisdiction.. 1195–1202
Rules of chancery practice 1202–1228

ACTS ADOPTING AND PROVIDING FOR PUBLICATION OF CODE.

AN ACT to adopt a Code of laws for the State of Alabama.

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That the work prepared by William L. Martin under the provisions of an act approved February 18th, 1895, entitled "An act to provide for the revision, codification, digesting and promulgation of the statutes of this state, both civil and criminal" is, as the same has been corrected, amended and reported by the joint committee of the two houses of the general assembly to examine the Code,* and as amended by the joint committee of the two houses appointed to revise the revenue system and laws of the state as shown by their report as the same appears of record in the journals of the senate and house of representatives and signed by W. Brewer, Hiram Hawkins, D. J. Meador, J. J. Mitchell, and R. B. Barnes, as said joint committee, adopted and enacted as the Code of Alabama, and shall regulate completely so far as a statute may, the subject to which it relates and shall go into force and be operative on such day after its publication as the governor may by proclamation designate.

SEC. 2. *Be it further enacted*, That no act passed at the present session of the general assembly shall be repealed or affected in any manner by the adoption of this Code, except that all acts passed prior to the 20th day of January, 1897, directly amending sections of the Code of 1886, and which have been, by the joint committee, incorporated in the Code, are repealed.

Approved February 16th, 1897.

AN ACT to provide for the publication and distribution of the Code of Alabama.

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That the governor shall secure to the state the copyright of the Code of Alabama adopted at this session of the general assembly.

SEC. 2. The commissioner who codified and revised the statutes of the state is required to supervise the publication of the Code. He shall read all proof, correct all manifest errors, compare the copy with the original manuscript, and see that the Code as printed corresponds accurately with the original as adopted.

SEC. 3. The commissioner shall, in arranging the Code, have the certificate hereinafter provided for, and the act adopting the Code, and this act, printed in the first volume, next after the title page; then the Constitution of the United States and the amendments thereto, with citations under each section to the decisions of the supreme court of the United States construing the section; then the Constitution of Alabama, 1875, with citations under

*The joint committee appointed to examine the Code consisted of M. L. Stansel (chairman), W. C. Davis, P. H. Pitts, Virgil Bouldin and O. Kyle, on the part of the house; and Francis L. Pettus, Hugh L. McElderry and Thomas H. Smith, on the part of the senate.

each section to the decisions of the supreme court of Alabama, construing that section, or a section of a previous Constitution of Alabama substantially the same, with brief and concise statements of the questions decided, so far as such statements may be practicable; then sections 905 and 906 of the Revised Statutes of the United States relating to the authentication of public records and judicial proceedings; then the table of contents of the Civil Code; then the Civil Code, from section one to forty-two hundred and ninety-eight, both included, as shown on the manuscript; then the rules of court and practice; then the index to the first volume, including therein the index to the Constitution of Alabama, 1875. The second volume shall contain the certificate hereinafter provided for, the Declaration of Independence, the Articles of Confederation, the Constitution of the United States and the amendments thereto; the ordinance of 1787; the act of Congress of April 7, 1798, for the government of the Mississippi Territory, and the act of May 10, 1800, supplementary thereto; the articles of cession and agreement entered into by the United States and the State of Georgia, April 24th, 1802; the act of March 27th, 1804, and the act of May 14th, 1812, enlarging the boundaries of the Mississippi Territory; the act of March 3d, 1817, establishing the Alabama Territory, and the act of April 20th, 1818, amendatory thereof; the act of March 2d, 1819, for the admission of Alabama into the Union, and the resolution of December 14th, 1819, declaring the admission of Alabama into the Union; the acts of Congress known as the reconstruction acts; the several acts of Congress of March 2d, 1827, July 4th, 1836, August 16th, 1842, January 27th, 1847, and August 11th, 1848, as found on pages 50 to 52, inclusive, of the Code of Alabama, 1876; the several constitutions of the State of Alabama which have been heretofore in force, with the amendments thereto, and the Constitution now in force, with the date of their going into effect; then the table of contents of the Criminal Code; then the Criminal Code, then the index to the Criminal Code; then the comparative table of sections contained in both the Civil and Criminal Codes, showing the number which each section brought from the Code of 1886 bears in this Code, showing also the sections of the former Code which are omitted from this Code. He shall substitute for any section, as shown on the manuscript, the same section as amended by any act passed at the present session of the general assembly, as fully and completely as though such sections had been originally written into the manuscript, with marginal notes showing the date of such amendment and the page of the pamphlet acts where found. He shall also incorporate all other acts of a general and public nature passed at the present session of the general assembly, and which affect or repeal sections of the Code as adopted, and shall omit all repealed sections. The commissioner must give to each new section a number, prefix thereto an appropriate head-line; and if it shall be deemed necessary he may renumber the sections as shown by the manuscript, and in that event he must change all cross references accordingly.

SEC. 4. The commissioner must insert after each section and before the next section, annotations giving full citations to the decisions of the supreme court construing or mentioning such section, or the act on which it is based, and, as far as practicable, a brief and concise statement of the question decided by the cases cited.

SEC. 5. That seven thousand copies of the Code shall be printed and bound for the use of the State. The paper and binding thereof must be of the best material and workmanship. The pages shall be the same size as the pages of the Code of 1886, and the same number of ems and type for the text, numbers of sections, head-lines of sections, annotations, citations and marginal references as in that Code; but the table of contents and the subjects of chapters shall be in such type as the commissioner may direct or approve. The Code shall be bound in two volumes, in law-sheep of the best quality and in the best style of workmanship.

SEC. 6. When the printing of the Code is completed and the same has been by the commissioner compared with the original manuscript as herein required, he must certify that the same has been compared with the original manuscript as adopted by the general assembly, and that the Code as printed is the same as adopted, which certificate must be printed in each copy of each volume of the Code; and the Code thus printed and published must be received as the law in all courts and in all proceedings before any board, body or officer in this state, subject to correction by the original manuscript, which shall be suitably bound and labeled and kept on file in the office of the secretary of state.

SEC. 7. Within thirty days after the adjournment of the present session of the general assembly the governor shall fix a maximum price for printing and binding the Code, not to exceed four dollars a copy for the two volumes, and thereupon the secretary of state must advertise for bids to print and bind the Code in accordance with this act, such advertisement to be inserted in two daily newspapers published in the state. Each bid must be in a sealed envelope addressed to the secretary of state, and indorsed, "Bid for printing and binding the Code of Alabama," and must be accompanied by a bond in not less than thirty thousand dollars, with resident sureties to be approved by the governor if the bid should be accepted, conditioned to faithfully perform the contract; and on the first day of April, 1897, or within ten days thereafter, all bids must be, by the secretary of state, opened in the presence of the governor, state auditor and state treasurer, and the contract must thereupon, with the approval of the governor, auditor and treasurer, be awarded to the lowest bidder. But no bid in excess of the maximum price, or which is not accompanied by the bond herein required, must be considered. The governor may, when the entire text of the Code has been delivered to the printers, pay the contractor such part of the agreed price as may be deemed just, not to exceed one-third of the whole sum to be paid for the entire work, and may make such further payments, as the work progresses, as he may deem just; but not more than two-thirds of such agreed price must be paid until the contract has been fully performed on the part of the contractor, all such payments to be made on the certificate of the governor and warrant drawn by the auditor.

SEC. 8. The original manuscript must be retained in the office of the secretary of state and a copy only sent to the printer. The commissioner shall furnish the copy of all matter to be included in the Code, for which he shall receive seven cents per hundred words, not including the prefatory matter, the original of which may be sent to the printer; the amount of such copying and the price thereof at the rate herein prescribed shall be ascertained

by the secretary of state and certified to the auditor when the work is done, whereupon the same must be paid.

SEC. 9. The commissioner for performing all the services required of him by this act other than the preceding section shall receive six thousand dollars, one-half when the work is all delivered to the binders, the other half when the seven thousand copies are delivered to the secretary of state, to be paid on warrants drawn by the auditor.

SEC. 10. Upon the delivery of the seven thousand copies of the Code to the secretary of state, the governor must issue his proclamation announcing the fact and designating a day, not less than thirty days thereafter, on which the Code shall go into effect and become operative. The secretary of state must cause a printed copy of such proclamation to be securely pasted inside the left back of each copy of the Civil Code which he may distribute or sell; but a failure on the part of the secretary of state to comply with this direction shall in no way affect the validity of the proclamation.

SEC. 11. The secretary of state must retain for the use of the executive officers and the two houses of the general assembly, three hundred copies of the Code, and must transmit to the librarian of congress, for the purpose of copyright, two copies; to the department of state of the United States, two copies; to the executive of each state and territory, two copies; to the governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of education, commissioner of agriculture, examiner of public accounts, state health officer, adjutant-general, president or other head of the convict bureau, president of the railroad commission, clerk of the supreme court, reporter of the supreme court, secretary of the senate, clerk of the house of representatives, and to each member of the general assembly, one copy each; to the president of the University of Alabama for the use of the law department three copies, to the librarian of the Agricultural and Mechanical College, of the Alabama Institute for the Deaf, and the Alabama-Bryce Insane Hospital, for the use of their respective institutions, one copy each; to each judge of any court of record in this state, not including county commissioners, one copy; to each chancellor, solicitor, United States district attorney, and United States district judge in this state, one copy; to the librarian of the supreme court for the use of library, ten copies; to the department of justice of the United States, one copy; to the United States circuit court of appeals for the fifth circuit, one copy; to the judge of probate for each county, one copy each for such judge, the clerk of the circuit court, the clerk of the city court or other inferior court of record, if there be such in the county, the sheriff, the register in chancery, the tax assessor, the tax-collector, the county treasurer, the county superintendent, and each justice of the peace and each notary public and ex officio justice of the peace.

SEC. 12. The copies distributed under this act to any officer shall belong to the office and not to the individual; and any officer, or in case of his death, the executor or administrator of such officer, failing to deliver such copy on demand to his successor, must, on conviction, be fined not less than twenty-five dollars; and such copy may be recovered in the name of the state, without bond or affidavit, as in a suit for the recovery of chattels in specie; and justices of the peace have jurisdiction of any cause arising under this section.

SEC. 13. For the purpose of making a correct distribution of the Code to the county and precinct officers entitled to the same, the secretary of state shall deliver to each judge of probate such number of copies as by the written requisition of the judge of probate may be shown that his county is entitled to receive. Such requisition must give the name and office of each officer for whom the requisition is made, and the judge of probate must take from each officer to whom a copy is delivered, a receipt, which receipt he must file in the office of the secretary of state; and he shall be responsible on his official bond for all copies delivered to him, and for which he has not filed the receipt of the officer entitled thereto, at double the selling price, as fixed by this act, to be recovered in the name of the state and paid into the treasury.

SEC. 14. All the rest of the copies of the Code after the distribution herein provided for, the secretary of state shall retain and may sell at four dollars per copy of two volumes, but shall not sell to any one individual, corporation or firm, more than ten copies.

SEC. 15. If, for any cause, the contract to print and bind the Code shall not be awarded at the time herein mentioned, it may be done at any subsequent time, in the manner hereinbefore provided; and in the event it shall become necessary to advertise more than once for bids, the governor may again fix the maximum price as hereinbefore provided.

SEC. 16. If the accepted bid be that of a foreign corporation it shall designate an agent and known place of business in this State as required by law of foreign corporations doing business in this State, but shall not be required to pay any fee or license. If the accepted bid be that of a non-resident of this state such person must file an instrument in writing designating an agent residing in this state on whom service of process issuing against such person in any action arising out of the contract, may be made; and suits on the bond of the contractor may be brought in Montgomery county.

SEC. 17. When the contract has been awarded the bid, bond and contract, together with the declaration provided for in the preceding section, if there be such, must be filed and recorded in the office of the secretary of state.

SEC. 18. If the commissioner shall die, resign or refuse to act, the governor shall appoint another in his stead.

SEC. 19. The cost and expenses incident to giving notice for bids and making distribution of the Code as herein provided must be paid out of the treasury on the certificate of the secretary of state and warrant of the auditor.

Approved February 17th, 1897.

CONSTITUTION OF THE UNITED STATES—1787.*

(Went into operation Wednesday, March 4, 1789.—Owings v. Speed, 5 Wheaton, 420.)

WE, THE PEOPLE of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

Chisholm v. Georgia, 2 Dall., 419; Martin v. Hunter, 1 Wh., 304; Dugan v. United States, 3 Wh., 172; McCulloch v. Maryland, 4 Wh., 316; Cohens v. Virginia, 6 Wh., 264; Brown v. Maryland, 12 Wh., 419; United States v. Tingey, 5 Pet., 115; Worcester v. Georgia, 6 Pet., 515; Martin v. Waddell, 16 Pet., 367; Pollard v. Hagan, 3 How., 212; Texas v. White, 7 Wall., 700; Mattox v. United States, 156 U. S., 237.

ARTICLE I.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Hayburn's case (notes), 2 Dall., 409; Sinking Fund Cases, 99 U. S., 700.

SECTION 2. [1]The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

[2]No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United

*In May, 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the state legislatures to proceed in the matter. In January, 1786, the legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other states of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other states were represented, viz.: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton, of New York) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the states by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the legislatures of every state, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the legislatures of those states which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven states having convened, George Washington, of Virginia, was unanimously elected president, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed federal government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of government under the new Constitution, it had been ratified by the conventions chosen in each state to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The president informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of Congress approved February 18, 1791, "received and admitted into this Union as a new and entire member of the United States."

States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3*[Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Hylton v. United States, 3 Dall., 171; Loughborough v. Blake, 5 Wh., 317; Pacific Ins. Co. v. Soule, 7 Wall., 433; Veazie Bank v. Fenno, 8 Wall., 533; Scholey v. Rew, 23 Wall., 331; DeTreville v. Smalls, 98 U. S., 517; Springer v. United States, 102 U. S., 586; Head Money Cases, 112 U. S., 580; Income Tax Cases, 157 U. S., 429; 158 U. S., 601.

4When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. 1The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

5The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and

*The clause included in brackets is amended by the 14th amendment, 2d section.

no person shall be convicted without the concurrence of two-thirds of the members present.

[7]Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. [1]The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

Ex parte Siebold, 100 U. S., 371; Ex parte Clarke, 100 U. S., 399; Ex parte Yarborough, 110 U. S., 651.

[2]The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. [1]Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

United States v. Ballin, 144 U. S., 1.

[2]Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Anderson v. Dunn, 6 Wh., 204; Kilbourn v. Thompson, 103 U. S., 168.

[3]Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Field v. Clark, 143 U. S. 649.

[4]Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. [1]The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Cox v. M'Clenachan, 3 Dall., 478.

[2]No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. [1]All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

[2]Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Matthews v. Zane, 7 Wh., 164; Gardner v. Collector, 6 Wall., 499.

[3]Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power:—[1]To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

Hylton v. United States, 3 Dall., 171; McCulloch v. Maryland, 4 Wh., 316; Loughborough v. Blake, 5 Wh., 317; Osborn v. Bank of United States, 9 Wh., 738; Weston v. City Council of Charleston, 2 Pet., 449; Dobbins v. The Commissioners of Erie County, 16 Pet., 435; License Cases, 5 How., 504; Cooley v. Board of Wardens, 12 How., 299; McGuire v. The Commonwealth, 3 Wall., 387; Van Allen v. The Assessors, 3 Wall., 573; Bradley v. The People, 4 Wall., 459; License Tax Cases, 5 Wall., 462; Pervear v. The Commonwealth, 5 Wall., 475; Woodruff v. Parham, 8 Wall., 123; Hinson v. Lott, 8 Wall., 148; Veazie Bank v. Fenno, 8 Wall., 533; The Collector v. Day, 11 Wall., 113; United States v. Singer, 15 Wall., 111; State tax on foreign-held bonds, 15 Wall., 300; United States v. Railroad Company, 17 Wall., 322; Railroad Company v. Peniston, 18 Wall., 5; Scholey v. Rew, 23 Wall., 331; Springer v. United States, 102 U. S., 586; Legal Tender Case, 110 U. S., 421; Brown v. Houston, 114 U. S., 622; Income Tax Cases, 157 U. S., 429; 158 U. S., 601.

[2]To borrow money on the credit of the United States;

McCulloch v. Maryland, 4 Wh., 316; Weston v. The City Council of Charleston, 2 Pet., 449; Bank of Commerce v. New York City, 2 Black, 620; Bank Tax Cases, 2 Wall., 200; The Bank v. The Mayor, 7 Wall., 16; Bank v. Supervisors, 7 Wall., 26; Hepburn v. Griswold, 8 Wall., 603; National Bank v. Commonwealth, 9 Wall., 353; Parker v. Davis, 12 Wall., 457; Legal Tender Case, 110 U. S., 421.

[3]To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

Gibbons v. Ogden, 9 Wh., 1; Brown v. Maryland, 12 Wh., 419; Wilson v. Black Bird Creek Marsh Company, 2 Pet., 245; Worcester v. Georgia, 6 Pet., 515; New York v. Miln, 11

Pet., 102; United States v. Coombs, 12 Pet., 72; Holmes v. Jennison, 14 Pet., 540; License Cases, 5 How., 504; Passenger Cases, 7 How., 283; Nathan v. Louisiana, 8 How., 73; Mager v. Grima et al., 8 How., 490; United States v. Marigold, 9 How., 560; Cowley v. Board of Wardens, 12 How., 299; The Propeller Genesee Chief v. Fitzhugh, 12 How., 443; State of Pennsylvania v. The Wheeling Bridge Company, 13 How., 518; Veazie v. Moor, 14 How., 568; Smith v. Maryland, 18 How., 71; Pennsylvania v. The Wheeling and Belmont Bridge Company, 18 How., 421; Sinnitt v. Davenport, 22 How., 227; Foster v. Davenport, 22 How., 244; Conway v. Taylor, 1 Black, 603; United States v. Holliday, 3 Wall., 407; Gilman v. Philadelphia, 3 Wall., 713; The Passaic Bridges, 3 Wall., 782; Steamship Company v. Port Wardens, 6 Wall., 31; Crandall v. Nevada, 6 Wall., 35; White's Bank v. Smith, 7 Wall., 646; Waring v. The Mayor, 8 Wall., 110; Paul v. Virginia, 8 Wall., 168; Thomson v. Pacific Railroad, 9 Wall., 579; Downham et al. v. Alexandria Council, 10 Wall., 173; The Clinton Bridge, 10 Wall., 454; The Daniel Ball, 10 Wall., 557; Liverpool Insurance Company v. Massachusetts, 10 Wall., 566; The Montello, 11 Wall., 411; Ex parte McNeil, 13 Wall., 236; State freight-tax, 15 Wall., 232; State tax on railway gross receipts, 15 Wall., 284; Osborn v. Mobile, 16 Wall., 479; Railroad Company v. Fuller, 17 Wall., 560; Bartemeyer v. Iowa, 18 Wall., 129; The Delaware railroad tax, 18 Wall., 206; Peete v. Morgan, 19 Wall., 581; Railroad Company v. Richmond, 19 Wall., 584; Railroad Company v. Maryland, 21 Wall., 456; The Lottawanna, 21 Wall., 558; Welton v. Missouri, 91 U. S., 275; Henderson v. New York, 92 U. S., 259; Chy Lung v. Freeman, 92 U. S., 275; South Carolina v. Georgia, 93 U. S., 4; Sherlock v. Alling, 93 U. S., 99; United States v. Forty-three Gallons of Whisky, 93 U. S., 188; Munn v. Illinois, 94 U. S., 113; Foster v. Master and Wardens, 94 U. S., 246; McCrady v. Virginia, 94 U. S., 375; Railroad Company v. Husen, 95 U. S., 465; Pensacola Telegraph Company v. Western Union Telegraph Company, 96 U. S., 1; Beer Company v. Massachusetts, 97 U. S., 25; Cook v. Pennsylvania, 97 U. S., 566; Transportation Company v. Wheeling, 99 U. S., 273; Packet Company v. St. Louis, 100 U. S., 423; Wilson v. McNamee, 102 U. S., 572; Western Union Telegraph Company v. Texas, 105 U. S., 460; Wiggins Ferry Company v. E. St. Louis, 107 U. S., 365; Moran v. New Orleans, 112 U. S., 69; Head Money Cases, 112 U. S., 580; Glouchester Ferry Company v. Pennsylvania, 114 U. S., 196; Poindexter v. Greenhow, 114 U. S., 270; Brown v. Houston, 114 U. S., 622; Robbins v. Shelby County Taxing District, 120 U. S., 489; Fargo v. Michigan, 121 U. S., 230; Philadephia, etc., Co., v. Pennsylvania, 122 U. S., 326; Western Union Telegraph Company v. Massachusetts, 125 U. S., 530; Ratterman v. Western Union Telegraph Company, 127 U. S., 411; Leloup v. Mobile, 127 U. S., 640; Western Union Telegraph Company v. Alabama, 132 U. S., 472; Bell's Gap Rd. Company v. Pennsylvania, 134 U. S., 232; McCall v. California, 136 U. S., 104; N. & W. Railroad Company v. Pennsylvania, 136 U. S., 114; Pullman's Palace Car Company v. Pennsylvania, 141 U. S., 18; Maine v. Grand Trunk Railway, 142 U. S., 217; Pacific Express Company v. Seibert, 142 U. S., 339; Charlotte, etc., Railroad Company v. Gibbs, 142 U. S., 386; Budd v. New York, 143 U. S., 517; Lehigh Valley Railroad Company v. Pennsylvania, 145 U. S., 192; St. Louis v. Western Union Telegraph Company, 148 U. S., 92; Virginia v. Paul, 148 U. S., 107; Columbus Southern Railroad Company v. Wright, 151 U. S., 470; Brennan v. Titusville, 153 U. S., 289; Brass v. North Dakota, 153 U. S., 391; Ashley v. Ryan, 153 U. S., 436; Postal Telegraph Cable Company v. Charleston, 153 U. S., 692; Pittsburg, etc., Railroad Company v. Backus, 154 U. S., 421; Plumley v. Massachusetts, 155 U. S., 461; Texas and Pacific Railroad Company v. Interstate Transportation Company, 155 U. S., 585; Hooper v. California, 155 U. S., 648; Postal Telegraph Cable Company v. Adams, 155 U. S., 688; United States v. Knight, 156 U. S., 1; Maddox v. United States, 156 U. S., 237; Emert v. Missouri, 156 U. S., 296; Pittsburg, etc., Coal Company v. Bates, 156 U. S., 577; Pittsburg, etc., Coal Company v. Louisiana, 156 U. S., 590; In re Debbs, 158 U. S., 564; Geer v. Connecticut, 161 U. S., 519; Western Union Telegraph Company v. James, 162 U. S., 650; Western Union Telegraph Company v. Taggart, 163 U. S., 1; Illinois Central Railroad Company v. Illinois, 163 U. S., 142; Hemington v. Georgia, 163 U. S., 299; Plessy v. Ferguson, 163 U. S., 537; Osborne v. Florida, 164 U. S., 650; Adams Express Company v. Ohio, 165 U. S., 194; New York, etc., Railroad Company v. New York, 165 U. S., 628.

[4]To establish an uniform rule of naturalization,[a] and uniform laws on the subject of bankruptcies throughout the United States;[b]

[b]Sturges v. Crowningshield, 4 Wh., 122; [b]McMillan v. McNeil, 4 Wh., 209; [b]Farmers' and Mechanics' Bank, Pennsylvania, v. Smith, 6 Wh., 131; [b]Ogden v. Saunders, 12 Wh., 213; [b]Boyle v. Zacharie, 6 Pet., 348; [a]Gassies v. Ballon, 6 Pet., 761; [b]Beers et al. v. Haughton, 9 Pet., 329; [b]Suydam et al. v. Broadnax, 14 Pet., 67; [b]Cook v. Moffat et al., 5 How., 295; [a]Dred Scott v. Sanford, 19 How., 393; United States v. Fox, 95 U. S., 670.

[5]To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

Briscoe v. The Bank of Kentucky, 11 Pet., 257; Fox v. The State of Ohio, 5 How., 410; United States v. Marigold, 9 How., 560; Hepburn v. Griswold, 8 Wall., 603; Legal Tender Cases, 12 Wall., 457; Legal Tender Case, 110 U. S., 421.

[8] To provide for the punishment of counterfeiting the securities and current coin of the United States;

Fox v. Ohio, 5 How., 410; United States v. Marigold, 9 How., 560.

[7] To establish post-offices and post-roads;

Pennsylvania v. The Wheeling and Belmont Bridge Company, 18 How., 421; Ex parte Jackson, 96 U. S., 727; In re Rapier, 143 U. S., 110.

[8] To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

Grant v. Raymond, 6 Pet., 218; Wheaton v. Peters, 8 Pet., 591; McClurg v. Kingsland, 1 How., 202; Brooks v. Fiske, 15 How., 212; Patterson v. Kentucky, 97 U. S., 501; Trade Mark Cases, 100 U. S., 82.

[9] To constitute tribunals inferior to the supreme court;

Chisholm v. Georgia, 2 Dall., 419; American Insurance Company v. Canter, 1 Pet., 511; Leitensdorfer v. Webb, 20 How., 176; United States v. Union Pacific Railroad Company, 98 U. S., 569.

[10] To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

United States v. Palmer, 3 Wh., 610; United States v. Wiltberger, 5 Wh., 76; United States v. Smith, 5 Wh., 153; United States v. Pirates, 5 Wh., 184.

[11] To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

Brown v. United States, 8 Cr., 110; American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Mrs. Alexander's cotton, 2 Wall., 404; Miller v. United States, 11 Wall., 268; Tyler v. Defrees, 11 Wall., 331; Stewart v. Kahn, 11 Wall., 493; Hamilton v. Dillin, 21 Wall., 73; Lamar, ex., v. Brown et al., 92 U. S., 187.

[12] To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

Crandall v. State of Nevada, 6 Wall., 35; Coleman v. Tennessee, 97 U. S., 509; Presse v. Illinois, 116 U. S., 252.

[13] To provide and maintain a navy;

United States v. Bevans 3 Wh., 336; Dynes v. Hoover, 20 How., 65.

[14] To make rules for the government and regulation of the land and naval forces;

Coleman v. Tennessee, 97 U. S., 509.

[15] To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

Houston v. Moore, 5 Wh., 1; Martin v. Mott, 12 Wh., 19; Luther v. Borden, 7 How., 1; Crandall v. State of Nevada, 6 Wall., 35; Texas v. White, 7 Wall., 700; Presser v. Illinois, 116 U. S., 252.

[16] To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

Houston v. Moore, 5 Wh., 1; Martin v. Mott. 12 Wh., 19; Luther v. Borden, 7 How., 1; Presser v. Illinois, 116 U. S., 252.

[17] To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased

by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

Hepburn v. Ellzey, 2 Cr., 444; Loughborough v. Blake, 5 Wh., 317; Cohens v. Virginia, 6 Wh., 264; American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Kendall, Postmaster-General v. The United States, 12 Pet., 524; United States v. Dewitt, 9 Wall., 41; Dunphy v. Kleinsmith, 11 Wall., 610; Willard v. Presbury, 14 Wall., 676; Phillips v. Payne, 92 U. S., 130; United States v. Fox, 94 U. S., 315; Mattingly v. District of Columbia, 97 U. S., 687; National Bank v. Yankton county, 101 U. S., 129.

[18] To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

McCulloch v. Maryland, 4 Wh., 316; Wayman v. Southard, 10 Wh., 1; Bank of United States v. Halstead, 10 Wh., 51; Hepburn v. Griswold, 8 Wall., 603; National Bank v. Commonwealth, 9 Wall., 353; Thomson v. Pacific Railroad, 9 Wall., 579; Parker v. Davis, 12 Wall., 457; Railroad Company v. Johnson, 15 Wall., 195; Railroad Company v. Peniston, 18 Wall., 5; United States v. Hall, 98 U. S., 343; Legal Tender Case, 110 U. S., 421; Presser v. Illinois, 116 U. S., 252.

SECTION 9. [1]The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

"Josefa Segunda," 5 Wh., 338; "The Emily," 9 Wh., 381; "The Merino," 9 Wh., 391; "The Antelope," 10 Wh., 66; United States v. Gooding, 12 Wh., 460; United States v. Preston, 3 Pet., 57; United States v. Skiddy, 11 Pet., 73; United States v. Morris, 14 Pet., 464; Dred Scott v. Sanford, 19 How., 393; People v. Compagnie, 107 U. S., 59; Morgan v. Louisiana, 118 U. S., 455.

[2]The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

United States v. Hamilton, 3 Dall., 17; Hepburn v. Ellzey, 2 Cr., 445; Ex parte Bollman, 4 Cr., 75; Ex parte Kearney, 7 Wh., 38; Ex parte Watkins, 3 Pet., 192; Ex parte Millburn, 9 Pet., 704; Holmes v. Jennison, 14 Pet., 540; Ex parte Dorr, 3 How., 103; Luther v. Borden, 7 How., 1; Ableman v. Booth and United States v. Booth, 21 How., 506; Ex parte Vallandigham, 1 Wall., 243; Ex parte Mulligan, 4 Wall., 2; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; Tarble's case, 13 Wall., 397; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Karstendick, 93 U. S., 396; Ex parte Virginia, 100 U. S., 339.

[3]No bill of attainder or ex post facto law shall be passed.

Fletcher v. Peck, 6 Cr., 87; Ogden v. Saunders, 12 Wh., 213; Watson v. Mercer, 8 Pet., 88; Carpenter et al. v. Pennsylvania, 17 How., 456; Locke v. New Orleans, 4 Wall., 172; Cummings v. Missouri, 4 Wall., 277; Ex parte Garland, 4 Wall., 333; Drehman v. Stifle, 8 Wall., 595; Klinger v. Missouri, 13 Wall., 257; Pierce v. Carskadon, 16 Wall., 234; United States v. Fox, 95 U. S., 670; Kring v. Missouri, 107 U. S., 221; In re Sawyer, 124 U. S., 200; In re Medley, 134 U. S., 160.

[4]No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Loughborough v. Blake, 5 Wh., 317; License Tax Cases, 5 Wall., 462; Pacific Ins. Co., v. Soule, 7 Wall., 433; Veazie Bank v. Fenno, 8 Wall., 533; Buffington v. Day, 11 Wall., 113; United States v. Baltimore & Ohio R. Co., 17 Wall., 322; Springer v. United States, 102 U. S., 586; Income Tax Cases, 157 U. S., 429; 158 U. S., 601.

[5]No tax or duty shall be laid on articles exported from any state.

Cooley v. Board of Wardens, 12 How., 299; Page v. Burgess, 92 U. S., 372; Turpin v. Burgess, 117 U. S., 504.

[6]No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

Cooley v. Board of Wardens, 12 How., 299; Pennsylvania v. Wheeling and Belmont Bridge Company et al., 18 How., 421; Munn v. Illinois, 94 U. S., 113; Packet Co. v. St. Louis, 100 U. S., 423; Packet Co. v. Catlettsburg, 105 U. S., 559.

[7]No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

[8]No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10. [1]No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit;[a] make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law,[b] or law impairing the obligation of contracts,[c] or grant any title of nobility.

[b]Calder v. Bull, 3 Dall., 386; [c]Fletcher v. Peck, 6 Cr., 87; [c]New Jersey v. Wilson, 7 Cr., 164; [c]Sturgis v. Crowningshield, 4 Wh., 122; [c]McMillan v. McNeil, 4 Wh., 209; [c]Dartmouth College v. Woodward, 4 Wh., 518; [c]Owings v. Speed, 5 Wh., 420; [c]Farmers' and Mechanics' Bank v. Smith, 6 Wh., 131; [c]Green et al. v. Biddle, 8 Wh., 1; [c]Ogden v. Saunders, 12 Wh., 213; [c]Mason v. Haile, 12 Wh., 370; [c]Satterlee v. Matthewson, 2 Pet., 380; [c]Hart v. Lamphire, 3 Pet., 280; [a]Craig v. State of Missouri, 4 Pet., 410; [c]Providence Bank v. Billings and Pitman, 4 Pet., 514; [a]Byrne v. State of Missouri, 8 Pet., 40; [b]Watson v. Mercer, 8 Pet., 88; [c]Mumma v. Potomac Company, 8 Pet., 281; [c]Beers v. Haughton, 9 Pet., 329; [a]Briscoe v. The Bank of Kentucky, 11 Pet., 257; [c]The Proprietors of Charles River Bridge v. The Proprietors of Warren Bridge, 11 Pet., 420; [c]Armstrong v. The Treasurer of Athens County, 16 Pet., 281; [c]Bronson v. Kinzie, 1 How., 311; [c]McCracken v. Hayward, 2 How., 608; [c]Gordon v. Appeal Tax Court, 3 How., 133; [c]Maryland v. Baltimore and Ohio R. R. Co., 3 How., 534; [c]Neil, Moore & Co. v. Ohio, 3 How., 720; [c]Cook v. Moffatt, 5 How., 295; [c]Planters' Bank v. Sharp, 96 How., 301; [c]West River Bridge Company v. Dix, 6 How., 507; [c]Crawford v. Branch Bank of Mobile, 7 How., 279; [c]Woodruff v. Trapnall, 10 How., 190; [c]Paup v. Drew, 10 How., 218; [b,c]Baltimore and Susquehanna R. R. Co. v. Nesbitt, 10 How., 395; [c]Butler v. Pennsylvania, 10 How., 402; [a]Darrington v. Bank of Alabama, 13 How., 12; [c]Richmond, &c., R. R. Co. v. The Louise R. R. Co., 13 How., 71; [c]Trustees for Vincennes University v. Indiana, 14 How., 268; [c]Curran v. Arkansas, et al., 15 How., 304; [c]Bank of Ohio v. Knoop, 16 How., 369; [b]Carpenter v. Pennsylvania, 17 How., 456; [c]Dodge v. Woolsey, 18 How., 331; [c]Beers v. Arkansas, 20 How., 527; [c]Aspinwall v. Commissioners of County of Daviess, 22 How., 364; [c]Rector of Christ Church, Philadelphia, v. County of Philadelphia, 24 How., 300; [c]Howard v. Bugbee, 24 How., 461; [c]Jefferson Branch Bank v. Skelley, 1 Black, 436; [c]Franklin Branch Bank v. State of Ohio, 1 Black, 474; [c]Trustees of the Wabash and Erie Canal Company v. Beers, 2 Black, 448; [c]Gilman v. City of Sheboygan, 2 Black, 510; [c]Bridge Proprietors v. Hoboken Company, 1 Wall., 116; [c]Hawthorne v. Calef, 2 Wall., 10; [c]The Binghampton Bridge, 3 Wall., 51; [c]The Turnpike Company v. The State, 3 Wall., 210; [b]Locke v. City of New Orleans, 4 Wall., 172; [c]Railroad Company v. Rock, 4 Wall., 177; [c]Cummings v. State of Missouri, 4 Wall., 277; [b]Ex parte Garland, 4 Wall., 333; [c]Von Hoffman v. City of Quincy, 4 Wall., 535; [c]Mulligan v. Corbin, 7 Wall., 487; [c]Furman v. Nichol, 8 Wall., 44; [c]Home of the Friendless v. Rouse, 8 Wall., 430; [c]The Washington University v. Rouse, 8 Wall., 439; [c]Butz v. City of Muscatine, 8 Wall., 575; [c]Drehman v. Stifle, 8 Wall., 595; [c]Hepburn v. Griswold, 8 Wall., 603; [b]Gut v. The State, 9 Wall., 35; [c]Railroad Company v. McClure, 10 Wall., 511; [c]Parker v. Davis, 12 Wall., 457; [c]Curtis v. Whiting, 13 Wall., 68; [c]Pennsylvania College Cases, 13 Wall., 190; [c]Wilmington R. R. v. Reid, sheriff, 13 Wall., 264; [c]Salt Company v. East Saginaw, 13 Wall., 373; [c]White v. Hart, 13 Wall., 646; [c]Osborn v. Nicholson et al., 13 Wall., 654; [c]Railroad Company v. Johnson, 15 Wall., 195; [c]Case of the State tax on foreign-held bonds, 15 Wall., 300; [c]Tomlinson v. Jessup, 15 Wall., 454; [c]Tomlinson v. Branch, 15 Wall., 460; [c]Miller v. The State, 15 Wall., 478; [c]Holyoke Company v. Lyman, 15 Wall., 500; [c]Gunn v. Barry, 15 Wall., 610; [c]Humphrey v. Pegues, 16 Wall., 244; [c]Walker v. Whitehead, 16 Wall., 314; [c]Sohn v. Waterson, 17 Wall., 596; [c]Barings v. Dabney, 19 Wall., 1; [c]Head v. The University, 19 Wall., 526; [c]Pacific R. R. Co. v. Maguire, 20 Wall., 36, [c]Garrison v. The City of New York, 21 Wall., 196; [c]Ochiltree v. The Railroad Company, 21 Wall., 249; [c]Wilmington, &c., Railroad v. King, 91 U. S., 3; [c]County of Moultrie v. Rockingham Ten Cent Savings Bank, 92 U. S., 631; [c]Home Insurance Company v. City Council of Augusta, 93 U. S., 116; [c]West Wisconsin R. R. Co. v. Supervisors, 93 U. S., 595; Farrington v. Tennessee, 95 U. S., 679; Murray v. Charleston, 96 U. S., 432; Edwards v. Kearzey, 96 U. S., 595; Keith v. Clark, 97 U. S., 454; Railroad Co. v. Georgia, 98 U. S., 359; Newton v. Commissioners, 100 U. S., 548; Railroad Co. v. Tennessee, 101

U. S., 337; Wright v. Nagle, 101 U. S., 791; Stone v. Mississippi, 101 U. S., 814; Railroad Co. v. Alabama, 101 U. S., 832; Louisiana v. New Orleans, 102 U. S., 203; Hall v. Wisconsin, 103 U. S., 5; Pennyman's case, 103 U. S., 714; Greenwood v. Freight Co., 105 U. S., 13; Guaranty Cov. Board of Liquidation, 105 U. S., 622; Kring v. Missouri, 107 U. S., 221; Louisiana v. New Orleans, 109 U. S., 285; Gilfillan v. Union Canal Co., 109 U. S., 401; Hopt v. Utah, 110 U. S., 574; Spring Valley Water Wks. v. Schottler, 110 U. S., 347; Nelson v. St. Martin's Parish, 111 U. S., 716; Mobile v. Watson, 116 U. S., 289; Church v. Kelsey, 121 U. S., 282; Freeland v. Williams, 131 U. S., 405; McGahey v. Virginia, 135 U. S., 662; Essex Road Board v. Skinkle, 140 U. S., 334; Mobile & Ohio R. Co. v. Tennessee, 153 U. S., 486; City and Lake R. Co. v. New Orleans, 157 U. S., 219; Bank of Commerce v. Tennessee, 161 U. S., 134; Baltzer v. North Carolina, 161 U. S., 240; Barnitz v. Beverly, 163 U. S., 118; Hanford v. Davies, 163 U. S., 273; St. Louis, etc., Ry. Co. v. Mathews, 165 U. S., 1.

[2]No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

McCulloch v. Maryland, 4 Wh., 316; Gibbons v. Ogden, 9 Wh., 1; Brown v. Maryland, 12 Wh., 419; Mager v. Grima, 8 How., 490; Cooley v. Board of Wardens, 12 How., 299; Almy v. California, 24 How., 169; License Tax Cases, 5 Wall., 462; Crandall v. Nevada, 6 Wall., 35; Waring v. The Mayor, 8 Wall., 110; Woodruff v. Parham, 8 Wall., 123; Hinson v. Lott, 8 Wall.. 148; State Tonnage Tax Cases, 12 Wall.,·204; State tax on railway gross receipts, 15 Wall., 284; Welton v. Missouri, 91 U. S., 275; Inman Steamship Co., v. Tinker, 94 U. S., 238; Packet Co., v. Keokuk, 95 U. S., 80; Cook v. Pennsylvania, 97 U. S., 566; Guy v. Baltimore, 100 U. S., 434; Machine Co., v. Gage, 100 U. S., 676; Turner v. Maryland, 107 U. S., 38; People v. Compagnie General Transatlantique, 107 U. S., 59; Brown v. Houston, 114 U. S., 622.

[3]No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Green v. Biddle, 8 Wh., 1; Poole v. The Lessee of Fleeger, 11 Pet., 185; Holmes v. Jennison, 14 Pet., 540; Cooley v. Board of Wardens, 12 How., 299; Steamship Co., v. Port Warden, 6 Wall., 31; State Tonnage Tax Cases, 12 Wall., 204; Peete v. Morgan, 19 Wall., 581; Cannon v. New Orleans, 20 Wall., 577; Inman Steamship Co., v. Tinker, 94 U. S., 238; Packet Co., v. Keokuk, 95 U. S., 80; Transportation Co., v. Wheeling, 99 U. S., 273; Packet Co., v. St. Louis, 100 U. S., 423; Vicksburg v. Tobin, 100 U. S., 430; Packet Co., v. Catlettsburg, 105 U. S., 559; Transportation Co., v. Parkersburg, 107 U. S., 691; Presser v. Illinois, 116 U. S., 252; Huse v. Glover, 119 U. S., 543; Sands v. Manistee Imp. Co., 123 U. S., 288; Harmon v. Chicago, 147 U. S., 396.

ARTICLE II.

SECTION 1. [1]The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected, as follows:

[2]Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Chisholm v. Georgia, 2 Dall., 419; Leitensdorfer v. Webb, 20 How., 176; Ex parte Siebold, 100 U. S., 271; McPherson v. Blacker, 146 U. S., 1.

["The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president

of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president."]

This clause has been superseded by the twelfth amendment.

[3]The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

[4]No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

English v. The Trustees of the Sailors' Snug Harbor, 3 Pet., 99.

[5]In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

[6]The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

[7]Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Mississippi v. Johnson, 4 Wall., 475.

SECTION 2. [1]The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

United States v. Wilson, 7 Pet., 150; Ex parte William Wells, 18 How., 307; Ex parte Garland, 4 Wall., 333; Armstrong's Foundry, 6 Wall., 766; The Grape Shot, 9 Wall., 129; United States v. Padelford, 9 Wall., 542; United States v. Klein, 13 Wall., 128; Armstrong v. The United States, 13 Wall., 152; Pargoud v. The United States, 13 Wall., 156; Hamilton v. Dillin, 21 Wall., 73; Mechanics and Traders' Bank v. Union Bank, 22 Wall., 276; Lamar, ex., v. Brown et al., 92 U. S., 187; Wallach et al. v. Van Riswick, 92 U. S., 202; Young v. United States, 97 U. S., 39.

[2]He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Ware v. Hylton, 3 Dall., 199; Marbury v. Madison, 1 Cr., 137; United States v. Kirkpatrick, 9 Wh., 720; American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Foster and Elam v. Neilson, 2 Pet., 253; Cherokee Nation v. Georgia, 5 Pet., 1; Patterson v. Gwinn et al., 5 Pet. 233; Worcester v. State of Georgia, 6 Pet., 515; City of New Orleans v. De Armas et al., 9 Pet. 224; Holden v. Joy, 17 Wall., 211; Mimmack v. United States, 97 U. S., 426; United States v. Germaine, 99 U. S., 508; Ex parte Siebold, 100 U. S., 371; Ex parte Clarke, 100 U. S., 399; McPherson v. Blacker, 146 U. S., 1.

[3]The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

The United States v. Kirkpatrick et al., 9 Wh., 720.

SECTION 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Marbury v. Madison, 1 Cr., 137; Kendall, Postmaster-General, v. The United States, 12 Pet., 524; Luther v. Borden, 7 How., 1; The State of Mississippi v. Johnson, President, 4 Wall., 475; Stewart v. Kahn, 11 Wall., 493.

SECTION 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Chisholm, ex., v. Georgia, 2 Dall., 419; Stuart v. Laird, 1 Cr., 299; United States v. Peters, 5 Cr., 115; Cohens v. Virginia, 6 Cr., 264; Martin v. Hunter's Lessee, 1 Wh., 304; Osborn v. United States Bank, 9 Wh., 738; Benner et al. v. Porter, 9 How., 235; The United States v. Ritchie, 17 How., 525; Murray's Lessee et al. v. Hoboken Land and Improvement Company, 18 How., 272; Ex parte Vallandigham, 1 Wall., 243; United States v. Union Pacific R. Co., 98 U. S., 569; Ames v. Kansas, 111 U. S., 449.

SECTION 2. [1]The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United

States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Hayburn's case (note), 2 Dall., 410; Chisholm v. Georgia, 2 Dall., 419; Glass et al. v. Sloop Betsey, 3 Dall., 6; United States v. La Vengeance, 3 Dall., 297; Hollingsworth v. Virginia, 3 Dall., 378; Mossman v. Higginson, 4 Dall., 12; Marbury v. Madison, 1 Cr., 137; Hepburn et al. v. Ellezley, 2 Cr., 444; United States v. Moore, 3 Cr., 159; Strawbridge et al. v. Curtis,, 3 Cr., 267; Ex parte Bollman, 4 Cr., 75; Rose v. Himely, 4 Cr., 241; Chappedelaine v. Dechenaux, 4 Cr., 305; Hope Insurance Company v. Boardman, 5 Cr., 57; Bank of United States v. Devaux, 5 Cr., 61; Hodgson v. Bowerbank, 5 Cr., 303; Owings v. Norwood's Lessee, 5 Cr., 344; Durousseau v. The United States, 6 Cr., 307; United States v. Hudson and Goodwin, 7 Cr., 32; Martin v. Hunter, 1 Wh., 304; Colson v. Lewis, 2 Wh., 377; United States v. Bevans, 3 Wh., 336; Cohens v. Virginia, 6 Wh., 264; Ex parte Kearney, 7 Wh., 38; Matthews v. Zane, 7 Wh., 164; Osborn v. United States Bank, 9 Wh., 738; United States v. Ortega, 11 Wh., 467; American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Jackson v. Twentyman, 2 Pet., 136; Cherokee Nation v. Georgia, 5 Pet., 1; New Jersey v. New York, 5 Pet., 283; Davis v. Packard, 6 Pet., 41; United States v. Arredondo, 6 Pet., 691; Davis v. Packard, 7 Pet., 276; Breedlove v. Nickolet, 7 Pet., 413; Brown v. Keene, 8 Pet., 112; Davis v. Packard, 8 Pet., 312; City of New Orleans v. De Armas, 9 Pet., 224; Rhode Island v. Massachusetts, 12 Pet., 657; The Bank of Augusta v. Earle, 13 Pet., 519; The Commercial and Railroad Bank of Vicksburg v. Slocomb, 14 Pet., 60; Suydam v. Broadnax, 14 Pet., 67; Prigg v. Pennsylvania, 16 Pet., 539; Louisville, Cincinnati and Charleston Railway Co. v. Letson, 2 How., 497; Cary v. Curtis, 3 How., 236; Warring v. Clark, 5 How., 441; Luther v. Borden, 7 How., 1; Sheldon v. Sill, 8 How., 441; The Propeller Genessee Chief v. Fitzhugh, 12 How., 443; Fretz v. Ball, 12 How., 466; Neves v. Scott, et al., 13 How., 268; Pennsylvania v. The Wheeling, &c., Bridge Company, 13 How., 518; Marshall v. The Baltimore and Ohio R. R. Co., 16 How., 314; The United States v. Guthrie, 17 How., 284; Smith v. Maryland, 18 How., 71; Jones v. League, 18 How., 76; Murray's Lessee v. Hoboken Land and Improvement Company, 18 How., 272; Hyde v. Stone, 20 How., 170; Irvine v. Marshall, 20 How., 558; Fenn v. Holmes, 21 How., 481; Moorewood v. Erequist, 23 How., 491; Kentucky v. Dennison, Governor, 24 How., 66; Ohio and Mississippi Railroad Company v. Wheeler, 1 Black, 286; The Steamer Saint Lawrence, 1 Black, 522; The Propeller Commerce, 1 Black, 574; Ex parte Vallandigham, 1 Wall., 243; Ex parte Milligan, 4 Wall., 1; The Moses Taylor, 4 Wall., 411; Mississippi v. Johnson, President, 4 Wall., 475; The Hine v. Trevor, 4 Wall., 555; City of Philadelphia v. The Collector, 5 Wall., 720; Georgia v. Stanton, 6 Wall., 50; Paynev . Hook, 7 Wall., 425; The Alicia, 7 Wall., 571; Ex parte Yerger, 8 Wall., 85; Insurance Company v. Dunham, 11 Wall., 1; Virginia v. West Virginia, 11 Wall., 39; Coal Company v. Blatchford, 11 Wall., 172; Railway Company v. Whitton's adm., 13 Wall., 270; Tarble's Case, 13 Wall., 397; Blyew v. The United States, 13 Wall., 581; Davis v. Gray, 16 Wall., 203; Case of the Sewing Machine Companies, 18 Wall., 553; Insurance Company v. Morse, 20 Wall., 445; Vannevar v. Bryant, 21 Wall., 41; The Lottawanna, 21 Wall., 558; Gaines v. Fuentes, 92 U. S., 10; Miller v. Dows, 94 U. S., 444; Doyle v. Continental Insurance Company, 94 U. S., 535; United States v. Union Pacific R. Co., 98 U. S., 569; United States v. Winchester, 99 U. S., 372; Tennessee v. Davis, 100 U. S., 257; The City of Panama, 101 U. S., 453; Ex parte Boyd, 105 U. S., 647; New Hampshire v. Louisiana, 108 U. S., 76; Wisconsin v. Pelican Ins. Co., 127 U. S., 265; Eilenbecker v. Plymouth County, 134 U. S., 31; Cook v. United States, 138 U. S., 157.

[2]In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Chisholm v. Georgia, 2 Dall., 419; Wiscart v. Dauchy, 3 Dall., 321; Marbury v. Madison, 1 Cr. 137; Durousseau v. United States, 6 Cr., 307; Martin v. Hunter's Lessee, 1 Wh., 304; Cohens v. Virginia, 6 Wh., 264; Ex parte, Kearney, 7 Wh., 38; Wayman v. Southard, 10 Wh., 1; Bank of the United States v. Halstead, 10 Wh., 51; United States v. Ortega, 11 Wh., 467; The Cherokee Nation v. Georgia, 5 Pet., 1; Ex parte Crane, 5 Pet., 189; New Jersey v. New York, 5 Pet., 283; Ex parte Sibbald v. United States, 12 Pet., 488; Rhode Island v. Massachusetts, 12 Pet., 657; Pennsylvania v. The Wheeling &c., Bridge Co., 13 How., 518; In re Kaine, 14 How., 103; Ableman v. Booth and United States v. Booth, 21 How., 506; Freeborn v. Smith, 2 Wall., 160; Ex parte McCardle, 6 Wall., 318; Ex parte McCardle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85; The Lucy, 8 Wall., 307; The Justices v. Murray, 9 Wall., 274; Pennsylvania v. Quicksilver Com-

pany, 10 Wall., 553; Murdock v. City of Memphis, 20 Wall., 590; Ex parte Siebold, 100 U. S., 371; Ex parte Clarke, 100 U. S., 399; Bors v. Preston, 111 U. S., 252; Ames v. Kansas, 111 U. S., 449.

[3]The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Ex parte Milligan, 4 Wall., 2; Smith v. Alabama, 124 U. S., 465; Nashville, Chattanooga and St. L. R. Co. v. Alabama, 128 U. S., 96; Eilenbecker v. Plymouth County, 134 U. S., 31.

SECTION. 3. [1]Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

United States v. The Insurgents, 2 Dall., 335; United States v. Mitchell, 2 Dall., 348; Ex parte Bollman 4 Cr., 75; United States v. Aaron Burr, 4 Cr., 469; Young v. United States, 97 U. S., 39.

[2]The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Bigelow v. Forest, 9 Wall., 339; Day v. Micou, 18 Wall., 156; Ex parte Lange, 18 Wall., 163; Wallach v. Van Riswick, 92 U. S., 202.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceeding of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Mills v. Duryee, 7 Cr., 481; Hampton v. McConnel, 3 Wh., 234; Mayhew v. Thatcher, 6 Wh., 129; Darby's Lessee v. Mayer, 10 Wh., 465; The United States v. Amedy, 11 Wh., 392; M'Elmoyle v. Cohen, 13 Pet., 312; Bank of Alabama, v. Dalton, 9 How., 522; D'Arcy v. Ketchum, 11 How., 165; Christmas v. Russell, 5 Wall., 290; Green v. Van Buskirk, 7 Wall., 139; Board of Public Works v. Columbia College, 17 Wall., 521; Thompson v. Whitman, 18 Wall., 457; Pennoyer v. Neff, 95 U. S., 714; Insurance Company v. Harris, 97 U. S., 331; Robertson v. Pickrell, 109 U. S., 608; Hanley v. Donohue, 116 U. S., 1; Freeman v. Alderson, 119 U. S., 185; Sugg v. Thornton, 132 U. S., 524; Cole v. Cunningham, 133 U. S., 107; Wilson v. Seligman, 144 U. S., 41; Huntington v. Attrill, 146 U. S., 657; Laing v. Rigney, 160 U. S., 531.

SECTION 2. [1]The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Bank of United States v. Devereux, 5 Cr., 61; Gassies v. Ballou, 6 Pet., 761; Rhode Island v. Massachusetts, 12 Pet., 657; The Bank of Augusta v. Earle, 13 Pet., 519; Moore v. Illinois, 14 How., 13; Conner v. Elliott, 18 How., 591; Dred Scott v. Sanford, 19 How., 393; Crandall v. Nevada, 6 Wall., 35; Woodruff v. Parham, 8 Wall., 123; Paul v. Virginia, 8 Wall., 168; Downham v. Alexandria Council, 10 Wall., 173; Liverpool Insurance Company v. Massachusetts, 10 Wall., 566; Ward v. Maryland, 12 Wall., 418; Slaughterhouse Cases, 16 Wall., 36; Bradwell v. The State, 16 Wall., 130; Chemung Bank v. Lowery, 93 U. S., 72; McCready v. Virginia, 94 U. S., 391; Guy v. Baltimore, 100 U. S., 434; Kirtland v. Hotchkiss, 100 U. S., 491; Ex parte Yarborough, 110 U. S., 651; United States v. Waddell, 112 U. S., 76; Brown v. Houston, 114 U. S., 622; Bowman v. Chicago, etc., Ry. Co., 115 U. S., 611; Walling v. Michigan, 116 U. S., 446; Mugler v. Kansas, 123 U. S., 623; Pembina Mining Co., v. Pennsylvania, 125 U. S., 181; Virginia v. Paul, 148 U. S., 107; Giozza v. Tiernan, 148 U. S., 657; Miller v. Texas, 153 U. S., 535; McKane v. Durston, 153 U. S., 684; In re Lockwood, 154 U. S., 116.

[2]A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Holmes v. Jennison, 14 Pet., 540; In re Metzger, 5 How., 176; In re Kaine, 14 How., 103; Kentucky v. Dennison, 24 How., 66; Taylor v. Tainter, 16 Wall., 366; Mahon v. Justice, 127 U. S., 700.

[3]No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Prigg v. Pennsylvania, 16 Pet., 539; Jones v. Van Zandt, 5 How., 215; Strader v. Graham, 10 How., 82; Moore v. Illinois, 14 How., 13; Dred Scott v. Sanford, 19 How., 393; Ableman v. Booth and United States v. Booth, 21 How., 506; Freeborn v. Smith, 2 Wall., 160; National Bank v. County of Yankton, 101 U. S., 129; The City of Panama, 101 U. S., 453; Van Wick v. Knevals, 106 U. S., 360; United States v. Waddell, 112 U. S., 76; Fort Leavenworth R. Co., v. Lowe, 114 U. S., 525.

SECTION 3. [1]New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

American Insurance Company v. Canter (356 bales cotton), 1 Pet., 511; Pollard's Lessee v. Hagan, 3 How., 212; Cross et al. v. Harrison, 16 How., 164.

[2]The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

McCulloch v. Maryland, 4 Wh., 316; American Insurance Company v. Canter, 1 Pet., 511; United States v. Gratiot et al., 14 Pet., 526; United States v. Rogers, 4 How., 567; Cross v. Harrison, 16 How., 164; Muckey v. Coxe, 18 How., 100; Gibson v. Chouteau, 13 Wall., 92; Clinton v. Englebert, 13 Wall., 434; Beall v. New Mexico, 16 Wall., 535; National Bank v. County of Yankton, 101 U. S., 129; The City of Panama, 101 U. S., 453; Van Wick v. Knevals, 106 U. S., 360; Fort Leavenworth R. Co., v. Lowe, 114 U. S., 525.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Luther v. Borden, 7 How., 1; Texas v. White, 7 Wall., 700.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

[1]All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2]This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

Hayburn's case, 2 Dall., 409; Ware v. Hylton, 3 Dall., 199; Calder v. Bull, 3 Dall., 386; Marbury v. Madison, 1 Cr., 137; Chirac v. Chirac, 2 Wh., 259; McCulloch v. Maryland, 4 Wh., 316; Society v. New Haven, 8 Wh., 464; Gibbons v. Ogden, 9 Wh., 1; Foster and Elam v. Neilson, 2 Pet., 253; Buckner v. Finley, 2 Pet., 586; Worcester v. Georgia, 6 Pet., 515; Kennett v. Chambers, 14 How., 38; Dodge v. Woolsey, 18 How., 331; New York v. Dibble, 21 How., 366; Ableman v. Booth and United States v. Booth, 21 How., 506; Sinnot v. Davenport, 22 How., 227; Foster v. Davenport, 22 How., 244; Haver v. Yaker, 9 Wall., 32; Hauenstein v. Lynham, 100 U. S., 483; Head Money Cases, 112 U. S., 580.

[3]The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Ex parte Garland, 4 Wall., 333.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

DONE in convention by the unanimous consent of the states present the seventeenth day of September in the year of our lord one thousand seven hundred and eighty seven and of the independance of the United States of America the twelfth. **In Witness** whereof we have hereunto subscribed our names,

GO. WASHINGTON—
Presidt. and Deputy from Virginia

New Hampshire.

JOHN LANGDON, NICHOLAS GILMAN,

Massachusetts.

NATHANIEL GORHAM, RUFUS KING.

Connecticut.

WM. SAML. JOHNSON, ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON, WM. PATERSON,
DAVID BREARLEY, JONA. DAYTON.

Pennsylvania.

B. FRANKLIN, THOMAS MIFFLIN,
ROBT. MORRIS, GEO: CLYMER,
THO: FITZSIMONS, JARED INGERSOLL,
JAMES WILSON, GOUV: MORRIS.

Delaware.

GEO: READ, GUNNING BEDFORD, JUN'R,
JOHN DICKINSON, RICHARD BASSETT.
JACO: BROOM,

Maryland.

JAMES M'HENRY, DAN: OF ST. THOS. JENIFER,
DANL CARROLL

Virginia.

JOHN BLAIR, JAMES MADISON, JR,

North Carolina.

WM. BLOUNT, RICH'D DOBBS SPAIGHT,
HU. WILLIAMSON.

South Carolina.

J. RUTLEDGE, CHARLES COTESWORTH PINCKNEY,
CHARLES PINCKNEY, PIERCE BUTLER.

Georgia.

WILLIAM FEW, ABR. BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

[ARTICLE I.]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Terret v. Taylor, 9 Cr., 43; Vidal v. Girard, 2 How., 127; Ex parte Garland, 4 Wall., 333; United States v. Cruikshank, 92 U. S., 542; Reynolds v. United States, 98 U. S., 145; Eilenbecker v. District Court of Plymouth County, 134 U. S., 31; In re Rapier, 143 U. S., 110.

[ARTICLE II.]

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

United States v. Cruikshank, 92 U. S., 542; Presser v. Illinois, 116 U. S., 252; Miller v. Texas, 153 U. S., 535.

[ARTICLE III.]

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Eilenberger v. District Court, 134 U. S., 31.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and

*The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September 1789, the preamble reciting: "The Conventions of a number of States having at the time of their adopting the Constitution expressed a desire, in order to prevent misconstruction or abuse of its powers, that proper declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the government will best insure the beneficent ends of its creation—" (1 U. S. Stat. at Large, p. 97). They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Ex parte Burford, 3 Cr., 448; The Caledonian, 4 Wh., 100; Smith v. Maryland, 18 How., 71; Murray v. Hoboken, etc. Co., 18 How., 272; Ex parte Milligan, 4 Wall., 2; Boyd v. United States, 116 U. S., 616; Eilenbecker v. District Court, 134 U. S., 31; Fong Yue Ting v. United States, 149 U. S., 698.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States v. Perez, 9 Wh., 579; Barron v. The City of Baltimore, 7 Pet., 243; Fox v. Ohio, 5 How., 410; West River Bridge Company v. Dix, 6 How., 507; Mitchell v. Harmony, 13 How., 115; Moore v. Illinois, 14 How., 13; Murray's Lessee v. Hoboken Land and Improvement Company, 18 How., 272; Dynes v. Hoover, 20 How., 65; Withers v. Buckley, 20 How., 84; Gilman v. The City of Sheboygan, 2 Black, 510; Ex parte Milligan, 4 Wall., 2; Twitchell v. The Commonwealth, 7 Wall., 321; Hepburn v. Griswold, 8 Wall., 603; Miller v. United States, 11 Wall., 268; Legal Tender Cases, 12 Wall., 457; Pumpelly v. Green Bay Company, 13 Wall., 166; Osborn v. Nicholson, 13 Wall., 654; Ex parte Lange, 18 Wall., 163; Kohl v. United States, 91 U. S., 367; Davidson v. New Orleans, 96 U. S., 97; Fox v. Cincinnati, 104 U. S., 783; United States v. Lee, 106 U. S., 196; United States v. Jones, 109 U. S., 513; Ex parte Wilson, 114 U. S., 417; Boyd v. United States, 116 U. S., 616; Ex parte Bain, 121 U. S., 1; Parkinson v. United States, 121 U. S., 281; Nashville, Chattanooga & St. Louis Ry. v. Alabama, 128 U. S., 96; Eilenbecker v. District Court, 134 U. S., 31; In re Ross, 140 U. S., 453; New Orleans v. Tater Works Co., 142 U. S., 79; McElvaine v. Brush, 142 U. S., 155; Counselman v. Hitchcock, 142 U. S., 547; Thorington v. Montgomery, 147 U. S., 490; McKane v. Durston, 153 U. S., 684; Raegan v. Farmers' Loan & Trust Co., 154 U. S., 362; Pittsburgh Ry. Co., v. Backus, 154 U. S., 421; United States v. Zucker, 161 U. S., 475; Fallbrook Irrigation Dist. v. Bradley, 164 U. S., 112.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States v. Cooledge, 1 Wh., 415; Ex parte Kearney, 7 Wh., 38; United States v. Mills, 7 Pet., 142; Barron v. City of Baltimore, 7 Pet., 243; Fox v. Ohio, 5 How., 410; Withers v. Buckley, 20 How., 84; Ex parte Milligan, 4 Wall., 2; Twitchell v. The Commonwealth, 7 Wall., 321; Miller v. The United States, 11 Wall., 268; United States v. Cook, 17 Wall., 168; United States v. Cruikshank et al., 92 U. S., 542; Reynolds v. United States, 98 U. S., 145; Eilenbecker v. District Court, 134 U. S., 31; McElvaine v. Brush, 142 U. S., 155; Mattox v. United States, 156 U. S., 237; Rosen v. United States, 161 U. S., 29; United States v. Zucker, 161 U. S., 475; Brown v. Walker, 161 U. S., 591.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

United States v. La Vengeance, 3 Dall., 297; Bank of Columbia v. Oakley, 4 Wh., 235; Parsons v. Bedford, 3 Pet., 433; Lessee of Livingston v. Moore, 7 Pet., 469; Webster v. Reid, 11 How., 437; Pennsylvania v. The Wheeling, &c., Bridge Company et al., 13 How., 518; The Justices v. Murray, 9 Wall., 274; Edwards v. Elliott, 21 Wall., 532; Pearson v. Yewdall, 95 U. S., 294; McElrath v. United States, 102 U. S., 426; Arkansas Valley, etc. Co., v. Mann, 130 U. S., 69; Eilenbecker v. District Court, 134 U. S., 31; Coughran v. Bigelow, 164 U. S., 301.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Pervear v. Commonwealth, 5 Wall., 475; Wilkerson v. Utah, 99 U. S., 130; Eilenbecker v. District Court, 134 U. S., 31; In re Kemmler, 136 U. S., 436; McElvaine v. Brush, 142 U. S., 155; O'Neil v. Vermont, 144 U. S., 323; Fong Yue Ting v. United States, 149 U. S., 698.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Lessee of Livingston v. Moore et al., 7 Pet., 469.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Chisholm v. Georgia, 2 Dall., 419; Hollingsworth v. Virginia, 3 Dall., 378; Martin v. Hunter's Lessee, 1 Wh., 304; McCulloch v. Maryland, 4 Wh., 316; Anderson v. Dunn, 6 Wh., 204; Cohens v. Virginia, 6 Wh., 264; Osborn v. United States Bank, 9 Wh., 738; Buchler v. Finley, 2 Pet., 586; Ableman v. Booth, 21 How., 506; The Collector v. Day, 11 Wall., 113; Claflin v. Houseman, 93 U. S., 130; Inman Steamship Company v. Tinker, 94 U. S., 238; United States v. Harris, 106 U. S., 629; Manchester v. Massachusetts, 139 U. S., 24; Ex parte Rapier, 143 U. S., 110.

ARTICLE XI.*

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Georgia v. Brailsford et al., 2 Dall., 402; Chisholm v. Georgia, 2 Dall., 419; Hollingsworth v. Virginia, 3 Dall., 378; Cohen v. Virginia, 6 Wh., 264; Osborn v. United States Bank, 9 Wh., 738; United States v. The Planters' Bank, 9 Wh., 904; Georgia v. Juan Madrazo, 1 Pet., 110; Cherokee Nation v. Georgia, 5 Pet., 1; Briscoe v. The Bank of Kentucky, 11 Pet., 257; Curran v. Arkansas et al., 15 How., 304; New Hampshire v. Louisiana, 108 U. S., 76; Clark v. Barnard, 108 U. S., 436; Poindexter v. Greenhow, 114 U. S., 270; Hagood v. Southern, 117 U. S., 52; Scott v. Donald, 165 U. S., 58, 107.

ARTICLE XII.†

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as

*The eleventh amendment of the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th September, 1794; and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

†The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—The president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII.*

SECTION. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

Dred Scott v. Sanford, 19 How., 393; White v. Hart, 13 Wall., 646; Osborn v. Nicholson, 13 Wall., 654; Slaughter-house Cases, 16 Wall., 36; Ex parte Virginia, 100 U. S., 339; Civil Rights case, 109 U. S., 3; Slaughter-house Cases, 16 Wall., 36; United States v. Harris, 106 U. S., 629; Plessy v. Ferguson, 163 U. S., 537; Adams Express Company v. Ohio, 165 U. S., 194.

ARTICLE XIV.†

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

*The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

†The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of

nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Slaughter-house Cases, 16 Wall., 36: Bartemeyer v. Iowa, 18 Wall., 129; Minor v. Happersett, 21 Wall., 162; Walker v. Stuvinet, 92 U. S., 90; Kennard v. Louisiana, 92 U. S., 480; United States v. Cruikshank, 92 U. S., 542; Munn v. Illinois, 94 U. S., 113; McMillan v. Anderson, 95 U. S., 37; Pennoyer v. Neff, 95 U. S., 714; Davidson v. New Orleans, 96 U. S., 97; R. Co. v. Richmond, 96 U. S., 521; Strauder v. West Virginia, 100 U. S., 303; Virginia v. Rivers, 100 U. S., 313; Ex parte Virginia, 100 U. S., 339; Missouri v. Lewis, 101 U. S., 22; Neal v. Delaware, 103 U. S., 370; Pace v. Alabama, 106 U. S., 583; United States v. Harris, 106 U. S., 629; Bush v. Kentucky, 107 U. S., 110; Ex parte Wall., 107 U. S., 265; Gross v. United States Mtg. Company, 108 U. S., 477; Civil Rights Cases, 109 U. S., 3; Louisiana v. New Orleans, 109 U. S., 285; Hurtado v. California, 110 U. S., 516; Hagar v. Reclamation Dist., 111 U. S., 701; Head v. Amos Keag Manufacturing Company, 113 U. S., 9; Barbier v. Connolly, 113 U. S., 27; Provident Institution v. New Jersey, 113 U. S., 506; Chicago Life Insurance Company v. Needles, 113 U. S., 574; Wurts v. Hoagland, 114 U. S., 606; Kentucky Railroad Tax Cases, 115 U. S., 321; Missouri Pacific Railroad Company v. Humes, 115 U. S., 512; Campbell v. Holt, 115 U. S. 620; Presser v. Illinois, 116 U. S., 252; Arrowsmith v. Harmoning, 118 U. S., 194; Yick Wo v. Hopkins, 118 U. S., 356; Santa Clara Company v. Southern Pacific Railroad Company, 118 U. S., 394; Philadelphia Fire Association v. New York, 119 U. S., 110; Hayes v. Missouri, 120 U. S., 68; Huntington v. Worthen, 120 U. S., 97; Sands v. Manistee River Improvement Company, 123 U. S., 288; Mugler v. Kansas, 123 U. S., 623; Pembina, etc., Company v. Pennsylvania, 125 U. S., 181; Robards v. Lamb, 127 U. S., 58; Missouri Pacific Railroad Company v. Mackey, 127 U. S., 205; Powell v. Pennsylvania, 127 U. S., 678; Kidd v. Pearson, 128 U. S., 1; Walston v. Nevin, 128 U. S., 578; Minneapolis Railroad Company v. Beckwith, 129 U. S., 26; Huling v. Kaw Valley Ry. 130 U. S., 559; Palmer v. McMahon, 133 U. S., 660; Eilenbecker v. District Court, 134 U. S., 31; Bell's Gap R. Company v. Pennsylvania, 134 U. S., 232; Chicago, etc., Ry. Company v. Minnesota, 134 U. S., 418; L. & N. Railroad Company v. Woodson, 134 U. S., 614; Kauffman v. Wooters, 138 U. S., 285; Leeper v. Texas, 139 U. S., 462; Davis v. Texas, 139 U. S., 651; McElvaine v. Brush, 142 U. S., 155; Pacific Express Company v. Seibert, 142 U. S., 339; Charlotte, etc., Railroad Company v. Gibbes, 142 U. S., 386; Schwab v. Berggren, 143 U. S., 442; Fielden v. Illinois, 143 U. S., 452; Budd v. New York, 143 U. S., 517; Logan v. United States, 144 U. S., 263; New York v. Squire, 145 U. S., 175; Morley v. Lake Shore Ry. Company, 146 U. S. 162; Hallinger v. Davis, 146 U. S., 314; Paulsen v. Portland, 149 U. S., 30; Minneapolis and St. Louis Ry. Company v. Emmons, 149 U. S., 364; McNulty v. California, 149 U. S., 645; Fong Yue Ting v. United States, 149 U. S., 698; Columbus Southern Ry. Company v. Wright, 151 U. S., 470; New York, etc., Railroad Company v. Bristol, 151 U. S., 556; Duncan v. Missouri, 152 U. S., 377; Marchant v. Pennsylvania Railroad Company, 153 U. S., 380; Scott v. McNeal, 154 U. S., 34; In re Lockwood, 154 U. S., 116; Gray v. Connecticut, 159 U. S., 74; Central Land Company v. Laidley, 159 U. S., 103; Moore v. Missouri, 159 U. S., 673; Iowa Central Ry. Company v. Iowa, 160 U. S., 389; Eldridge v. Trezevant, 160 U. S., 452; Chappell v. United States, 160 U. S., 499; Gibson v. Mississippi, 162 U. S., 565; Lowe v. Kansas, 163 U. S., 81; Plessy v. Ferguson, 163 U. S., 537; Fall Brook Irrigation District v. Bradley, 164 U. S., 112; Missouri Pacific Railroad Company v. Nebraska, 164 U. S., 403; Covington, etc., Turnpike Company v. Sandford, 164 U. S., 578; St. Louis & San Francisco Railroad Company v. Mathews, 165 U. S., 1; Gulf, Colorado & Santa Fe Railroad Company v. Ellis, 165 U. S., 150; Jones v. Brine, 165 U. S., 180; Adams Express Company v. Ohio, 165 U. S., 194; Western Union Telegraph Company v. Indiana, 165 U. S., 304.

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of per-

amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore *Resolved*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it;) Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it;) Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867; and was not afterward ratified by either State.

sons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Keith v. Clark, 97 U. S., 454.

SECTION 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Crandall v. Nevada, 6 Wall., 35; Paul v. Virginia, 8 Wall., 168; Ward v. Maryland, 12 Wall., 418; Slaughter-house Cases, 16 Wall., 36; Bradwell v. The State, 16 Wall., 130; Bartemeyer v. Iowa, 18 Wall., 129; Minor v. Happersett, 21 Wall., 162; Walker v. Sauvinet, 92 U. S., 90; Kennard v. Louisiana, Morgan, 92 U. S., 480; United States v. Cruikshank, 92 U. S., 542; Munn v. Illinois, 94 U. S., 113. Strauder v. West Virginia, 100 U. S., 303; Virginia v. Rives, 100 U. S., 313.

ARTICLE XV.*

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The congress shall have power to enforce this article by appropriate legislation.

United States v. Reese, 92 U. S., 214; United States v. Cruikshank, 92 U. S., 542; Neal v. Delaware, 103 U. S., 370; United States v. Harris, 106 U. S., 629; Ex parte Yarborough, 110 U. S., 651.

*The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: from North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9–12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13–14, 1869; New York, March 17–April 14, 1869, (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it) New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15–17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18–19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870, Nebraska, February 17, 1870; Texas, February, 18, 1870. The State of Georgia also ratified the amendment, February 2, 1870.

ANALYTICAL INDEX

TO THE

CONSTITUTION OF THE UNITED STATES

AND THE

AMENDMENTS THERETO.

A.

	Art.	Sec.	Cl.	Page.
Abridged. The privileges or immunities of citizens of the United States shall not be. [Amendments]	14	1	—	24
Absent members, in such manner and under such penalties as it may provide. Each house is authorized to compel the attendance of	1	5	1	8
Accounts of receipts and expenditures of public money shall be published from time to time. A statement of the	1	9	7	13
Accusation. In all criminal prosecutions the accused shall be informed of the cause and nature of the. [Amendments]	6	—	—	22
Accused shall have a speedy public trial. In all criminal prosecutions the. [Amendments]	6	—	—	22
He shall be tried by an impartial jury of the State and district where the crime was committed. [Amendments]	6	—	—	22
He shall be informed of the nature of the accusation. [Amendments]	6	—	—	22
He shall be confronted with the witnesses against him. [Amendments]	6	—	—	22
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	—	—	22
He shall have the assistance of counsel for his defense. [Amendments]	6	—	—	22
Actions at common law involving over twenty dollars shall be tried by jury. [Amendments]	7	—	—	22
Acts, records, and judicial proceedings of another State. Full faith and credit shall be given in each State to the	4	1	—	18
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—	18
Adjourn from day to day. A smaller number than a quorum of each house may	1	5	1	8
Adjourn for more than three days, nor to any other place than that in which they shall be sitting. Neither house shall, during the session of Congress, without the consent of the other	1	5	4	8
Adjournment, the president may adjourn them to such time as he shall think proper. In case of disagreement between the two houses as to	2	3	—	16
Admiralty and maritime jurisdiction. The judicial power shall extend to all cases of	3	2	1	16
Admitted by the Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State. New States may be	4	3	1	19
Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures and of Congress	4	3	1	19
Adoption of the Constitution shall be valid. All debts and engagements contracted by the confederation and before the	6	—	1	19
Advice and consent of the senate. The president shall have power to make treaties by and with the	2	2	2	16
To appoint ambassadors or other public ministers and consuls by and with the	2	2	2	16
To appoint other officers of the United States not herein otherwise provided for by and with the	2	2	2	16
Affirmation. Senators sitting to try impeachments shall be on oath or	1	3	6	7
To be taken by the president of the United States. Form of the oath or	2	1	7	15

	Art.	Sec.	Cl.	Page.
Affirmation. No warrants shall be issued but upon probable cause and on oath or. [Amendments]	4	—	—	22
To support the Constitution. Senators and representatives, members of State legislatures, executive and judicial officers, both State and Federal, shall be bound by oath or	6	—	3	20
Age. No person shall be a representative who shall not have attained twenty-five years of	1	2	2	6
No person shall be a senator who shall not have attained thirty years of	1	3	3	7
Agreement or compact with another State without the consent of Congress. No State shall enter into any	1	10	3	14
Aid and comfort. Treason against the United States shall consist in levying war against them, adhering to their enemies, and giving them	3	3	1	18
Alliance or confederation. No State shall enter into any treaty of.	1	10	1	13
Ambassadors, or other public ministers and consuls. The president may appoint	2	2	2	16
The judicial power of the United States shall extend to all cases affecting	2	2	1	16
Amendments to the Constitution. Whenever two-thirds of both houses shall deem it necessary, congress shall propose	5	—	—	19
To the Constitution. On applications of the legislatures of two-thirds of the States, congress shall call a convention to propose	5	—	—	19
Shall be valid when ratified by the legislatures of, or by conventions in, three-fourths of the States	5	—	—	19
Answer for a capital or infamous crime unless on presentment of a grand jury. No person shall be held to. [Amendments]	5	—	—	22
Except in cases in the land or naval forces, or in the militia when in actual service. [Amendments]	5	—	—	22
Appellate jurisdiction both as to law and fact, with such exceptions and under such regulutions as congress shall make. In what cases the supreme court shall have	3	2	2	17
Application of the legislature or the executive of a State. The United States shall protect each State against invasion and domestic violence on the	4	4	—	19
Application of the legislatures of two-thirds of the States, Congress shall call a convention for proposing amendments to the Constitution. On the	5	—	—	19
Appointment of officers and authority to train the militia reserved to the States respectively	1	8	16	11
Of such inferior officers as they may think proper in the president alone. Congress may by law vest the	2	2	2	16
In the courts of law or in the heads of departments. Congress may by law vest the	2	2	2	16
Apportionment of representation and direct taxation among the several States. Provisions relating to the. [Repealed by sec. 2 of 14th amendment]	1	2	3	7
Of representatives among the several States. Provisions relating to the. [Amendments]	14	2	—	25
Appropriate legislation. Congress shall have power to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof	1	8	18	12
Congress shall have power to enforce the thirteenth article, prohibiting slavery, by. [Amendments]	13	2	—	24
Congress shall have power to enforce the provisions of the fourteenth article by. [Amendments]	14	5	—	26
Congress shall have power to enforce the provisions of the fifteenth article by. [Amendments]	15	2	—	26
Appropriation of money for raising and supporting armies shall be for a longer term than two years. But no	1	8	12	11
Appropriations made by law. No money shall be drawn from the treasury but in consequence of	1	9	7	13
Approve and sign a bill before it shall become a law. The president shall	1	7	2	9
He shall return it to the House in which it originated with his objections, if he do not	1	7	2	9
Armies, but no appropriation for that use shall be for a longer term than two years. Congress shall have power to raise and support	1	8	12	11

	Art.	Sec.	Cl.	Page.
Armies. Congress shall make rules for the government and regulation of the land and naval forces	1	8	14	11
Arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear. [Amendments]	2	—	—	21
Arrest during their attendance at the session of their respective houses, and in going to and returning from the same, members shall in all cases, except treason, felony, and breach of the peace, be privileged from	1	6	1	8
Arsenals. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17	12
Articles exported from any State. No tax or duty shall be laid on	1	9	5	12
Arts, by securing to authors and inventors their patent rights. Congress may promote the progress of science and the useful	1	8	8	11
Assistance of counsel for his defense. In all criminal prosecutions the accused shall have the. [Amendments]	6	—	—	22
Assumption of the debt or obligations incurred in the aid of rebellion or insurrection against the United States. Provisions against the. [Amendments]	14	4	—	26
Attainder or *ex post facto* law shall be passed. No bill of	1	9	3	12
Attainder, ex post facto law, or law impairing the obligation of contracts. No State shall pass any bill of	1	10	1	13
Attainder of treason shall not work corruption of blood or forfeiture, except during the life of the person attainted	3	3	2	18
Authors and inventors the exclusive right to their writings and inventions. Congress shall have power to secure to	1	8	8	11
B.				
Bail. Excessive bail shall not be required, nor excessive fines nor cruel and unusual punishment imposed. [Amendments.]	8	—	—	23
Ballot for president and vice-president. The electors shall vote by. [Amendments.]	12	—	—	23
Ballot. If no person have a majority of the electoral votes for president and vice-president, the house of representatives shall immediately choose the president by. [Amendments.]	12	—	—	23
Bankruptcies. Congress shall have power to pass uniform laws on the subject of	1	8	4	10
Basis of representation among the several States. Provisions relating to the. [Amendments.]	14	2	—	25
Bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and. [Amendments.]	2	—	—	21
Behavior. The judges of the supreme and inferior courts shall hold their offices during good	3	1	—	16
Bill of attainder or *ex post facto* law shall be passed. No	1	9	3	12
Bill of attainder, *ex post facto* law, or law impairing the obligation of contracts. No State shall pass any	1	10	1	13
Bills of credit. No State shall emit	1	10	1	13
Bills for raising revenue shall originate in the house of representatives. All	1	7	1	9
Bills which have passed the senate and house of representatives shall, before they become laws, be presented to the president	1	7	2	9
If he approve, he shall sign them; if he disapprove, he shall return them, with his objections, to that house in which they originated	1	7	2	9
Upon the reconsideration of a bill returned by the president, with his objections, if two-thirds of each house agree to pass the same, it shall become a law	1	7	2	9
Upon the reconsideration of a bill returned by the president, the question shall be taken by yeas and nays	1	7	2	9
Not returned by the president within ten days (Sundays excepted) shall, unless congress adjourn, become laws	1	7	2	9
Borrow money on the credit of the United States. Congress shall have power to	1	8	2	9
Bounties and pensions shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments.]	14	4	—	26
Breach of the peace, shall be privileged from arrest while attending the session, and in going to and returning from the same. Senators and representatives, except for treason, felony, and	1	6	1	8

	Art.	Sec.	Cl.	Page.
Bribery, or other high crimes and misdemeanors. The President, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason	2	4	—	16
C.				
Capital or otherwise infamous crime, unless on indictment of a grand jury, except in certain specified cases. No person shall be held to answer for a. [Amendments.]	5	—	—	22
Capitation or other tax shall be laid unless in proportion to the census or enumeration. No	1	9	4	12
Captures on land and water. Congress shall make rules concerning	1	9	11	11
Casting vote. The vice-president shall have no vote unless the senate be equally divided	1	3	4	7
Census or enumeration of the inhabitants shall be made within three years after the first meeting of congress and within every subsequent term of ten years thereafter	1	2	3	7
Census or enumeration. No capitation or other direct tax shall be laid except in proportion to the	1	9	4	12
Chief justice shall preside when the president of the United States is tried upon impeachment. The	1	3	6	7
Choosing the electors and the day on which they shall give their votes, which shall be the same throughout the United States. Congress may determine the time of	2	1	3	15
Citizen of the United States at the adoption of the Constitution shall be eligible to the office of president. No person not a natural born	2	1	4	15
Citizen of the United States. No person shall be a senator who shall not have attained the age of thirty years, and been nine years a	1	3	3	7
No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a	1	2	2	6
Citizenship. Citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.	4	2	1	18
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—	24
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—	24
Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—	24
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments]	14	1	—	24
Citizens or subjects of a foreign state. The judicial power of the United States shall not extend to suits in law or equity brought against one of the States by the citizens of another State, or by. [Amendments]	11	—	—	23
Civil officers of the United States shall, on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors, be removed. All	2	4	—	16
Claims of the United States or any particular State in the territory or public property. Nothing in this Constitution shall be construed to prejudice	4	3	2	19
Classification of senators. Immediately after they shall be assembled after the first election, they shall be divided as equally as may be into three classes	1	3	2	7
The seats of the senators of the first class shall be vacated at the expiration of the second year	1	3	2	7
The seats of the senators of the second class at the expiration of the fourth year	1	3	2	7
The seats of the senators of the third class at the expiration of the sixth year	1	3	2	7
Coin a tender in payment of debts. No State shall make anything but gold and silver	1	10	1	13
Coin money and regulate the value thereof and of foreign coin. Congress shall have power to	1	8	5	10
Coin of the United States. Congress shall provide for punishing the counterfeiting the securities and current	1	8	6	10
Color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied, or abridged by the United States or by any State on account of race. [Amendments]	15	1	—	26

	Art.	Sec.	Cl.	Page.
Comfort. Treason against the United States shall consist in levying war against them, and giving their enemies aid and . .	3	3	1	18
Commander-in-chief of the army and navy, and of the militia when in actual service. The president shall be	2	2	1	17
Commerce with foreign nations, among the States, and with Indian tribes. Congress shall have power to regulate	1	8	3	9
Commerce or revenue. No preference shall be given to the ports of one State over those of another by any regulation of . . .	1	9	9	12
Vessels clearing from the ports of one State shall not pay duties in those of another	1	9	6	12
Commissions to expire at the end of the next session. The president may fill vacancies that happen in the recess of the senate by granting	2	2	3	16
Common defense, promote the general welfare, etc. To insure the [Preamble]	—	—	—	6
Common defense and general welfare. Congress shall have power to provide for the	1	8	1	9
Common law, where the amount involved exceeds twenty dollars, shall be tried by jury. Suits at. [Amendments]	7	—	—	22
No fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the. [Amendments]	7	—	—	22
Compact with another State. No State shall, without the consent of congress, enter into any agreement or	1	10	3	14
Compact with a foreign power. No State shall, without the consent of congress, enter into any agreement or	1	10	3	14
Compensation of senators and representatives to be ascertained by law	1	6	1	8
Compensation of the president shall not be increased nor diminished during the period for which he shall be elected . .	2	1	6	15
Compensation of the judges of the supreme and inferior courts shall not be diminished during their continuance in office .	3	1	—	16
Compensation. Private property shall not be taken for public use without just. [Amendments].	5	—	—	22
Compulsory process for obtaining witnesses in his favor. In criminal prosecutions the accused shall have. [Amendments] .	6	—	—	22
Confederation. No state shall enter into any treaty, alliance, or	1	10	1	13
Confederation. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under it, as under the	6	—	1	19
Confession in open court. Conviction of treason shall be on the testimony of two persons to the overt act, or upon . . .	3	3	1	18
Congress of the United States. All legislative powers shall be vested in a	1	1	—	6
Shall consist of a senate and house of representatives . .	1	1	—	6
Congress shall assemble at least once in every year, which shall be on the first Monday of December, unless they by law appoint a different day	1	4	2	8
May at any time alter regulations for elections of senators and representatives, except as to the places of choosing senators	1	4	1	8
Each house shall be the judge of the elections, returns, and qualifications of its own members	1	5	1	8
A majority of each house shall constitute a quorum to do business	1	5	1	8
A smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members .	1	5	1	8
Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2	8
Each house shall keep a journal of its proceedings	1	5	3	8
Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days	1	5	4	8
Senators and representatives shall receive a compensation to be ascertained by law	1	6	1	8
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at their respective houses, and in going to and returning from the same	1	6	1	8
No senator or representative shall, during his term, be appointed to any civil office which shall have been created, or of which the emolument shall have been increased, during such term	1	6	2	8

	Art.	Sec.	Cl.	Page.
Congress. No person holding any office under the United States, shall, while in office, be a member of either house of congress	1	6	2	8
All bills for raising revenue shall originate in the house of representatives	1	7	1	9
Proceedings in cases of bills returned by the president with his objections	1	7	1	9
Shall have power to lay and collect duties, imposts, and excises, pay the debts, and provide for the common defense and general welfare	1	8	2	9
Shall have power to borrow money on the credit of the United States	1	8	2	9
To regulate foreign and domestic commerce, and with the Indian tribes	1	8	3	9
To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies	1	8	4	10
To coin money, regulate its value, and the value of foreign coin, and to fix the standard of weights and measures	1	8	5	10
To punish the counterfeiting the securities and current coin of the United States	1	8	6	11
To establish post-offices and post-roads	1	8	7	11
To promote the progress of science and the useful arts	1	8	8	11
To constitute tribunals inferior to the supreme court	1	8	9	11
To define and punish piracies and felonies on the high seas and to punish offenses against the law of nations	1	8	10	11
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water	1	8	11	11
To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years	1	8	12	11
To provide and maintain a navy	1	8	13	11
To make rules for the government of the army and navy	1	8	14	11
To call out the militia to execute the laws, suppress insurrections, and repel invasions	1	8	15	11
To provide for organizing, arming, and equipping the militia	1	8	16	11
To exercise exclusive legislation over the district fixed for the seat of government, and over forts, magazines, arsenals, and dockyards	1	8	17	11
To make all laws necessary and proper to carry into execution all powers vested by the Constitution in the government of the United States	1	8	18	12
No person holding any office under the United States shall accept of any present, emolument, office, or title of any kind from any foreign state, without the consent of	1	9	8	13
May determine the time of choosing the electors for president and vice-president and the day on which they shall give their votes	2	1	3	15
The president may, on extraordinary occasions, convene either house of	2	3	—	16
The manner in which the acts, records, and judicial proceedings of the States shall be proved, shall be prescribed by	4	1	—	18
New States may be admitted by congress into this Union	4	3	2	19
Shall have power to make all needful rules and regulations respecting the territory or other property belonging to the United States	4	3	1	19
Amendments to the Constitution shall be proposed whenever it shall be deemed necessary by two-thirds of both houses of	5	—	—	19
Persons engaged in insurrection or rebellion against the United States disqualified for senators or representatives in. [Amendments]	14	3	—	26
But such disqualifications may be removed by a vote of two-thirds of both houses of. [Amendments]	14	3	—	26
Shall have power to enforce, by appropriate legislation, the thirteenth amendment. [Amendments]	13	2	—	24
Shall have power to enforce, by appropriate legislation, the fourteenth amendment. [Amendments]	14	5	—	26
Shall have power to enforce by appropriate legislation, the fifteenth amendment. [Amendments]	15	2	—	26
Consent. No State shall be deprived of its equal suffrage in the senate without its	5	—	—	19
Consent of Congress. No person holding any office of profit or trust under the United States shall accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign potentate, without the	1	9	8	13

	Art.	Sec.	Cl.	Page.
Consent of Congress. No State shall lay any imposts, or duties on imports, except what may be absolutely necessary for executing its inspection laws, without the	1	10	2	14
No State shall lay any duty of tonnage, keep troops or ships of war in time of peace, without the	1	10	3	14
No State shall enter into any agreement or compact with another State, or with a foreign power, without the . . .	1	10	3	14
No State shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay, without the	1	10	3	14
No new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures thereof, as well as the	4	3	1	19
Consent of the legislature of the State in which the same may be. Congress shall exercise exclusive authority over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings by the	1	8	17	12
Consent of the legislatures of the States and of congress. No State shall be formed by the junction of two or more States or parts of States without the	4	3	1	19
Consent of the other. Neither house, during the session of congress, shall adjourn for more than three days, nor to any other place than that in which they shall be sitting, without the	1	5	4	8
Consent of the owner. No soldier shall be quartered in time of peace in any house without the. [Amendments]	3	—	—	21
Consent of the Senate. The president shall have power to make treaties, by and with the advice and	2	2	2	16
The President shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers created by law and not otherwise herein provided for, by and with the advice and	2	2	2	16
Constitution, in the Government of the United States, or in any department or officer thereof. Congress shall have power to pass all laws necessary to the execution of the powers vested by	1	8	18	12
Constitution, shall be eligible to the office of president. No person except a natural-born citizen or a citizen at the time of the adoption of the	2	1	4	15
Constitution. The president, before he enters upon the execution of his office, shall take an oath to preserve, protect, and defend the	2	1	7	15
Constitution, laws, and treaties of the United States. The judicial power shall extend to all cases arising under the . .	3	2	1	16
Constitution shall be so construed as to prejudice any claims of the United States, or of any State (in respect to territory or other property of the United States). Nothing in the . .	4	3	2	19
Constitution. The manner in which amendments may be proposed and ratified	5	—	—	19
Constitution as under the Confederation shall be valid. All debts and engagements contracted before the adoption of the . .	6	—	1	19
Constitution and the laws made in pursuance thereof, and all treaties made, or which shall be made, by the United States, shall be the supreme law of the land. The	6	—	2	20
The judges in every State, anything in the Constitution or laws of a State to the contrary notwithstanding, shall be bound thereby	6	—	2	20
Constitution. All officers, legislative, executive, and judicial, of the United States, and of the several States, shall be bound by an oath to support the	6	—	3	20
But no religious test shall ever be required as a qualification for any office or public trust	6	—	3	20
Constitution between the States so ratifying the same. The ratification of the conventions of nine States shall be sufficient for the establishment of the	7	—	—	20
Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The enumeration in the. [Amendments]	9	—	—	23
Constitution, nor prohibited by it to the States, are reserved to the State respectively or to the people. Powers not delegated to the United States by the. [Amendments]	10	—	—	23

	Art.	Sec.	Cl.	Page.
Constitution, and then engaged in rebellion against the United States. Disqualification for office imposed upon certain classes of persons who took an oath to support the. [Amendments]	14	3	—	26
Constitution. Done in convention by the unanimous consent of the States present, September 17, 1787	7	—	2	20
Contracts. No State shall pass any ex post facto law, or law impairing the obligation of	7	10	1	13
Controversies to which the United States shall be a party; between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; between a State or its citizens and foreign State, citizens, or subjects. The judicial power shall extend to.	3	2	1	16
Convene Congress or either house, on extraordinary occasions. The president may	2	3	—	16
Convention for proposing amendments to the Constitution. Congress, on the application of two-thirds of the legislatures of the States, may call a	5	—	—	19
Convention, by the unanimous consent of the States present on the 17th of September, 1787. Adoption of the Constitution in .	7	—	—	20
Conventions of nine States shall be sufficient for the establishment of the Constitution. The ratification of the	7	—	—	20
Conviction in cases of impeachment shall not be had without the concurrence of two-thirds of the members present	1	3	6	8
Copyrights to authors for limited times. Congress shall have power to provide for	1	8	8	11
Corruption of blood. Attainder of treason shall not work	3	3	2	18
Counsel for his defense. In all criminal prosecutions the accused shall have the assistance of. [Amendments]	6	—	—	22
Counterfeiting the securities and current coin of the United States. Congress shall provide for the punishment of	1	8	6	11
Courts. Congress shall have power to constitute tribunals inferior to the supreme court	1	8	9	11
Courts of law. Congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the heads of departments, or in the	2	2	2	16
Courts as Congress may establish. The judicial power of the United States shall be vested in one supreme court and such inferior	3	1	—	16
Courts. The judges of the supreme and inferior courts shall hold their offices during good behavior	3	1	—	16
Their compensation shall not be diminished during their continuance in office	3	1	—	16
Credit. No State shall emit bills of	1	10	1	13
Credit of the United States. Congress shall have power to borrow money on the	1	8	2	9
Credit shall be given in every other State to the public acts, records, and judicial proceedings of each State. Full faith and	4	1	—	18
Crime, unless on a presentment of a grand jury. No person shall be held to answer for a capital or otherwise infamous. [Amendments]	5	—	—	22
Except in cases in the military and naval forces, or in the militia when in actual service. [Amendments]	5	—	—	22
Crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—	16
Crimes, except in cases of impeachment, shall be tried by jury. All	3	2	3	18
They shall be tried in the State within which they may be committed	3	2	3	18
When not committed in a State, they shall be tried at the places which congress may by law have provided	3	2	3	18
Criminal prosecutions, the accused shall have a speedy and public trial by jury in the State and district where the crime was committed. In all. [Amendments]	6	—	—	22
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—	22
He shall be confronted with the witnesses against him. [Amendments]	6	—	—	22
He shall have compulsory process for obtaining witnesses in his favor. [Amendments]	6	—	—	22
He shall have the assistance of counsel in his defense. [Amendments]	6	—	—	22

	Art.	Sec.	Cl.	Page.
Criminate himself. No person as a witness shall be compelled to. [Amendments]	5	—	—	22
Cruel and unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor. [Amendments]	8	—	—	23
D.				
Danger as will not admit of delay. No State shall, without the consent of congress, engage in war, unless actually invaded, or in such imminent	1	10	3	14
Day on which they shall vote for president and vice-president, which shall be the same throughout the United States. Congress may determine the time of choosing the electors, and the	2	1	3	15
Day to day, and may be authorized to compel the attendance of absent members. A smaller number than a quorum of each house may adjourn from	1	5	1	8
Death, resignation, or inability of the president, the powers and duties of his office shall devolve on the vice-president. In case of the	2	1	5	15
Death, resignation, or inability of the president. Congress may provide by law for the case of the removal	2	1	5	15
Debt of the United States, including debts for pensions and bounties incurred in suppressing insurrection or rebellion, shall not be questioned. The validity of the public. [Amendments]	14	4	—	26
Debts. No State shall make anything but gold and silver coin a tender in payment of	1	10	1	13
Debts and provide for the common defense and general welfare of the United States. Congress shall have power to pay the	1	8	1	9
Debts and engagements contracted before the adoption of this Constitution shall be as valid against the United States under it as under the Confederation	6	—	1	19
Debts or obligations incurred in aid of insurrection or rebellion against the United States, or claims for the loss or emancipation of any slave. Neither the United States nor any State shall assume or pay any. [Amendments]	14	4	—	26
Declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to	1	8	11	11
Defense, promote the general welfare, etc. To insure the common. [Preamble]	—	—	—	6
Defense and general welfare throughout the United States. Congress shall have power to pay the debts and provide for the common	1	8	1	9
Defense. In all criminal prosecutions the accused shall have the assistance of counsel for his. [Amendments]	6	—	—	22
Delaware entitled to one representative in the first congress	1	2	3	7
Delay. No State shall, without the consent of congress, engage in war unless actually invaded, or in such imminent danger as will not admit of	1	10	3	14
Delegated to the United States, nor prohibited to the States, are reserved to the States or to the people. The powers not. [Amendments]	10	—	—	23
Deny or disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to. [Amendments]	9	—	—	23
Departments upon any subject relating to their duties. The president may require the written opinion of the principal officers in each of the executive	2	2	1	15
Departments. Congress may by law vest the appointment of inferior officers in the heads of	2	2	2	16
Direct tax shall be laid unless in proportion to the census or enumeration. No capitation or other	1	9	4	12
Direct taxes and representatives, how apportioned among the several States. [Repealed by the second section of the fourteenth amendment]	1	2	3	7
Disability of the president and vice-president. Provisions in case of the	2	1	5	15
Disability. No person shall be a senator or representative in congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who having previously taken an oath as a legislative, executive, or judicial officer of the United States, or of any				

	Art.	Sec.	Cl.	Page.
State, to support the Constitution, afterwards engaged in insurrection or rebellion against the United States. [Amendments]	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such. [Amendments]	14	3	—	26
Disagreement between the two houses as to the time of adjournment, the president may adjourn them to such time as he may think proper. In case of	2	3	—	16
Disorderly behavior. Each house may punish its members for	1	5	2	8
And with the concurrence of two-thirds expel a member	1	5	2	8
Disparage others retained by the people. The enumeration in the Constitution of certain rights shall not be construed to deny or. [Amendments]	9	—	—	23
Disqualification. No senator or representative shall, during the time for which he was elected, be appointed to any office under the United States which shall have been created or its emoluments increased during such term	1	6	2	8
No person holding any office under the United States shall be a member of either house during his continuance in office	1	6	2	8
No person shall be a member of either house, presidential elector, or hold any office under the United States, or any State, who, having previously sworn to support the Constitution, afterwards engaged in insurrection or rebellion. [Amendments]	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such disability. [Amendments]	14	3	—	26
District of Columbia. Congress shall exercise exclusive legislation in all cases over the	1	8	17	11
Dockyards. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17	12
Domestic tranquillity, provide for the common defense, etc. To insure. [Preamble]	—	—	—	6
Domestic violence. The United States shall protect each State against invasion and	4	4	—	19
Due process of law. No person shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property without. [Amendments]	5	—	—	22
No State shall deprive any person of life, liberty, or property without. [Amendments]	14	1	—	24
Duties and powers of the office of the president, in case of his death, removal, or inability to act, shall devolve on the vice-president	2	1	5	15
In case of the disability of the president and vice-president, congress shall declare what officer shall act	2	1	5	15
Duties, imposts, and excises. Congress shall have power to lay and collect taxes	1	8	1	9
Shall be uniform throughout the United States	1	8	1	9
Duties shall be laid on articles exported from any state. No tax or	1	9	5	12
Duties in another State. Vessels clearing in the ports of one state shall not be obliged to pay	1	9	6	12
On imports and exports, without the consent of congress, except where necessary for executing its inspection laws. No state shall lay any	1	10	2	14
Duties on imports or exports. The net produce of all such duties shall be for the use of the treasury of the United States	1	10	2	14
All laws laying such duties shall be subject to the revision and control of congress	1	10	2	14
Duty of tonnage without the consent of congress. No State shall lay any	1	10	3	14
E.				
Election of president and vice-president. Congress may determine the day for the	2	1	3	15
Shall be the same throughout the United States. The day of the	2	1	3	15
Elections for senators and representatives. The legislatures of the States shall prescribe the time, places, manner of holding	1	4	1	8
But congress may, at any time, alter such regulations, except as to the places of choosing senators	1	4	1	8
Returns and qualifications of its own members. Each house shall be judge of the	1	5	1	8

	Art.	Sec.	Cl.	Page.
Electors for members of the house of representatives. Qualifications of	1	2	1	6
Electors for president and vice-president. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the congress	2	1	2	14
But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector	2	1	2	14
Congress may determine the time of choosing the electors and the day on which they shall give their votes	2	1	3	15
Which day shall be the same throughout the United States	2	1	3	15
The electors shall meet in their respective States and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—	23
Electors shall name, in their ballots, the persons voted for as president; and in distinct ballots the person voted for as vice-president. [Amendments]	12	—	—	23
They shall make distinct lists of the persons voted for as president and of persons voted for as vice-president, which they shall sign and certify, and transmit sealed to the seat of government, directed to the president of the senate. [Amendments]	12	—	—	24
No person having taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and afterward engaged in insurrection or rebellion against the United States, shall be an elector	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such disability. [Amendments]	14	3	—	26
Emancipation of any slave shall be held to be illegal and void. Claims for the loss or. [Amendments]	14	4	—	26
Emit bills of credit. No State shall	1	10	1	13
Emolument of any kind from any king, prince, or foreign state, without the consent of congress. No person holding any office under the United States shall accept any	1	9	8	13
Enemies. Treason shall consist in levying war against the United States, in adhering to, or giving aid and comfort to their	3	3	1	18
Engagements contracted before the adoption of this Constitution shall be valid. All debts and	6	—	1	19
Enumeration of the inhabitants shall be made within three years after the first meeting of congress, and within every subsequent term of ten years thereafter	1	2	3	7
Ratio of representation not to exceed one for every 30,000 until the first enumeration shall be made	1	2	3	7
Enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The. [Amendments]	9	—	—	23
Equal protection of the laws. No State shall deny to any person within its jurisdiction the. [Amendments]	14	1	—	24
Equal suffrage in the senate. No State shall be deprived without its consent of its	5	—	—	19
Establishment of this Constitution between the States ratifying the same. The ratification of nine States shall be sufficient for the	7	—	—	20
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Amendments]	8	—	—	23
Excises. Congress shall have power to lay and collect taxes, duties, imposts, and	1	8	1	9
Shall be uniform throughout the United States. All duties, imposts, and	1	8	1	9
Exclusive legislation, in all cases, over such district as may become the seat of government. Congress shall exercise	1	8	17	11
Exclusive legislation over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise	1	8	17	12
Executive of a State. The United States shall protect each State against invasion and domestic violence on the application of the legislature or the	4	4	—	19
Executive and judicial officers of the United States, and of the several States shall be bound by an oath to support the Constitution	6	3	—	20

	Art.	Sec.	Cl.	Page.
Executive departments. On subjects relating to their duties the president may require the written opinions of the principal officers in each of the	2	2	1	15
Congress may by law vest the appointment of inferior officers in the heads of	2	2	2	15
Executive power shall be vested in a president of the United States of America. The	2	1	1	14
Expel a member. Each house, with the concurrence of two-thirds may	1	5	2	8
Expenditures of public money shall be published from time to time. A regular statement of the receipts and	1	9	7	13
Exportations from any State. No tax or duty shall be laid on	1	9	5	12
Exports or imports, except upon certain conditions. No State shall, without the consent of congress, lay any duties on	1	10	2	14
Laid by any State shall be for the use of the treasury. The net produce of all duties on	1	10	2	14
Shall be subject to the revision and control of congress. All laws of the States laying duties on	1	10	2	14
Ex post facto law shall be passed. No bill of attainder or	1	9	3	12
Ex post facto law, or law impairing the obligation of contracts. No State shall pass any bill of attainder	1	10	1	13
Extraordinary occasions. The president may convene both houses —either house of congress on	2	3	—	16

F.

Faith and credit in each State shall be given to the acts, records, and judicial proceedings of another State. Full	4	1	—	18
Felony, and breach of the peace. Members of congress shall not be privileged from arrest for treason	1	6	1	8
Felonies committed on the high seas. Congress shall have power to define and punish piracies and	1	8	10	11
Fines. Excessive fines shall not be imposed. [Amendments]	8	—	—	23
Foreign coin. Congress shall have power to coin money, fix the standard of weights and measures, and to regulate the value of	1	8	5	10
Foreign nations, among the States, and with the Indian tribes. Congress shall have power to regulate commerce with	1	8	3	9
Foreign power. No State shall, without the consent of congress, enter into any compact or agreement with any	1	10	3	14
Forfeiture, except during the life of the person attainted. Attainder of treason shall not work	3	3	2	18
Formation of new States. Provisions relating to the	4	3	1	19
Form of government. The United States shall guarantee to every State in this Union a republican	4	4	—	19
And shall protect each of them against invasion; and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—	19
Forts, magazines, arsenals, dockyards, and other needful buildings. Congress shall exercise exclusive authority over all places purchased for the erection of	1	8	17	12
Freedom of speech or the press. Congress shall make no law abridging the. [Amendments]	1	—	—	21
Free State, the right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a. [Amendments]	2	—	—	21
Fugitives from crime found in another State shall, on demand, be delivered up to the authorities of the State from which they may flee	4	2	2	18
Fugitives from service or labor in one State, escaping into another State shall be delivered up to the party to whom such service or labor may be due	4	2	3	19

G.

General welfare and secure the blessings of liberty, etc. To promote the. [Preamble]	—	—	—	6
General welfare. Congress shall have power to provide for the common defense and	1	8	1	9
Georgia shall be entitled to three representatives in the first congress	1	2	3	7
Gold and silver coin a tender in payment of debts. No State shall make anything but	1	10	1	13
Good behavior. The judges of the supreme and inferior courts shall hold their offices during	3	1	—	16

	Art.	Sec.	Cl.	Page.
Government. The United States shall guarantee to every State in this Union a republican form of	4	4	—	19
And shall protect each of them against invasion, and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence.	4	4	—	19
Grand jury. No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment of a. [Amendments]	5	—	—	22
Except in cases arising in the land and naval forces, and in the militia when in actual service. [Amendments]	5	—	—	22
Guarantee to every State in this Union a republican form of government. The United States shall	4	4	—	19
And shall protect each of them against invasion, and on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—	19
H.				
Habeas corpus shall not be suspended unless in cases of rebellion or invasion. The writ of	1	9	2	12
Heads of departments. Congress may, by law, vest the appointment of inferior officers in the	2	2	2	16
On any subject relating to their duties, the president may require the written opinion of the principal officers in each of the executive departments	2	2	1	15
High crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other	2	4	—	16
House of representatives. Congress shall consist of a senate and	1	1	—	6
Shall be composed of members chosen every second year	1	2	1	6
Qualifications of electors for members of the	1	2	1	6
No person shall be a member who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States	1	2	2	6
The executive of the several States shall issue writs of election to fill vacancies in the	1	2	4	6
Shall choose their speaker and other officers	1	2	5	6
Shall have the sole power of impeachment	1	2	5	6
Shall be the judge of the elections, returns, and qualifications of its own members	1	5	1	8
A majority shall constitute a quorum to do business	1	5	1	8
Less than a majority may adjourn from day to day, and compel the attendance of absent members	1	5	1	8
May determine its own rules of proceedings	1	5	2	8
May punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member	1	5	2	8
Shall keep a journal of its proceedings	1	5	3	8
Shall not adjourn for more than three days during the session of congress without the consent of the senate	1	5	4	8
Members shall not be questioned for any speech or debate in either house or any other place	1	6	1	8
No person holding any office under the United States shall, while holding such office, be a member of the	1	6	2	8
No person, while a member of either house, shall be appointed to an office which shall have been created or the emoluments increased during his membership	1	6	2	8
All bills for raising revenue shall originate in the	1	7	1	9
The vote for president and vice-president shall be counted in the presence of the senate and. [Amendments]	12	—	—	24
If no person have a majority of electoral votes, then from the three highest on the list the house of representatives shall immediately, by ballot, choose a president. [Amendments]	12	—	—	24
They shall vote by States, each State counting one vote. [Amendments]	12	—	—	24
A quorum shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to the choice of a president. [Amendments]	12	—	—	24
No person having as a legislative, executive, or judicial officer of the United States, or of any State, taken an oath to support the Constitution, and afterwards engaged in insurrection or rebellion against the United States, shall be a member of the. [Amendments]	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such disability. [Amendments]	14	3	—	26

	Art.	Sec.	Cl.	Page.
I.				
Imminent danger as will not admit of delay. No State shall, without the consent of congress, engage in war, unless actually invaded or in such	1	10	3	14
Immunities. Members of congress shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going and returning from the same	1	6	1	8
No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—	21
No person shall be twice put in jeopardy of life and limb for the same offense. [Amendments]	5	—	—	22
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—	24
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—	24
Nor shall any State deprive any person of life, liberty, or property without due process of law. [Amendments.]	14	1	—	24
Nor deny to any person within its jurisdiction the equal protection of the laws. [Amendments.]	14	1	—	24
Impeachment. The president may grant reprieves and pardons except in cases of	2	2	1	15
The house of representatives shall have the sole power of	1	2	5	7
The trial of all crimes shall be by jury, except in cases of	3	2	3	18
Impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed upon	2	4	—	16
Impeachments. The senate shall have the sole power to try all	1	3	6	7
The senate shall be on oath, or affirmation, when sitting for the trial of	1	3	6	7
When the president of the United States is tried the chief justice shall preside	1	3	6	7
No person shall be convicted without the concurrence of two-thirds of the members present	1	3	6	8
Judgment shall not extend beyond removal from office and disqualification to hold office	1	3	7	8
But the party convicted shall be liable to indictment and punishment according to law	1	3	7	8
Importation of slaves prior to 1808 shall not be prohibited by the congress	1	9	1	12
But a tax or duty of ten dollars for each person may be imposed on such	1	9	1	12
Imports or exports except what may be absolutely necessary for executing its inspection laws. No State shall, without the consent of congress, lay any impost or duties on	1	10	2	14
Imports or exports laid by any State shall be for the use of the treasury. The net produce of all duties on	1	10	2	14
Imports or exports shall be subject to the revision and control of congress. All laws of States laying duties on	1	10	3	14
Imposts and excises. Congress shall have power to lay and collect taxes, duties	1	8	1	9
Shall be uniform throughout the United States. All taxes, duties	1	8	1	9
Inability of the president, the powers and duties of his office shall devolve on the vice-president. In case of the death, resignation, or	2	1	5	15
Inability of the president or vice-president. Congress may provide by law for the case of the removal, death, resignation, or	2	1	5	15
Indian tribes. Congress shall have power to regulate commerce with the	1	8	3	9
Indictment or presentment of a grand jury. No person shall be held to answer for a capital or infamous crime unless on. [Amendments.]	5	—	—	22
Indictment. Except in cases arising in the land and naval and in the militia when in actual service. [Amendments.]	5	—	—	22
Indictment, trial, judgment, and punishment, according to law. The party convicted in case of impeachment shall nevertheless be liable and subject to	1	3	7	8

	Art.	Sec.	Cl.	Page.
Infamous crime unless on presentment or indictment of a grand jury. No person shall be held to answer for a capital or. [Amendments.]	5	—	—	22
Inferior courts. Congress shall have power to constitute tribunals inferior to the supreme court	1	8	9	11
Inferior courts as congress may establish. The judicial power of the United States shall be vested in one supreme court and such	3	1	—	16
The judges of both the supreme and inferior courts shall hold their offices during good behavior	3	1	—	16
Their compensation shall not be diminished during their continuance in office	3	1	—	16
Inferior officers in the courts of law, in the president alone, or in the heads of departments. Congress, if they think proper, may by law vest the appointment of	2	2	2	16
Inhabitant of the State for which he shall be chosen. No person shall be a senator who shall not have attained the age of thirty years, been nine years a citizen of the United States, and who shall not, when elected, be an	1	3	3	7
Insurrection or rebellion against the United States. No person shall be a senator or representative in congress, or presidential elector, or hold any office, civil or military, under the United States, or any State, who, having taken an oath as a legislative, executive, or judicial officer of the United States, or of a State, afterwards engaged in. [Amendments.]	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such disabilities. [Amendments.]	14	3	—	26
Debts declared illegal and void which were contracted in aid of. [Amendments.]	14	4	—	26
Insurrections and repel invasions. congress shall provide for calling forth the militia to suppress	1	8	15	11
Invasion. No State shall, without the consent of congress, engage in war unless actually invaded, or in such imminent danger as will not admit of delay	1	10	3	14
Invasion. The writ of habeas corpus shall not be suspended unless in case of rebellion or	1	9	2	12
Invasion and domestic violence. The United States shall protect each State against	4	4	—	19
Invasions. Congress shall provide for calling forth the militia to suppress insurrections and repel	1	8	15	11
Inventors and authors in their inventions and writings. Congress may pass laws to secure for limited times exclusive rights to	1	8	8	11
Involuntary servitude, except as a punishment for crime, abolished in the United States. Slavery and. [Amendments]	13	1	—	24
J.				
Jeopardy of life and limb for the same offense. No person shall be twice put in. [Amendments]	5	—	—	22
Journal of its proceedings. Each house shall keep a	1	5	3	8
Judges in every State shall be bound by the Constitution, the laws and treaties of the United States, which shall be the supreme law of the land	6	—	2	20
Judges of the supreme and inferior courts shall hold their offices during good behavior	3	1	—	16
Their compensation shall not be diminished during their continuance in office	3	1	—	16
Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under the United States	1	3	7	8
But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law	1	3	7	8
Judicial power of the United States. Congress shall have power to constitute tribunals inferior to the supreme court	1	8	9	11
The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may from time to time ordain and establish	3	1	—	16
The judges of the supreme and inferior courts shall hold their offices during good behavior	3	1	—	16
Their compensation shall not be diminished during their continuance in office	3	1	—	16

	Art.	Sec.	Cl.	Page.
Judicial power of the United States. It shall extend to all cases in law and equity arising under the Constitution, laws, and treaties of the United States	3	2	1	16
To all cases affecting ambassadors, other public ministers and consuls	3	2	1	16
To all cases of admiralty and maritime jurisdiction	3	2	1	16
To controversies to which the United States shall be a party	3	2	1	16
To controversies between two or more States	3	2	1	17
To controversies between a State and citizens of another State	3	2	1	17
To controversies between citizens of different States	3	2	1	17
To citizens of the same State claiming lands under grants of different States	3	2	1	17
To controversies between a State or its citizens and foreign States, citizens, or subjects	3	2	1	17
In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction	3	2	2	17
In all other cases before mentioned it shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as congress shall make	3	2	2	17
The trial of all crimes, except in cases of impeachment, shall be by jury	3	2	3	18
The trial shall be held in the State where the crimes shall have been committed	3	2	3	18
But when not committed in a State, the trial shall be at such place or places as congress may by law have directed	3	2	3	18
The judicial power of the United States shall not be held to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state. [Amendments]	11	—	—	23
Judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts, records, and	4	1	—	18
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—	18
Judicial and executive officers of the United States and of the several States shall be bound by an oath to support the Constitution	6	—	3	20
Judiciary. The supreme court shall have original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State may be a party	3	2	2	17
The supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and regulations as congress may make	3	2	2	17
Junction of two or more States or parts of States without the consent of the legislatures and of congress. No State shall be formed by the	4	3	1	19
Jurisdiction of another State. No new State shall, without the consent of congress, be formed or erected within the	4	3	1	19
Jurisdiction, both as to law and fact, with such exceptions and under such regulations as congress may make. The supreme court shall have appellate	3	2	2	17
Jurisdiction. In all cases affecting ambassadors, and other public ministers and consuls, and in cases where a State is a party, the supreme court shall have original	3	2	2	17
Jury. The trial of all crimes, except in cases of impeachment, shall be by	3	2	3	18
In all criminal prosecutions the accused shall have a speedy and public trial by. [Amendments]	6	—	—	22
All suits at common law, where the value exceeds twenty dollars, shall be tried by. [Amendments]	7	—	—	22
Where a fact has been tried by a jury it shall not be re-examined except by the rules of the common law. [Amendments]	7	—	—	22
Just compensation. Private property shall not be taken for public use without. [Amendments]	5	—	—	22
Justice, insure domestic tranquillity, etc. To establish. [Preamble]	—	—	—	6

L.

Labor, in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from service or	4	2	3	19
Land and naval forces. Congress shall make rules for the government and regulation of the	1	8	14	11

	Art.	Sec.	Cl.	Page.
Law and fact, with exceptions and under regulations to be made by congress. The supreme court shall have appellate jurisdiction as to	3	2	2	17
Law of the land. The Constitution, the laws made in pursuance thereof, and treaties of the United States, shall be the supreme	6	—	2	20
The judges in every State shall be bound thereby	6	—	2	20
Law of nations. Congress shall provide for punishing offenses against the	1	8	10	11
Laws. Congress shall provide for calling forth the militia to suppress insurrection, repel invasion, and to execute the	1	8	15	11
Laws and treaties of the United States. The judicial power shall extend to all cases in law and equity arising under the Constitution or the	3	2	1	16
Laws necessary to carry into execution the powers vested in the government, or in any department or officer of the United States. Congress shall make all	1	8	18	12
Legal tender in payment of debts. No State shall make anything but gold and silver coin a	1	10	1	13
Legislation in all cases over such district as may become the seat of the government. Congress shall exercise exclusive	1	8	17	11
Over all places purchased for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, congress shall exercise exclusive	1	8	17	11
Legislation. Congress shall have power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the government of the United States, or in any department or officer thereof	1	8	18	12
Legislation. Congress shall have power to enforce the thirteenth amendment, by appropriate. [Amendments]	13	2	—	24
Congress shall have power to enforce the fourteenth amendment by appropriate. [Amendments]	14	5	—	26
Congress shall have power to enforce the fifteenth amendment by appropriate. [Amendments]	15	2	—	26
Legislative powers herein granted shall be vested in congress. All.	1	1	—	6
Legislature, or the executive (when the legislature cannot be convened). The United States shall protect each State against invasion and domestic violence, on the application of the	5	—	—	19
Legislatures of two-thirds of the States, congress shall call a convention for proposing amendments to the Constitution on the application of the	5	—	—	19
Letters of marque and reprisal. Congress shall have power to grant.	1	8	11	11
No State shall grant	1	10	1	13
Liberty to ourselves and our posterity, etc. To secure the blessings of. [Preamble]	—	—	—	6
Life, liberty, and property without due process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of. [Amendments]	5	—	—	22
No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of. [Amendments]	14	1	—	24
Life or limb for the same offense. No person shall be twice put in jeopardy of. [Amendments]	5	—	—	22
Loss or emancipation of any slave shall be held illegal and void. [Amendments]	14	4	—	26
M.				
Magazines, arsenals, dockyards, and other needful buildings. Congress shall have exclusive authority over all places purchased for the erection of	1	8	17	12
Majority of each house shall constitute a quorum to do business. A	1	5	1	8
But a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1	8
Majority of all the States shall be necessary to a choice. When the choice of a president shall devolve on the house of representatives, a quorum shall consist of a member or members from two-thirds of the States; but a. [Amendments]	12	—	—	24
When the choice of a vice-president shall devolve on the senate, a quorum shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—	24

	Art.	Sec.	Cl.	Page.
Maritime jurisdiction. The judicial power shall extend to all cases of admiralty and	3	2	1	16
Marque and reprisal. Congress shall have power to grant letters of	1	8	11	11
No State shall grant any letters of	1	10	1	13
Maryland entitled to six representatives in the first congress	1	2	3	7
Massachusetts entitled to eight representatives in the first congress	1	2	3	7
Measures. Congress shall fix the standard of weights and	1	8	5	10
Meeting of congress. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day	1	4	2	8
Members of congress and of State legislatures shall be bound by oath or affirmation to support the Constitution	6	—	3	20
Militia to execute the laws, suppress insurrections, and repel invasions. Congress shall provide for calling forth the	1	8	15	11
Congress shall provide for organizing, arming, and disciplining the	1	8	16	11
Congress shall provide for governing such part of them as may be employed by the United States	1	8	16	11
Reserving to the States the appointment of the officers and the right to train the militia according to the discipline prescribed by congress	1	8	16	11
A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2	—	—	21
Misdemeanors. The president, vice-president, and all civil officers shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and	2	4	—	16
Money on the credit of the United States. Congress shall have power to borrow	1	8	2	9
Regulate the value thereof and of foreign coin. Congress shall have power to coin	1	8	5	10
Shall be drawn from the treasury but in consequence of appropriation made by law. No	1	9	7	13
Shall be published from time to time. A regular statement and account of receipts and expenditures of public	1	9	7	13
For raising and supporting armies. No appropriation of money shall be for a longer term than two years	1	8	12	11
N.				
Nations. Congress shall have power to regulate commerce with foreign	1	8	3	9
Congress shall provide for punishing offenses against the law of	1	8	10	11
Natural-born citizens, or a citizen at the adoption of the Constitution, shall be eligible to the office of president. No person except a	2	1	4	15
Naturalization. Congress shall have power to establish a uniform rule of	1	8	4	10
Naturalized in the United States, and subject to their jurisdiction, shall be citizens of the United States and of the states in which they reside. All persons born, or. [Amendments]	14	1	—	24
Naval forces. Congress shall make rules and regulations for the government and regulation of the land and	1	8	14	11
Navy. Congress shall have power to provide and maintain a	1	8	13	11
New Hampshire entitled to three representatives in the first congress	1	2	3	7
New Jersey entitled to four representatives in the first congress	1	2	3	7
New States may be admitted by congress into this Union	4	3	1	19
But no new State shall be formed within the jurisdiction of another State without the consent of congress	4	3	1	19
Nor shall any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures and of congress	4	3	1	19
New York entitled to six representatives in the first congress	1	2	3	7
Nobility shall be granted by the United States. No title of	1	9	8	13
No state shall grant any title of	1	10	1	13
Nominations for office by the president. The president shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors and other public officers	2	2	2	16
He may grant commissions to fill vacancies that happen in the recess of the senate, which shall expire at the end of their next session	2	2	3	16

	Art.	Sec.	Cl.	Page.
North Carolina entitled to five representatives in the first congress	1	2	3	7
Number of electors for president and vice-president in each State shall be equal to the number of senators and representatives to which such State may be entitled in congress	2	1	2	14
O.				
Oath of office of the president of the United States. Form of the	2	1	7	15
Oath or affirmation. No warrants shall be issued but upon probable cause, supported by. [Amendments]	4	—	—	22
Oath or affirmation to support the Constitution. Senators and representatives, members of State legislatures, executive and judicial officers of the United States and of the several States, shall be bound by	6	—	3	20
But no religious test shall ever be required as a qualification for office	6	—	3	20
The senators when sitting to try impeachment shall be on	1	3	6	7
Objections. If he shall not approve it, the president shall return the bill to the house in which it originated with his	1	7	2	9
Obligation of contracts. No State shall pass any ex post facto law, or law impairing the	1	10	1	13
Obligations incurred in aid of insurrection or rebellion against the United States to be held illegal and void. All debts or. [Amendments]	14	4	—	26
Offense. No person shall be twice put in jeopardy of life or limb for the same. [Amendments]	5	—	—	22
Offenses against the law of nations. Congress shall provide for punishing	1	8	10	11
Offenses against the United States, except in cases of impeachment. The president may grant reprieves or pardons for	2	2	1	15
Office under the United States. No person shall be a member of either house while holding any civil	1	6	2	8
No senator or representative shall be appointed to any office under the United States which shall have been created, or its emoluments increased, during the term for which he is elected	1	6	2	8
Or title of any kind from any king, prince, or foreign state, without the consent of congress. No person holding any office under the United States shall accept of any present, emolument	1	9	8	13
Office of president, in case of his removal, death, resignation, or inability, shall devolve on the vice-president. The powers and duties of the	2	1	5	15
During the term of four years. The president and vice-president shall hold	2	1	1	14
Of trust or profit under the United States shall be an elector for president and vice-president. No person holding an	2	1	2	14
Office, civil or military under the United States, or any State, who had taken an oath as a legislative, executive, or judicial officer of the United States, or of any State, and, afterwards engaged in insurrection or rebellion. No person shall be a senator, representative, or presidential elector, or hold any. [Amendments]	14	3	—	26
Officers in the president alone, in the courts of law, or in the heads of departments. Congress may vest the appointment of inferior	2	2	2	16
Officers of the United States shall be removed on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. The president, vice-president, and all civil	2	4	—	16
The house of representatives shall choose their speaker and other	1	2	5	7
The senate, in the absence of the vice-president, shall choose a president pro tempore, and also their other	1	3	5	8
Offices becoming vacant in the recess of the senate may be filled by the president, the commissions to expire at the end of the next session	2	2	3	16
One-fifth of the members present, be entered on the journal of each house. The yeas and nays shall, at the desire of	1	5	3	8
Opinion of the principal officers in each of the executive departments on any subject relating to their duties. The president may require the written	2	2	1	15
Order, resolution or vote (except on a question of adjournment), requiring the concurrence of the two houses, shall be presented to the president. Every	1	7	3	9

	Art.	Sec.	Cl.	Page.
Original jurisdiction, in all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party. The supreme court shall have	3	2	2	17
Overt act, or on confession in open court. Conviction of treason shall be on the testimony of two witnesses to the	3	3	1	18
P.				
Pardons, except in cases of impeachment. The president may grant reprieves and	2	2	1	15
Patent rights to inventors. Congress may pass laws for securing.	1	8	8	11
Peace. Members of congress shall not be privileged from arrest for treason, felony, and breach of the	1	6	1	8
No State shall, without the consent of congress, keep troops or ships of war in time of	1	10	3	14
No soldier shall be quartered in any house without the consent of the owner in time of. [Amendments]	3	—	—	21
Pensions and bounties shall not be questioned. The validity of the public debt incurred in suppressing insurrection and rebellion against the United States, including the debt for. [Amendments]	14	4	—	26
Pennsylvania entitled to eight representatives in the first congress	1	2	3	7
People, peaceably to assemble and petition for redress of grievances shall not be abridged by congress. The right of the. [Amendments]	1	—	—	21
To keep and bear arms shall not be infringed. A well-regulated militia being necessary to the security of a free State, the right of the. [Amendments]	2	—	—	21
To be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. The right of the. [Amendments]	4	—	—	21
People. The enumeration of certain rights in the Constitution shall not be held to deny or disparage others retained by the. [Amendments]	9	—	—	23
Powers not delegated to the United States, nor prohibited to the States, are reserved to the States or to the. [Amendments]	10	—	—	23
Perfect union, etc. To establish a more. [Preamble]	—	—	—	6
Persons, houses, papers, and effects against unreasonable searches and seizures. The people shall be secure in their. [Amendments]	4	—	—	21
Persons as any State may think proper to admit, shall not be prohibited prior to 1808. The migration or importation of such	1	9	1	12
But a tax or duty of ten dollars shall be imposed on the importation of each of such	1	9	1	12
Petition for the redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to. [Amendments]	1	—	—	21
Piracies and felonies committed on the high seas. Congress shall define and punish	1	8	10	11
Place than that in which the two houses shall be sitting. Neither house during the session shall, without the consent of the other, adjourn for more than three days, nor to any other	1	5	4	8
Places of choosing senators. Congress may by law make or alter regulations for the election of senators and representatives, except as to the	1	4	1	8
Ports of one State over those of another. Preference shall not be given by any regulation of commerce or revenue to the	1	9	6	12
Ports. Vessels clearing from the ports of one State shall not pay duties in another	1	9	6	12
Post-offices and post-roads. Congress shall establish	1	8	7	11
Powers herein granted shall be vested in congress. All legislative	1	1	—	6
Powers vested by the Constitution in the government or in any department or officer of the United States. Congress shall make all laws necessary to carry into execution the	1	8	18	12
Powers and duties of the office shall devolve on the vice-president, on the removal, death, resignation, or inability of the president. The	2	1	5	15
Powers not delegated to the United States nor prohibited to the States are reserved to the States and to the people. [Amendments.]	10	—	—	23

	Art.	Sec.	Cl.	Page.
The enumeration of certain rights in this Constitution shall not be held to deny or disparage others retained by the people. [Amendments.]	9	—	—	23
Preference, by any regulation of commerce or revenue, shall not be given to the ports of one State over those of another	1	9	6	12
Prejudice, any claims of the United States or of any particular State in the territory or property of the United States. Nothing in this Constitution shall	4	3	2	19
Present, emolument, office, or title of any kind whatever from any king, prince, or foreign State. No person holding any office under the United States shall, without the consent of congress, accept any	1	9	8	13
Presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service. No person shall be held to answer for a capital or otherwise infamous crime unless on a. [Amendments.]	5	—	—	22
President of the United States. The senate shall choose a president pro tempore when the vice-president shall exercise the office of	1	3	5	7
The chief justice shall preside upon the trial of the	1	3	6	7
Shall approve and sign all bills passed by congress before they shall become laws	1	7	2	9
Shall return to the house in which it originated, with his objections, any bill which he shall not approve	1	7	2	9
If not returned within ten days (Sundays excepted), it shall become a law, unless congress shall adjourn before the expiration of that time	1	7	2	9
Every order, resolution, or vote which requires the concurrence of both houses, except on the question of adjournment, shall be presented to the	1	7	3	9
If disapproved by him, shall be returned and proceeded on as in the case of a bill	1	7	3	9
The executive power shall be vested in a	2	1	1	14
He shall hold his office during the term of four years	2	1	1	14
In case of the removal of the president from office, or of his death, resignation or inability to discharge the duties of his office, the vice-president shall perform the duties of	2	1	5	15
Congress may declare, by law, in the case of the removal, death, resignation, or inability of the president, what officer shall act as	2	1	5	15
The president shall receive a compensation which shall not be increased nor diminished during his term, nor shall he receive any other emolument from the United States	2	1	6	15
Before he enters upon the execution of his office he shall take an oath of office	2	1	7	15
Shall be commander-in-chief of the army and navy and of the militia of the States when called into actual service	2	2	1	15
He may require the opinion, in writing, of the principal officer in each of the executive departments	2	2	1	15
He may grant reprieves or pardons for offenses, except in cases of impeachment	2	2	1	15
He may make treaties, by and with the advice and consent of the senate, two-thirds of the senators present concurring	2	2	2	16
He may appoint, by and with the advice and consent of the senate, ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers whose appointments may be authorized by law and not herein provided for	2	2	2	16
Congress may vest the appointment of inferior officers in the	2	2	2	16
He may fill up all vacancies that may happen in the recess of the senate by commissions which shall expire at the end of their next session	2	2	3	16
He shall give information to congress of the state of the Union, and recommend measures	2	3	—	16
On extraordinary occasions he may convene both houses or either house of congress	2	3	—	16
In case of disagreement between the two houses as to the time of adjournment, he may adjourn them to such time as he may think proper	2	3	—	16
He shall receive ambassadors and other public ministers	2	3	—	16
He shall take care that the laws be faithfully executed	2	3	—	16
He shall commission all the officers of the United States	2	3	—	16

	Art.	Sec.	Cl.	Page
President of the United States. On impeachment for, and conviction of, treaon, bribery, or other high crimes and misdemeanors, shall be removed from office. The	2	4	—	16
No person except a natural-born citizen, or a citizen of the United States at the adoption of the Constitution, shall be eligible to the office of	2	1	4	15
No person who shall not have attained the age of thirty-five years and been fourteen years a citizen of the United States shall be eligible to the office of	2	1	4	15
President and vice-president. Manner of choosing. Each State, by its legislature, shall appoint a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the congress	2	1	2	14
No senator or representative or person holding an office of trust or profit under the United States shall be an elector .	2	1	2	14
Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States	2	1	3	15
The electors shall meet in their respective States and vote by ballot for president and vice-president, one of whom at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—	23
They shall name in distinct ballots the person voted for as president and the person voted for as vice-president. [Amendments]	12	—	—	24
They shall make distinct lists of the persons voted for as president and as vice-president, which they shall sign and certify and transmit sealed to the president of the senate at the seat of government. [Amendments].	12	—	—	24
The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted. [Amendments].	12	—	—	24
The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed. [Amendments]	12	—	—	24
If no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. [Amendments]	12	—	—	24
In choosing the president, the votes shall be taken by States, the representation from each State having one vote. [Amendments[, ...	12	—	—	24
A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]. . .	12	—	—	24
But if no choice shall be made before the 4th of March next following, then the vice-president shall act as president, as in the case of the death or disability of the president. [Amendments].	12	—	—	24
President of the senate, but shall have no vote unless the senate be equally divided. The vice-president shall be , , , ,	1	3	4	7
President pro tempore. In the absence of the vice-president the senate shall choose a	1	3	5	7
When the vice-president shall exercise the office of president of the United States, the senate shall choose a	1	3	5	7
Press. Congress shall pass no law abridging the freedom of speech or of the. [Amendments].	1	—	—	21
Previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or. [Amendments].	15	1	—	26
Private property shall not be taken for public use without just compensation. [Amendments].	5	—	—	22
Privilege. Senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same.	1	6	1	8
They shall not be questioned for any speech or debate in either house in any other place	1	6	1	8
Privileges and immunities of citizens of the United States. The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States	4	2	1	18

	Art.	Sec.	Cl.	Page.
Privileges and immunities of citizens of the United States. No soldier shall be quartered in any house without the consent of the owner in time of peace. [Amendments]	3	—	—	21
No person shall be twice put in jeopardy of life and limb for the same offense. [Amendments]	5	—	—	22
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside. [Amendments]	14	1	—	24
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. [Amendments]	14	1	—	24
No State shall deprive any person of life, liberty, or property without due process of law. [Amendments]	14	1	—	24
Nor deny to any person within its jurisdiction the equal protection of its laws. [Amendments]	14	1	—	24
Prizes captured on land or water. Congress shall make rules concerning	1	8	11	11
Probable cause. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue for such but upon. [Amendments]	4	—	—	21
Process of law. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due. [Amendments]	5	—	—	22
No State shall deprive any person of life, liberty, or property without due. [Amendments]	14	1	—	24
Process for obtaining witnesses in his favor. In all criminal prosecutions the accused shall have. [Amendments]	6	—	—	22
Progress of science and useful arts. Congress shall have power to promote the	1	8	8	11
Property of the United States. Congress may dispose of and make all needful rules and regulations respecting the territory or	4	3	2	19
Property, without due process of law. No person shall be compelled in any criminal case to be a witness against himself; nor shall he be deprived of his life, liberty, or. [Amendments]	5	—	—	22
No State shall abridge the privileges or immunities of citizens of the United States, nor deprive any person of his life, liberty, or. [Amendments]	14	1	—	24
Prosecutions. The accused shall have a speedy and public trial in all criminal. [Amendment]	6	—	—	22
He shall be tried by a jury in the State or district where the crime was committed. [Amendments]	6	—	—	22
He shall be informed of the nature and cause of the accusation. [Amendments]	6	—	—	22
He shall be confronted with the witnesses against him. [Amendments]	6	—	—	22
He shall have compulsory process for obtaining witnesses. [Amendments]	6	—	—	22
He shall have counsel for his defense. [Amendments]	6	—	—	22
Protection of the laws. No State shall deny to any person within its jurisdiction the equal. [Amendments]	14	1	—	24
Public debt of the United States incurred in suppressing insurrection or rebellion shall not be questioned. The validity of the. [Amendments]	14	4	—	26
Public safety may require it. The writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the	1	9	2	12
Public trial by jury. In all criminal prosecutions the accused shall have a speedy and. [Amendments]	6	—	—	22
Public use. Private property shall not be taken for, without just compensation. [Amendments]	5	—	—	22
Punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and	1	3	7	8
Punishments inflicted. Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual. [Amendments]	8	—	—	23

	Art.	Sec.	Cl.	Page.
Q.				
Qualification for office. No religious test shall ever be required as a	6	—	3	20
Qualifications of electors of members of the house of representatives shall be the same as electors for the most numerous branch of the State legislature	1	2	1	6
Qualifications of members of the house of representatives. They shall be twenty-five years of age, seven years a citizen of the United States, and an inhabitant of the State in which chosen	1	2	2	6
Of senators. They shall be thirty years of age, nine years a citizen of the United States, and an inhabitant of the State in which chosen	1	3	3	7
Of its own members. Each house shall be the judge of the election, returns, and	1	5	1	8
Of the president. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of president	2	1	4	15
Of members of the house of representatives. Neither shall any person be eligible to the office of president who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States	2	1	4	15
Of the vice-president. No person constitutionally ineligible to the office of president shall be eligible to that of vice-president. [Amendments]	12	—	—	24
Quartered in any house without the consent of the owner in time of peace. No soldier shall be. [Amendments]	3	—	—	21
Quorum to do business. A majority of each house shall constitute a	1	5	1	8
But a smaller number than a quorum may adjourn from day to day and may be authorized to compel the attendance of absent members	1	5	1	8
Of the house of representatives for choosing a president shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. [Amendments]	12	—	—	24
Quorum to elect a vice-president by the senate. Two-thirds of the whole number of senators shall be a. [Amendments]	12	—	—	24
A majority of the whole number shall be necessary to a choice. [Amendments]	12	—	—	24
R.				
Race, color, or previous condition of servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of. [Amendments]	15	1	—	26
Ratification of amendments to the Constitution shall be by the legislatures of three-fourths of the several States or by conventions in three-fourths of the States, accordingly as congress may propose	5	—	—	19
Ratification of the conventions of nine States shall be sufficient to establish the constitution between the States so ratifiying the same	7	—	—	20
Ratio of representation until the first enumeration under the Constitution shall be made not to exceed one for every thirty thousand	1	2	3	7
Ratio of representation shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, including Indians not taxed. [Amendments]	14	2	—	25
But when the right to vote for presidential electors or members of congress, or the legislative, executive, and judicial officers of the State, except for engaging in rebellion or other crime, shall be denied or abridged by a State, the basis of representation shall be reduced therein in the proportion of such denial or abridgement of the right to vote. [Amendments]	14	2	—	26
Rebellion against the United States. Persons who, while holding certain Federal and State offices, took an oath to support the Constitution, afterwards engaged in insurrection or rebellion, disabled from holding office under the United States. [Amendments]	14	3	—	26
But congress may by a vote of two-thirds of each house remove such disability. [Amendments]	14	3	—	26

	Art.	Sec.	Cl.	Page.
Rebellion against the United States. Debts incurred for pensions and bounties for services in suppressing the rebellion shall not be questioned. [Amendments]	14	4	—	26
All debts and obligations incurred in aid of the rebellion, and all claims for the loss or emancipation of slaves, declared and held to be illegal and void. [Amendments]	14	4	—	26
Rebellion or invasion. The writ of habeas corpus shall not be suspended except when the public safety may require it in cases of	1	9	2	12
Receipts and expenditures of all public money shall be published from time to time. A regular statement of	1	9	7	13
Recess of the senate. The president may grant commissions, which shall expire at the end of the next session, to fill vacancies that may happen during the	2	2	3	16
Reconsideration of a bill returned by the president with his objections. Proceedings to be had upon the	1	7	2	9
Records, and judicial proceedings of every other State. Full faith and credit shall be given in each State to the acts	4	1	—	18
Congress shall prescribe the manner of proving such acts, records and proceedings	4	1	—	18
Redress of grievances. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the. [Amendments]	1	—	—	21
Regulations, except as to the places of choosing senators. The time, places, and manner of holding elections for senators and representatives shall be prescribed by the legislatures of the States, but congress may at any time by law make or alter such	1	4	1	8
Regulations of commerce or revenue. Preference to the ports of one State over those of another shall not be given by any	1	9	6	12
Religion or prohibiting the free exercise thereof. Congress shall make no law respecting the establishment of. [Amendments]	1	—	—	21
Religious test shall ever be required as a qualification for any office or public trust under the United States. No	6	—	3	20
Removal of the president from office, the same shall devolve on the vice-president. In case of the	2	1	5	15
Representation. No State, without its consent, shall be deprived of its equal suffrage in the senate	5	—	—	19
Representation and direct taxation, how apportioned among the several States. [This provision is changed by the 14th amendment, section 2.]	1	2	3	7
Representation until the first enumeration under the Constitution not to exceed one for every thirty thousand. The ratio of	1	2	3	7
Representation in any State. The executive thereof shall issue writs of election to fill vacancies in the	1	2	4	7
Representation among the several States shall be according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. The ratio of. [Amendments]	14	2	—	25
But where the right to vote in certain Federal and State elections is abridged for any cause other than rebellion or other crime, the basis of representation shall be reduced. [Amendments]	14	2	—	26
Representatives. Congress shall consist of a senate and house of	1	1	—	6
Qualifications of electors of members of the house of	1	2	1	6
No person shall be a representative who shall not have attained the age of twenty-five years, been seven years a citizen of the United States, and an inhabitant of the State in which he shall be chosen	1	2	2	6
And direct taxes, how apportioned among the several States, [Amended by 14th amendment, section 2.]	1	2	3	7
Shall choose their speaker and other officers. The house of	1	2	5	7
Shall have the sole power of impeachment. The house of	1	2	5	7
Executives of the States shall issue writs of election to fill vacancies in the house of	1	2	4	7
The times, places, and manner of choosing representatives shall be prescribed by the legislatures of the States	1	4	1	8
But congress may at any time by law make or alter such regulations except as to the places of choosing senators	1	4	1	8
And senators shall receive a compensation to be ascertained by law	1	6	1	8

	Art.	Sec.	Cl.	Page.
Representatives. Shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during attendance at the session of the house, and in going to and returning from the same	1	6	1	8
Shall not be questioned in any other place for any speech or debate. Members of the house of	1	6	1	8
No member shall be appointed during his term to any civil office which shall have been created, or the emoluments of which shall have been increased, during such term	1	6	2	8
No person holding any office under the United States shall, while holding such office, be a member of the house of	1	6	2	8
All bills for raising revenue shall originate in the house of	1	7	1	9
No senator or representative shall be an elector for president or vice-president	2	1	2	14
Representatives shall be bound by an oath or affirmation to support the Constitution of the United States. The senators and	6	—	3	20
Representatives among the several States. Provisions relative to the apportionment of. [Amendments]	14	2	—	25
Representatives and senators. Prescribing certain disqualifications for office as. [Amendments]	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such disqualification. [Amendments]	14	3	—	26
Reprieves and pardons except in cases of impeachment. The president may grant	2	2	1	15
Reprisal. Congress shall have power to grant letters of marque and	1	8	11	11
No State shall grant any letters of marque and	1	10	1	13
Republican form of government. The United States shall guarantee to every State in this Union a	4	4	—	19
And shall protect each of them against invasion; and on the application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence	4	4	—	19
Reserved rights of the States and the people. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. [Amendments]	9	—	—	23
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. [Amendments]	10	—	—	23
Resignation, or inability of the president, the duties and powers of his office shall devolve on the vice-president. In case of the death	2	1	5	15
Resignation, or inability of the president. Congress may by law provide for the case of the removal, death	2	1	5	15
Resolution, or vote (except on a question of adjournment) requiring the concurrence of the two houses shall, before it becomes a law, be presented to the president. Every order	1	7	3	9
Revenue shall originate in the house of representatives. All bills for raising	1	7	1	9
Revenue. Preference shall not be given to the ports of one State over those of another by any regulations of commerce or	1	9	6	12
Rhode Island entitled to one representative in the first congress	1	2	3	7
Right of petition. Congress shall make no law abridging the right of the people peaceably to assemble and to petition for the redress of grievances. [Amendments]	1	—	—	21
Right to keep and bear arms. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. [Amendments]	2	—	—	21
Rights in the Constitution shall not be construed to deny or disparage others retained by the people. The enumeration of certain. [Amendments]	9	—	—	23
Rights not delegated to the United States nor prohibited to the States are reserved to the States or to the people. [Amendments]	10	—	—	23
Rules of its proceedings. Each house may determine the	1	5	2	8
Rules and regulations respecting the territory or other property of the United States. Congress shall dispose of and make all needful	4	3	2	19
Rules of the common law. All suits involving over twenty dollars shall be tried by jury according to the. [Amendments]	7	—	—	22
No fact tried by a jury shall be re-examined except according to the. [Amendments]	7	—	—	22

	Art.	Sec.	Cl.	Page.
S.				
Science and the useful arts by securing to authors and inventors the exclusive right to their writings and discoveries. Congress shall have power to promote the progress of	1	8	8	11
Searches and seizures shall not be violated. The right of the people to be secure against unreasonable. [Amendments] . .	4	—	—	21
And no warrant shall be issued but upon probable cause, on oath or affirmation, describing the place to be searched and the person or things to be seized. [Amendments]	4	—	—	22
Seat of government. Congress shall exercise exclusive legislation in all cases over such district as may become the	1	8	17	11
Securities and current coin of the United States. Congress shall provide for punishing the counterfeiting of the	1	8	6	11
Security of a free State. The right of the people to keep and bear arms shall not be infringed. A well-regulated militia being necessary to the. [Amendments]	2	—	—	21
Senate and house of representatives. The congress of the United States shall consist of a	1	1	—	6
Senate of the United States. The senate shall be composed of two senators from each State, chosen by the legislature for six years	1	3	1	7
If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2	7
The vice-president shall be president of the senate, but shall have no vote unless the senate be equally divided	1	3	4	7
The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president or when he shall exercise the office of president	1	3	5	7
The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation	1	3	6	7
When the president of the United States is tried the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present . .	1	3	6	7
It shall be the judge of elections, returns, and qualifications of its own members	1	5	1	8
A majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members .	1	5	1	8
It may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds expel a member	1	5	2	8
It shall keep a journal of its proceedings and from time to time publish the same, except such parts as may in their judgment require secrecy	1	5	3	8
It shall not adjourn for more than three days during a session without the consent of the other house	1	5	4	8
It may propose amendments to bills for raising revenue, but such bills shall originate in the house of representatives .	1	7	1	9
The senate shall advise and consent to the ratification of all treaties, provided two-thirds of the members present concur	2	2	2	16
It shall advise and consent to the appointment of ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers not herein otherwise provided for	2	2	2	16
It may be convened by the president on extraordinary occasions	2	3	—	16
No State, without its consent, shall be deprived of its equal suffrage in the senate	5	—	—	19
Senators. They shall immediately after assembling, under their first election, be divided into three classes, so that the seats of one-third shall become vacant at the expiration of every second year	1	3	2	7
No person shall be a senator who shall not be thirty years of age, nine years a citizen of the United States, and an inhabitant when elected of the State for which he shall be chosen.	1	3	3	7
The time, places, and manner of choosing senators may be fixed by the legislature of a State, but congress may by law make or alter such regulations, except as to the places of choosing	1	4	1	8

	Art.	Sec.	Cl.	Page.
Senators. If vacancies happen during the recess of the legislature of a State, the executive thereof may make temporary appointments until the next meeting of the legislature	1	3	2	7
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of the senate and in going to and returning from the same	1	6	1	8
Senators and representatives shall receive a compensation to be ascertained by law	1	6	1	8
Senators and representatives shall not be questioned for any speech or debate in either house in any other place	1	6	1	8
No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the United States which shall have been created, or of which the emoluments shall have been increased, during such term	1	6	2	8
No person holding any office under the United States shall be a member of either house during his continuance in office.	1	6	2	8
No senator or representative or person holding an office of trust or profit under the United States shall be an elector for president and vice-president	2	1	2	14
Senators and representatives shall be bound by an oath or affirmation to support the Constitution	6	—	3	20
No person shall be a senator or representative who having, as a Federal or State officer, taken an oath to support the Constitution, afterwards engaged in rebellion against the United States. [Amendments]	14	3	—	26
But congress may, by a vote of two-thirds of each house, remove such disability. [Amendments]	14	3	—	26
Service or labor in one State, escaping into another State, shall be delivered up to the party to whom such service or labor may be due. Fugitives from	4	2	3	19
Servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States or any place subject to their jurisdiction. Neither slavery nor involuntary. [Amendments]	13	1	—	24
Servitude. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of. [Amendments]	15	1	—	26
Ships of war in time of peace, without the consent of congress. No State shall keep troops or	1	10	3	14
Silver coin a tender in payment of debts. No State shall make anything but gold and	1	10	1	13
Slave. Neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion, or any claim for the loss or emancipation of any. [Amendments]	14	4	—	26
Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist in the United States, or any places subject to their jurisdiction. Neither. [Amendments.]	13	1	—	24
Soldiers shall not be quartered, in time of peace, in any house, without the consent of the owner. [Amendments.]	3	—	—	21
South Carolina entitled to five representatives in the first congress.	1	2	3	7
Speaker and other officers. The house of representatives shall choose their	1	2	5	7
Speech or of the press. Congress shall make no law abridging the freedom of. [Amendments.]	1	—	—	21
Speedy and public trial by a jury. In all criminal prosecutions the accused shall have a. [Amendments.]	6	—	—	22
Standard of weights and measures. Congress shall fix the	1	8	5	10
State of the Union. The president shall, from time to time, give congress information of the	2	3	—	16
State legislatures, and all executive and judicial officers of the United States, shall take an oath to support the Constitution. All members of the several	6	—	3	20
States. When vacancies happen in the representation from any State, the executive authority shall issue writs of election to fill such vacancies	1	2	4	7
Congress shall have power to regulate commerce among the several	1	8	3	9
No State shall enter into any treaty, alliance, or confederation	1	10	1	13

	Art.	Sec.	Cl.	Page.
States. Shall not grant letters of marque and reprisal	1	10	1	13
Shall not coin money	1	10	1	13
Shall not emit bills of credit	1	10	1	13
Shall not make anything but gold and silver coin a tender in payment of debts	1	10	1	13
Shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts	1	10	1	13
Shall not grant any title of nobility	1	10	1	13
Shall not, without the consent of congress, lay any duties on imports or exports, except what may be absolutely necessary for executing its inspection laws	1	10	2	14
Shall not, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay	1	10	3	14
Full faith and credit in every State shall be given to the public acts, records, and judicial proceedings of each State	4	1	—	18
Congress shall prescribe the manner of proving such acts, records, and proceedings	4	1	—	18
Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States	4	2	1	18
New States may be admitted by congress into this Union	4	3	1	19
But no new State shall be formed or erected within the jurisdiction of another State	4	3	1	19
Nor any State formed by the junction of two or more States or parts of States, without the consent of the legislatures as well as of congress	4	3	1	19
No State shall be deprived, without its consent, of its equal suffrage in the senate	5	—	—	19
Three-fourths of the legislatures of the States or conventions of three-fourths of the States, as congress shall prescribe, may ratify amendments to the Constitution	5	—	—	19
The United States shall guarantee a republican form of government to every State in the Union	4	4	—	19
They shall protect each State against invasion	4	4	—	19
And on application of the legislature, or the executive (when the legislature cannot be convened), against domestic violence	4	4	—	19
The ratification by nine States shall be sufficient to establish the Constitution between the States so ratifying the same.	7	—	—	20
When the choice of president shall devolve on the house of representatives, the vote shall be taken by States. [Amendments.]	12	—	—	24
But in choosing the president the vote shall be taken by States, the representation from each State having one vote. [Amendments.]	12	—	—	24
A quorum for choice of president shall consist of a member or members from two-thirds of the States and a majority of all the States shall be necessary to a choice. [Amendments.]	12	—	—	24
States or to the people. Powers not delegated to the United States, nor prohibited to the States are reserved to the. [Amendments]	10	—	—	23
Suffrage in the senate. No State shall be deprived without its consent of its equal	5	—	—	19
Suits at common law, where the value in controversy shall exceed $20, shall be tried by jury. [Amendments]	7	—	—	22
In law or equity against one of the States, by citizens of another State, or by citizens of a foreign State. The judicial power of the United States shall not extend to. [Amendments]	11	—	—	23
Supreme court. Congress shall have power to constitute tribunals inferior to the	1	8	9	11
Supreme court, and such inferior courts as congress may establish. The judicial power of the United States shall be vested in one	4	1	—	16
Supreme court. The judges of the supreme and inferior courts shall hold their offices during good behavior	3	1	—	16
The compensation of the judges shall not be diminished during their continuance in office	3	1	—	16
Shall have original jurisdiction. In all cases affecting ambassadors, other public ministers and consuls, and in which a State may be a party, the	3	2	2	17

	Art.	Sec.	Cl.	Page.
Supreme court. Shall have appellate jurisdiction, both as to law and the fact, with such exceptions and regulations as congress may make. The	3	2	2	17
Supreme law of the land. This Constitution, the laws made in pursuance thereof, and the treaties of the United States, shall be the	6	—	2	20
The judges in every State shall be bound thereby	6	—	2	20
Suppress insurrections and repel invasions. Congress shall provide for calling forth the militia to execute the laws	1	8	15	11
Suppression of insurrection or rebellion shall not be questioned. The public debt, including the debt for pensions and bounties, incurred in the. [Amendments]	14	4	—	26

T.

Tax shall be laid unless in proportion to the census or enumeration. No capitation or other direct	1	9	4	12
Tax or duty shall be laid on articles exported from any State. No	1	9	5	12
Taxes (direct) and representatives, how apportioned among the several States. [See 14th amendment, section 2]	1	2	3	7
Taxes, duties, imposts, and excises. Congress shall have power to lay	1	8	1	9
They shall be uniform throughout the United States	1	8	1	9
Temporary appointments until the next meeting of the legislature. If vacancies happen in the senate in the recess of the legislature of a State, the executive of the State may make	1	3	2	7
Tender in payment of debts. No State shall make anything but gold and silver coin a	1	10	1	13
Term of four years. The president and vice-president shall hold their offices for the	2	1	1	14
Term for which he is elected. No senator or representative shall be appointed to any office under the United States which shall have been created or its emoluments increased during the	1	6	2	8
Territory or other property of the United States. Congress shall dispose of and make all needful rules and regulations respecting the	4	3	2	19
Test as a qualification for any office or public trust shall ever be required. No religious	6	—	3	20
Testimony of two witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason except on the	3	3	1	18
Three-fourths of the legislatures of the States, or conventions in three-fourths of the States, as congress shall prescribe, may ratify amendments to the Constitution	5	—	—	19
Tie. The vice-president shall have no vote unless the senate be equally divided	1	3	4	7
Times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof	1	4	1	8
But congress may at any time by law make or alter such regulations, except as to the places of choosing senators	1	4	1	8
Title of nobility. The United States shall not grant any	1	9	8	13
No State shall grant any	1	10	1	13
Title of any kind, from any king, prince, or foreign State, without the consent of congress. No person holding any office under the United States shall accept of any	1	9	8	13
Tonnage without the consent of congress. No State shall lay any duty of	1	10	3	14
Tranquillity, provide for common defense, etc. To insure domestic. [Preamble]	—	—	—	6
Treason shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort	3	3	1	18
Treason. No person shall, unless on the testimony of two witnesses to the same overt act, or on confession in open court, be convicted of	3	3	1	18
Congress shall have power to declare the punishment of , ,	3	3	2	18
Shall not work corruption of blood. Attainder of	3	3	2	18
Shall not work forfeiture, except during the life of the person attainted. Attainder of	3	3	2	18
Treason, bribery, or other high crimes and misdemeanors. The president, vice-president, and all civil officers shall be removed from office on impeachment for and conviction of	2	4	—	16

	Art.	Sec.	Cl.	Page.
Treason, felony, and breach of the peace. Senators and representatives shall be privileged from arrest while attending or while going to or returning from the sessions of congress, except in cases of	1	6	1	8
Treasury, but in consequence of appropriations made by law. No money shall be drawn from the	1	9	7	13
Treaties. The president shall have power, with the advice and consent of the senate, provided two-thirds of the senators present concur, to make	2	2	2	16
The judicial power shall extend to all cases arising under the Constitution, laws, and	3	2	1	16
They shall be the supreme law of the land, and the judges in every State shall be bound thereby	6	—	2	20
Treaty, alliance, or confederation. No State shall enter into any.	1	10	1	13
Trial, judgment, and punishment according to law. Judgment in cases of impeachment shall not extend further than to removal from, and disqualification for, office; but the party convicted shall nevertheless be liable and subject to indictment	1	3	7	8
Trial by jury. All crimes, except in cases of impeachment, shall be tried by jury	3	2	3	18
Such trial shall be held in the State within which the crime shall have been committed	3	2	3	18
But when not committed within a State, the trial shall be at such place as congress may by law have directed	3	2	3	18
In all criminal prosecutions the accused shall have a speedy and public. [Amendments]	6	—	—	22
Suits at common law, when the amount exceeds $20, shall be by. [Amendments]	7	—	—	22
Tribunals inferior to the supreme court. Congress shall have power to constitute	4	8	9	11
Troops or ships of war in time of peace without the consent of congress. No State shall keep	1	10	3	14
Trust and profit under the United States, shall be an elector for president and vice-president. No senator, representative, or person holding any office of	2	1	2	14
Two-thirds of the members present. No person shall be convicted on impeachment without the concurrence of	1	3	6	8
Two-thirds, may expel a member. Each house, with the concurrence of	1	5	2	8
Two-thirds. A bill returned by the president with his objections may be repassed by each house by a vote of	1	7	2	9
Two-thirds of the senators present concur. The president shall have power, by and with the advice and consent of the senate, to make treaties, provided	2	2	2	16
Two-thirds of the legislatures of the several States. Congress shall call a convention for proposing amendments to the Constitution on the application of	5	—	—	19
Two-thirds of both houses shall deem it necessary. Congress shall propose amendments to the Constitution whenever	5	—	—	19
Two-thirds of the States. When the choice of a president shall devolve on the house of representatives, a quorum shall consist of a member or members from. [Amendments]	12	—	—	24
Two-thirds of the whole number of senators. A quorum of the senate, when choosing a vice-president, shall consist of. [Amendments]	12	—	—	24
Two-thirds, may remove the disabilities imposed by the third section of the fourteenth amendment. Congress, by a vote of. [Amendments]	14	3	—	26
Two years. Appropriations for raising and supporting armies shall not be for a longer term than	1	8	12	11

U.

Union. To establish a more perfect. [Preamble]	—	—	—	6
The president shall, from time to time, give to congress information of the state of the	2	3	1	16
New States may be admitted by congress into this	4	3	1	19
But no new State shall be formed or erected within the jurisdiction of another	4	3	1	19
Unreasonable searches and seizures. The people shall be secured in their persons, houses, papers, and effects against. [Amendments]	4	—	—	21

	Art.	Sec.	Cl.	Page.
Unreasonable searches and seizures. And no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [Amendments] . .	4	—	—	22
Unusual punishments inflicted. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and. [Amendments]	8	—	—	23
Use without just compensation. Private property shall not be taken for public. [Amendments]	5	—	—	22
Useful arts, by securing for limited times to authors and inventors the exclusive right to their writings and inventions. Congress shall have power to promote the progress of science and the	1	8	8	11
V.				
Vacancies happening in the representation of a State. The executive thereof shall issue writs of election to fill	1	2	4	7
Vacancies happening in the senate in the recess of the legislature of a State. How filled	1	3	2	7
Vacancies that happened during the recess of the senate, by granting commissions which shall expire at the end of the next session. The president shall have power to fill . . .	2	2	3	16
Validity of the public debt incurred in suppressing insurrection against the United States, including debt for pensions and bounties, shall not be questioned. [Amendments] . . .	14	4	—	26
Vessels bound to or from the ports of one State shall not be obliged to enter, clear, or pay duties in another State . .	1	9	6	12
Veto of a bill by the president. Proceedings of the two houses upon the	1	7	2	9
Vice-president of the United States shall be president of the senate	1	3	4	7
He shall have no vote unless the senate be equally divided .	1	3	4	7
The senate shall elect a president pro tempore in the absence of the	1	3	5	7
He shall be chosen for the term of four years	2	1	1	14
The number and the manner of appointing electors for president and	2	1	2	14
In case of the removal, death, resignation, or inability of the president, the powers and duties of his office shall devolve on the	2	1	5	15
Congress may provide by law for the case of the removal, death, resignation, or inability both of the president and .	2	1	5	15
Vice-president. On impeachment for and conviction of treason, bribery and other high crimes and misdemeanors, shall be removed from office. The	2	4	—	16
Vice-president. The manner of choosing the. The electors shall meet in their respective States and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same State with themselves. [Amendments]	12	—	—	23
The electors shall name, in distinct ballots, the person voted for as vice-president. [Amendments]	12	—	—	24
They shall make distinct lists of the persons voted for a vice-president, which lists they shall sign and certify, and send sealed to the seat of government, directed to the president of the senate. [Amendments]	12	—	—	24
The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted. [Amendments] . .	12	—	—	24
The person having the greatest number of votes shall be vice-president, if such number be a majority of the whole number of electors. [Amendments]	12	—	—	24
If no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president. [Amendments]	12	—	—	24
A quorum for this purpose shall consist of two-thirds of the whole number of senators; and a majority of the whole number shall be necessary to a choice. [Amendments] . .	12	—	—	24
But if the house shall make no choice of a president before the 4th of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. [Amendments]	12	—	—	24
No person constitutionally ineligible as president shall be eligible as. [Amendments]	12	—	—	24

	Art.	Sec.	Cl.	Page.
Violence. The United States shall guarantee to every State a republican form of government, and shall protect each state against invasion and domestic	4	4	—	19
Virginia entitled to ten representatives in the first congress	1	2	3	7
Vote. Each senator shall have one	1	3	1	7
The vice-president, unless the senate be equally divided, shall have no	1	3	4	7
Vote requiring the concurrence of the two houses (except upon a question of adjournment) shall be presented to the president. Every order, resolution, or	1	7	3	9
Vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The right of citizens of the United States to. [Amendments]	15	1	—	26
Vote of two-thirds. Each house may expel a member by a	1	5	2	8
A bill vetoed by the president may be repassed in each house by a	1	7	2	9
No person shall be convicted on an impeachment except by a	1	3	6	8
Whenever both houses shall deem it necessary, congress may propose amendments to the Constitution by a	5	—	—	19
The president may make treaties, with the advice and consent of the senate, by a	2	2	2	16
Disabilities incurred by participation in insurrection or rebellion may be relieved by congress by a. [Amendments]	14	3	—	26

W.

War, grant letters of marque and reprisal, and make rules concerning captures on land and water. Congress shall have power to declare	1	8	11	11
For governing the land and naval forces. Congress shall have power to make rules and articles of	1	8	14	11
No State shall, without the consent of congress, unless actually invaded, or in such imminent danger as will not admit of delay, engage in	4	10	3	14
War against the United States, adhering to their enemies, and giving them aid and comfort. Treason shall consist only in levying	3	3	1	18
Warrants shall issue but upon probable cause, on oath or affirmation, describing the place to be searched, and the persons or things to be seized. No. [Amendments]	4	—	—	22
Weights and measures. Congress shall fix the standard of	1	8	5	10
Welfare, and to secure the blessings of liberty, etc. To promote the general. [Preamble]	—	—	—	6
Welfare. Congress shall have power to provide for the common defense and general	1	8	1	9
Witness against himself. No person shall, in a criminal case, be compelled to be a. [Amendments]	5	—	—	22
In all criminal prosecutions the accused shall be confronted with the. [Amendments]	6	—	—	22
Witnesses in his favor. In all criminal prosecutions the accused shall have compulsory process for obtaining. [Amendments]	6	—	—	22
Witnesses to the same overt act, or on confession in open court. No person shall be convicted of treason unless on the testimony of two	3	3	1	18
Writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety may require it	1	9	2	12
Writs of election to fill vacancies in the representation of any State. The executive of the State shall issue	1	2	4	7
Written opinion of the principal officer in each of the executive departments on any subject relating to the duties of his office. The president may require the	2	2	1	15

Y.

Yeas and nays of the members of either house shall, at the desire of one-fifth of those present, be entered on the journal	1	5	3	8
The votes of both houses upon the reconsideration of a bill returned by the president with his objections shall be determined by	1	7	2	9

CONSTITUTION OF THE STATE OF ALABAMA.
1875.*

PREAMBLE.

WE, THE PEOPLE of the State of Alabama, in order to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure to ourselves and to our posterity life, liberty, and property; profoundly grateful to Almighty God for this inestimable right, and invoking His favor and guidance, do ordain and establish the following Constitution and form of government for the State of Alabama.

ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:—

Effect and office of the declaration of rights.—Ex parte Dorsey, 7 Port. 293.

§1. That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

A guarantee to each citizen of all the rights and privileges enjoyed or possessed by any other citizen.—Ex parte Dorsey, 7 Port. 293. Free egress from, or transit through the State may be regulated but not prevented.—Joseph v. Randolph, 71 Ala. 499.

§2. That all persons resident in this State, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights.

Effect is **to place all persons**, natural and artificial, **on a basis of equality in the courts.**—S. & N. R. Co. v. Morris, 65 Ala. 193; Smith v. L. & N. R. Co., 75 Ala. 449; L. & N. R. Co. v. Baldwin, 85 Ala. 619; Brown v. A. G. S. R. Co., 87 Ala. 370; Randolph v. B. & P. Supply Co., 106 Ala. 501. See also citations to Art. I., Sec. 14; Art. XIV., Sec. 12. There can be no discriminative advantage bestowed by law between the parties to the same suit.—S. & N. R. Co. v. Morris, 65 Ala. 193; Randolph v. B. & P. Supply Co., 106 Ala. 501. The statute against miscegenation is not a denial of equal civil and political rights to the races.—Ford v. State, 53 Ala. 150; Green v. State, 58 Ala. 190 (overruling Burns v. State, 48 Ala. 195); Hoover v. State, 59 Ala. 57; Pace v. State, 69 Ala. 231 (affirmed 106 U. S. 583).

§3. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that therefore they have, at all times, an inalienable and indefeasible right to change their form of government, in such manner as they may deem expedient.

The elective franchise is a privilege rather than a right.—Washington v. State, 75 Ala. 582.

§4. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship, nor to pay any tithes, taxes, or other rate, for building or repairing any place of worship, or for maintaining any minister or ministry; that no

*Became operative December 6th, 1875.

religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

A Jew has no constitutional right to work on Sunday.—Frolickstein v. Mayor, 40 Ala. 725.

§5. That any citizen may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§6. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and that no warrant shall issue to search any place, or to seize any person or thing, without probable cause, supported by oath or affirmation.

Extent of authority to search the person of a prisoner.—Ex parte Hurn, 92 Ala. 102; Cunningham v. Baker, 104 Ala. 160. **Forbids the issuance of a warrant without probable cause and then on oath or affirmation; arrest may be made without warrant.**—Williams v. State, 44 Ala. 41; Johnson v. State, 82 Ala. 29; Cunningham v. Baker, 104 Ala. 160.

§7. That in all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions by indictment, a speedy public trial by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of his life, liberty, or property, but by due process of law.

Right of accused to be heard by himself and counsel, or either. A guaranty of the right to be present whenever any action is taken by the prosecution, except a continuance when the accused fails to appear, and the like orders, lying in the discretion of the court.—Ex parte Bryan, 44 Ala. 402; Slocovitch v. State, 46 Ala. 227; and when the verdict is rendered.—State v. Hughes, 2 Ala. 102. Applies to "Mayor's Court."—Withers v. State, 36 Ala. 252. But not to contempt proceedings.—Ex parte Hamilton, 51 Ala. 66. Does not authorize the accused to make a statement of facts outside of the evidence.—State v. McCall, 4 Ala. 643. The court may limit argument of counsel.—Yeldell v. State, 100 Ala. 26; Peagler v. State, 110 Ala. 11. **To demand the nature and cause of the accusation; to have a copy thereof.** Copy is waived if not applied for.—Driskill v. State, 45 Ala. 21; Miller v. State, 45 Ala. 24. Copy from a certified transcript, after change of venue, sufficient.—Bramlett v. State, 31 Ala. 376. **Sufficiency of Code forms of indictment.**—Noles v. State, 24 Ala. 672; Burdine v. State, 25 Ala. 60; Thompson v. State, Ib. 41; Elam v. State, 25 Ala. 53; Sherrod v. State, Ib. 78; Salomon v. State, 27 Ala. 26; Molett v. State, 33 Ala. 408; Aiken v. State, 35 Ala. 399; Schwartz v. State, 37 Ala. 460; Frank v. State, 40 Ala. 12; Miller v. State, 45 Ala. 24; Wesley v. State, 52 Ala. 182; Bradford v. State, 54 Ala. 230; Sandy v. State, 60 Ala. 58; Spigener v. State, 62 Ala. 583; Smith v. State, 63 Ala. 55; McCullough v. State, Ib. 75; Haley v. State, Ib. 89; Tatum v. State, Ib. 147; Phillips v. State, 68 Ala. 469; Billingslea v. State, 68 Ala. 486; Williams v. State, 68 Ala. 551; Ellerson v. State, 69 Ala. 1; Pace v. State, 69 Ala. 231, 106 U. S. 583; Peterson v. State, 74 Ala. 34; Johnson v. State, 75 Ala. 7; Sands v. State, 80 Ala. 201; Bibb v. State, 83 Ala. 84; Bogan v. State, 84 Ala. 449; McGuff v. State, 88 Ala. 147; Linton v. State, Ib. 216; Huffman v. State, 89 Ala. 33; Williams v. State, 91 Ala. 14; Rosson v. State, 92 Ala. 76; Freiburg v. State, 94 Ala. 91; Reeves v. State, 95 Ala. 31; Walker v. State, 96 Ala. 53; Lang v. State, 97 Ala. 41; Watt v. State, Ib. 72; Thompson v. State, 99 Ala. 173; Smith v. State, 103 Ala. 57. **To be confronted by the witnesses against him.** Applies only to courts where facts are inquired into; not to the supreme court.—Phleming v. State, Minor, 42. Applies to impeachments.—State v. Buckley, 54 Ala. 599. Showing of what an absent witness for the State would testify to is inadmissible, without the consent of the defendant; right may be waived.—Rosenbaum v. State, 33 Ala. 354; Wills v. State, 73 Ala. 362. **Where a witness, examined in a former proceeding between the parties, dies, becomes insane, or leaves the State, his former testimony may be proven.** Long v. Davis, 18 Ala. 801; Marler v. State, 67 Ala. 55; Lowe v. State, 86 Ala. 47; South v. State, 86 Ala. 617; Pruitt v. State, 92 Ala. 41; Thompson v. State, 106 Ala. 67. Dying declarations are excepted.—Green v. State, 66 Ala. 40. In all prosecutions by indictment, **a speedy public trial, etc.** What is a speedy trial.—Ex parte The State, 76 Ala. 482. **Jury must consist of twelve men.**—Collins v. State, 88 Ala. 212. **But may be waived in misdemeanor cases.**—Connelly v. State, 60 Ala. 89. **Must be impartial; opinions as to guilt or innocence of accused.**—

Bales v. State, 63 Ala. 30; Jackson v. State, 77 Ala. 18; Dean v. State, 89 Ala. 46; Hamill v. State, 90 Ala. 577. **Defendant cannot be put on trial under an indictment where the only provision for a jury is that one may be secured on giving bond and appealing.**—Collins v. State, 88 Ala. 212; Reeves v. State, 96 Ala. 33. **Does not apply to contempt cases, impeachment, nor unless the prosecution is by indictment.**—Tims v. State, 26 Ala. 165; Ex parte Hamilton, 51 Ala. 66; State v. Buckley, 54 Ala. 599. **A law giving jurisdiction to either county of an offense committed within a quarter of a mile of the border line,** does not violate.—Hill v. State, 43 Ala. 335; Grogan v. State, 44 Ala. 9; Jackson v. State, 90 Ala. 590. **Accused shall not be compelled to give evidence against himself.** Accused cannot be compelled to say or do anything that may tend to criminate him, and his refusal cannot be proven as a circumstance against him.—Kelly v. State, 72 Ala., 244; Cooper v. State, 86 Ala. 610. **Nor be deprived of life, liberty, or property,** but by due process of law. What is due process.—Ex parte Candee, 48 Ala. 386; Zeigler v. S. & N. R. Co., 58 Ala. 594. **Record must show due process** in a criminal case.—Hood v. State, 44 Ala. 81. **Persons affected must have due notice of judicial proceedings.**—Wilburn v. McCalley, 63 Ala 436; Mead v. Larkin, 66 Ala. 87; Betancourt v. Eberlin, 71 Ala., 461. **Not contravened by law prohibiting the sale of intoxicants** within limited district.—Dorman v. State, 34 Ala. 216; Barnes v. State, 49 Ala. 342. **Nor the taking of private property for public use;** but legislature cannot convert a private into a public use.—Sadler v. Langham, 34 Ala. 311. **Nor prohibiting the distillation of grain** without the consent of the governor.—Ingram v. State, 39 Ala. 247. **Nor removing administration** from the county of the decedent's residence.—Wright v. Ware, 50 Ala. 549. **Nor establishing stock districts and pounds.**—Dillard v. Webb, 55 Ala. 468. **Nor special private statute for the disposal of property of deceased by administrator.**—Chappell v. Williamson, 49 Ala. 153; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindal v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala. 360; Mumford v. Pearce, 70 Ala. 452; (since the adoption of the Constitution. Quaere. Art. IV., Sec. 23). **Nor prohibiting the sale or removal of cotton in the seed at certain times, and in particular localities.**—Davis v. State, 68 Ala., 58; Mangan v. State, 76 Ala. 60. **Nor exempting the State from making affidavit and giving bond in attachment.**—Ex parte Macdonald, 76 Ala. 603. **Nor requiring examination and license of locomotive engineers.**—McDonald v. State, 81 Ala. 279. **Contravened by law authorizing toll-gate to be thrown open if road out of repair.**—Powell v. Sammons, 31 Ala. 552. **Making tax deed conclusive, instead of prima facie evidence.**—Stoudenmire v. Brown, 48 Ala. 699; s. c., 57 Ala. 481; Davis v. Minge, 56 Ala. 121; Calhoun v. Fletcher, 63 Ala. 574; Lassiter v. Lee, 68 Ala. 287. **Requiring deposit of money before prosecution or defense of suit by or against purchaser at tax sale.**—Stoudenmire v. Brown, 48 Ala. 699; Whitworth v. Anderson, 54 Ala. 33; Lassiter v. Lee, 68 Ala. 287. **Taxing an attorney's fee as costs against railroad in certain cases.**—S. & N. R. Co. v. Morris, 65 Ala. 193. **Giving filer of mechanic's lien a lien also for an attorney's fee.**—Randolph v. B. & P. Sup. Co., 106 Ala. 501. **Imposing absolute liability on railroad for cattle killed by it under certain conditions.**—Zeigler v. S. & N. R. Co., 58 Ala. 594; B. M. R. Co. v. Parsons, 100 Ala. 662. **Requiring railroad to pay a fee for the examination of its employees for color-blindness.**—L. & N. R. Co. v. Baldwin, 85 Ala. 619. **Declaring conveyances already executed void because not acknowledged according to a then prescribed form.**—Ala. L. I. & T. Co. v. Boykin, 38 Ala. 510.

§8. That no person shall be accused, or arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but by virtue of a law established and promulgated prior to the offense, and legally applied.

Law directing nol. pros., and another indictment, when it is seen there will be a variance, is constitutional.—State v. Kreps, 8 Ala. 951. **Law must be promulgated prior to the offense.**—Aaron v. State, 39 Ala. 684; Eliza v. State, 39 Ala. 693. **Unauthorized discharge of the jury** after rendering a void verdict is not a legal application of the law, and is an acquittal.—Grogan v. State, 44 Ala. 9; Bell v. State, 48 Ala. 684; Jackson v. State, 102 Ala. 76; Hayes v. State, 107 Ala. 1.

§9. That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the militia and volunteer forces when in actual service, or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in this Constitution. *Provided*, that in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the general assembly may, by law, dispense with a grand jury, and authorize such prosecutions and proceedings before justices of the peace, or such other inferior courts as may be by law established.

A guaranty of the right to demand an indictment in all but the excepted cases.—State v. Middleton, 5 Port. 484; Noles v. State, 24 Ala. 672; Thompson v. State, 25 Ala. 41. **No restraint on the mode of drawing and summoning grand jurors.**—Williams v. State, 61 Ala. 33. **Trial in excepted cases** may be had before justices and without a jury.—Connelly v. State, 60 Ala. 89; Ex parte Brown, 63 Ala. 187. And in these cases **the complaint need not conclude "against the peace, etc."**—Thomas v. State, 107 Ala. 61; Simpson v. State, 111 Ala. 6. Law giving **punitive damages in a civil action** does not violate.—R. & D. R. Co. v. Freeman, 97 Ala. 289.

§10. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

When jeopardy begins.—Grogan v. State, 44 Ala. 1. **A single crime cannot be subdivided** into two or more offenses.—Ben v. State, 22 Ala. 9; Moore v. State, 71 Ala. 307; Hurst v. State, 86 Ala. 604. **A person has not been in jeopardy:** When judgment was arrested on account of a defective indictment, or indictment quashed.—State v. Phil, 1 Stew. 31; Weston v. State, 63 Ala. 155. Nor when informal verdict set aside, or case is reversed, and new trial granted.—State v. Slack, 6 Ala. 676; State v. Hughes, 2 Ala. 102; Cobia v. State, 16 Ala. 781; Turner v. State, 40 Ala. 21; Waller v. State, 40 Ala. 325; Jeffries v. State, 40 Ala. 381; Kendall v. State, 65 Ala. 492; Morisette v. State, 77 Ala. 71. Nor when a part of the sentence under a former conviction has been served.—Jeffries v. State, 40 Ala. 381. Nor when a judge withdraws from the bench.—State v. Abram, 4 Ala. 272. Or becomes sick and unable to proceed with the trial.—Nugent v. State, 4 S. & P. 72. Nor where nol. pros. is entered on account of a variance.—State v. Kreps, 8 Ala. 951. Nor where former prosecution was based on a void warrant.—Johnson v. State, 82 Ala. 29. Nor where a juror becomes sick and unable to proceed, or in any case of pressing necessity.—Hawes v. State, 88 Ala. 37; Powell v. State, 19 Ala. 577. **A person has been in jeopardy:** When tried for an offense which includes the one he is being prosecuted for.—Sanders v. State, 55 Ala. 42. When there has been an unauthorized discharge of the jury.—Ned v. State, 7 Port. 187; Law v. State, 4 Ala. 173; Powell v. State, 19 Ala. 577; McCauley v. State, 26 Ala. 135; Ex parte Vincent, 43 Ala. 402; (in conflict, State, ex rel. Battle, 7 Ala. 259; Barrett v. State, 35 Ala. 406, as to when discharge is authorized); Grogan v. State, 44 Ala. 9; Bell v. State, 48 Ala. 684; Cook v. State, 60 Ala. 39; Foster v. State, 88 Ala. 182; Jackson v. State, 102 Ala. 76; Hayes v. State, 107 Ala. 1. For the protection of the accused, and may be waived.—Ned v. State, 7 Port. 187; McCauley v. State, 26 Ala. 135; Barrett v. State, 35 Ala. 406; Hughes v. State, Ib. 135; Turner v. State, 40 Ala. 21; Jeffries v. State, Ib. 381; Kendall v. State, 65 Ala. 492; Morisette v. State, 77 Ala. 71. Being convicted or acquitted of aiding one prisoner to escape, a person cannot be again indicted for aiding another for the same act.—Hurst v. State, 86 Ala. 604.

§11. That no person shall be debarred from prosecuting or defending, before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Applies to "Mayor's Court."—Withers v. State, 36 Ala. 252. Need not employ an attorney, but **party may appear in person.**—May v. Williams, 17 Ala. 23. **No court can exclude an attorney until after he is suspended.**—Withers v. State, 36 Ala. 252. **Taxing an attorney's fee as costs against railroad operates to debar.**—S. & N. R. Co. v. Morris, 65 Ala. 193. **And so, the requirement that any one prosecuting or defending** against purchaser at tax sale **shall deposit money before being allowed to do so.**—Stoudenmire v. Brown, 48 Ala. 699; Whitworth v. Anderson, 54 Ala. 33; Lassiter v. Lee, 68 Ala. 287. But the imposition of the "library tax" does not.—Swann v. Kidd, 79 Ala. 431.

§12. That the right of trial by jury shall remain inviolate.

Jury must consist of twelve men.—Collins v. State, 88 Ala. 212; M & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **Does not extend the right to cases unknown to the common law, or to the statute law at the time of the adoption of the Constitution.**—Boring v. Williams, 17 Ala. 510; Tims v. State, 26 Ala. 165; Thomas v. Bibb, 44 Ala. 721; Taliaferro v. Lee, 97 Ala. 92. **Does not apply to impeachments.**—State v. Buckley, 54 Ala. 599. **Nor to proceeding to compel the delivery of property to successor in office.**—Chambers v. Stringer, 62 Ala. 596. **Nor to bill of discovery by creditor.**—M. & F. Ry. Co. v. McKenzie, 85 Ala. 546 (s. c., 96 Ala. 465); S. Ry. & C. Co. v. McKenzie, 96 Ala. 465; Norman v. Goetter, 96 Ala. 468; N. Y. Condensed Milk Co. v. Cook, 100 Ala. 580; Cook v. Schmidt, 100 Ala. 582. **Nor to proceedings, under the statute, to try the right to a public office.**—Taliaferro v. Lee, 97 Ala. 92 (declaring State v. Burnett, 2 Ala. 140, dictum). But see Wammack v. Holloway, 2 Ala. 31. But legislature **may, as matter of grace, give a jury trial.**—Taliaferro v. Lee, 97 Ala. 92. **Law authorizing a toll-gate to be thrown open** if the road is out of repair **is a denial of trial by jury.**—Powell v. Sammons, 31 Ala. 552. **Includes the right to have the deliberations of the jury continued until a legal reason for discharge occurs.**—McCauley v. State, 26 Ala. 135. **Waiver of jury.**—Saunders v. State, 55 Ala. 42; Connelly v. State, 60 Ala. 89.

§13. That in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court.

§14. That all courts shall be open, and that every person, for any injury done him in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.

Justice cannot be sold or denied by the exaction of a pecuniary consideration for its enjoyment from one, when it is freely given to another.—S. & N. R. Co. v. Morris, 65 Ala. 193; Smith v. L. & N. R. Co., 75 Ala. 449; L. & N. R. Co. v. Baldwin, 85 Ala. 619; Brown v. A. G. S. R. Co., 87 Ala. 370; Randolph v. B. & P. Sup. Co., 106 Ala. 501. **"Stay law" does not violate.**—Ex parte Pollard, 40 Ala. 77. **Nor "library tax."**—Swann v. Kidd, 79 Ala. 431. **Nor law providing that contracts shall only be awarded when a board of revenue and their clerk are in private.**—State v. Rogers, 107 Ala. 444. **But law requiring deposit of money by party prosecuting or defending suit against purchaser of land at tax sale violates this section.**—Stoudenmire v. Brown, 48 Ala. 699; Whitworth v. Anderson, 54 Ala. 33; Lassiter v. Lee, 68 Ala. 287. **Taxing an attorney's fee against railroads in certain cases is not "due process."**—S. & N. R. Co. v. Morris, 65 Ala. 193. **And giving justice of the peace extraordinary jurisdiction in actions for damages against railroad is discrimination** and unconstitutional.—Brown v. A. G. S. R. Co., 87 Ala. 370. And a law **giving the lienor filing a mechanic's lien a lien also for an attorney's fee.**—Randolph v. B. & P. Sup. Co., 106 Ala. 501.

§15. That the State of Alabama shall never be made defendant in any court of law or equity.

State cannot be sued by cross-bill asking affirmative relief.—Holmes v. State, 100 Ala. 90. **Suit against the warden of the penitentiary** on a contract made by him in his official capacity, **is a suit against the State.**—Comer v. Bankhead, 70 Ala. 493.

§16. That excessive fines shall not be imposed, nor cruel or unusual punishments be inflicted.

§17. That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great; and that excessive bail shall not, in any case, be required.

Designed to place the right to bail beyond legislative or judicial power; does not restrain legislature from authorizing bail in the excepted cases.—Ex parte Croom, 19 Ala. 561. **To justify refusal of bail the offense must be capital, the proof evident or presumption great;** this cannot be if a well-founded doubt exists.—Ex parte Simonton, 9 Port. 390; Ex parte McCrary, 22 Ala. 65; Ex parte Banks, 28 Ala. 89; Ex parte Mahone, 30 Ala. 49; Ex parte Howard, 30 Ala. 43; Ex parte Bryant, 34 Ala. 270. **It is a safe rule to deny bail if the court would sustain a capital conviction** on the evidence. —Ex parte Nettles, 58 Ala. 268. **Bail should be granted where the evidence is circumstantial, "unless it excludes to a moral certainty every other hypothesis but that of guilt."**—Ex parte Acree, 63 Ala. 234. **Law providing that if the defendant is not tried at the second term he may have bail does not violate.**—Ex parte Croom, 19 Ala. 561. **If the assaulted person is likely to die within a year and a day, accused is not entitled to bail,** unless he would be so entitled if assaulted person died.—Ex parte Andrews, 19 Ala. 582.

§18. That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this State.

§19. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

§20. That no person shall be attainted of treason by the general assembly; and that no conviction shall work corruption of blood, or forfeiture of estate.

§21. That no person shall be imprisoned for debt.

Applies to liabilities ex contractu; defendant may not be imprisoned for alleged contempt in failing to pay a decree for money.—Ex parte John Hardy, 68 Ala. 303; State v. Allen, 71 Ala. 543; Smith v. State, 82 Ala. 40; Wynn v. State, 82 Ala. 55; Carr v. State, 106 Ala. 35; Crosby v. City Council, 108 Ala. 498. **Fines, forfeitures, and costs arise ex delicto, and are not debts.**—Nelson v. State, 46 Ala. 186; Morgan v. State, 47 Ala. 34; Caldwell v. State, 55 Ala. 133; Ex parte Hardy, 68 Ala. 303; State v. Bauerman, 72 Ala. 252; Lee v. State, 75 Ala. 29; State v. Leach, 75 Ala. 36; Smith v. State, 82 Ala. 40; Wynn v. State. 82 Ala. 55; Ex parte Russellville, 95 Ala. 19. **Advances made to a convict by his surety in the confessed judgment is a debt** arising ex contractu.—Smith v. State, 82 Ala. 40; Wynn v. State, 82 Ala. 55. **Law punishing crime of enticing servant of another** does not imprison for debt.—Tarpley v. State, 79 Ala. 271. **Nor "innkeepers' law."**—Ex parte King, 102 Ala. 182. **Nor imprisonment as a punishment visited on employees of a water company for violation of their contract with a city.**—Crosby v. City Council, 108 Ala. 498. **Law authorizing imprisonment, not as an alternative punishment or in lieu of fine and costs, but as a means of coercing the payment of fine and costs, violates.**—Ex parte Russellville, 95 Ala. 19. **And so, a law punishing with imprisonment, a banker who receives a deposit knowing he is insolvent.**—Carr v. State, 106 Ala. 35. **It makes no difference that the debt was contracted fraudulently.**—Ex parte Hardy, 68 Ala. 303; Carr v. State, 106 Ala. 35.

§22 That no power of suspending laws shall be exercised, except by the general assembly.

§23. That no ex post facto law, or any law impairing the obligation of contracts, or making any irrevocable grants of special privileges or immunities, shall be passed by the general assembly.

No ex post facto law shall be passed.—Aldridge v. T. C. & D. R. Co. 2 S. & P. 199; Elliott v. Mayfield, 4 Ala. 417; Holman v. Bank of Norfolk, 12 Ala. 369; Eliza v. State, 39 Ala. 693; Aaron v. State, 39 Ala. 684; Witherby v. State, 39 Ala. 702; Ferdinand v. State, 39 Ala. 706; Turner v. State, 40 Ala. 21; Hart v. State, Ib., 32; Miles v. State, Ib., 39; Moore v. State, Ib., 49; Miller v. State, Ib., 54; Stephen v. State, Ib., 67; Walthall v. Walthall, 42 Ala. 450; Caldwell v. State, 55 Ala. 133; Payne v. State, 60 Ala. 80; Goodlett v. Kelly, 74 Ala. 213; Washington v. State, 75 Ala. 582; South v. State, 86 Ala. 617; Perry v. State, 87 Ala. 30; Brown v. Williams, 87 Ala. 353; Cary v. Simmons, 87 Ala. 524. **Nor any law impairing the obligation of contracts.**—Wheat v. State, Minor, 199; State v. Tombeckbee Bank, 2 Stew., 30; Anonymous, 2 Stew., 228; Dale v. Governor, 3 Stew., 387; Aldridge v. Tuscumbia R. Co. 2 S. & P., 199; Bloodgood v. Cammack, 5 S. & P., 276; Trustees v. Winston, 5 S. & P., 17; Dyer v. Tuscaloosa Bridge Co., 2 Port., 297; Rathbone v. Bradford, 1 Ala. 312; Givens v. Western Bank, 2 Ala. 397; Bartlett v. Lang, 2 Ala. 402; Iverson v. Shorter, 9 Ala. 713; Paschal v. Whitsitt, 11 Ala. 472; Holman v. Bank of Norfolk, 12 Ala. 369; Trustee v. Walden, 15 Ala. 655; Benford v. Gibson, Ib., 521; Walker v. Chapman, 22 Ala. 116; Beck v. Burnett, Ib., 822; Jemison v. P. & M. Bank, 23 Ala. 168; Mays v. Williams, 27 Ala. 267; M. & O. R. Co. v. State, 29 Ala. 573; Coosa River S. Co. v. Barclay, 30 Ala. 120; Powell v. Sammons, 31 Ala. 552; Bugbee v. Howard, 32 Ala. 713; Curry v. Landers, 35 Ala. 280; T. & C. R. Co. v. Moore, 36 Ala. 371; Ex parte N. E. &. S. W. A. R. Co., 37 Ala. 679; Ala. Life Ins. Co. v. Boykin, 38 Ala. 510; Warfield v. Ravesies, Ib., 518; A. & F. R. Co. v. Kenney, 39 Ala. 307; Blann v. State, 39 Ala. 353; Ex parte Pollard, 40 Ala. 77; Page v. Matthews, 40 Ala. 547; Hudspith v. Davis, 41 Ala. 389; Scheible v. Bacho, 41 Ala., 423; Tarleton v. Southern Bank, 41 Ala. 722; Kirtland v. Molton, 41 Ala. 548; Weaver v. Lapsley, 43 Ala. 224; Ashurst v. Phillips, 43 Ala. 158; Hubert v. Easton, 43 Ala. 547; Hale v. Huston, 44 Ala. 134; Ex parte Norton, 44 Ala. 177; Roach v. Gunter, 44 Ala. 209; Ex parte Sims, 44 Ala. 248; Curry v. Reynolds, 44 Ala. 349; School Coms. v. Putnam, 44 Ala. 506; Martin v. Hearst, 44 Ala. 418; Fitzpatrick v. Hearne, 44 Ala. 171; Perkins v. Corbin, 45 Ala. 103; Broadbent v. Tuskaloosa S. &. A. Assn., 45 Ala. 170; A. & F. R. Co. v. Burkett, 46 Ala. 569; Med. College v. Muldon, 46 Ala. 603; Wharton v. Cunningham, 46 Ala. 590; Boyd v. State, 46 Ala. 329; M. & G. R. Co. v. Peebles, 47 Ala. 317; Micou v. Tallassee Bridge Co., 47 Ala. 652; Commissioners v. Rather, 48 Ala. 433; Horst v. Moses, 48 Ala. 129; Todd v. Neal, 49 Ala. 266; Ex parte Buckley, 53 Ala. 42; Wilson v. Brown, 58 Ala. 62; Nelson v. McCrary, 60 Ala. 301; M. & M. R. Co. v. Steiner, 61 Ala. 559; State v. Cobb, 64 Ala. 127; Steele v. Steele, 64 Ala. 438; Fearn v. Ward, 65 Ala. 33; Smith v. Cockrell, 66 Ala. 64; Powell v. State, 69 Ala. 10; Edwards v. Williams, 70 Ala. 145; Peevy v. Cabaniss, 70 Ala. 253; Slaughter v. Mobile Co., 73 Ala. 134; Goodlett v. Kelly, 74 Ala. 213; M. &. S. H. R. Co. v. Kennedy, 74 Ala., 566; Dunlap v. State, 76 Ala., 460; Bell v. Hall, 76 Ala., 546; Amy v. Selma, 77 Ala. 103; B. &. P. M. St. Ry. Co. v. B. St. Ry. Co., 79 Ala. 465; County Commissioners v. Woodstock, I Co., 82 Ala. 151; Winter v. City Council, 83 Ala. 589; N. C. & St. L. R. Co. v. State, 83 Ala. 71; McDonnell v. Ala. Gold Life Ins. Co., 85 Ala. 401; Abbett v. Page, 92 Ala. 571; Harold v. Herrington, 95 Ala., 395; Osborn v. Johnson, W. P. Co., 99 Ala. 309; State v. Montgomery L. Co., 102 Ala. 594; Lindsay v. Mayor, 104 Ala. 257; Crosby v. City Council, 108 Ala., 498. **Nor any law making irrevocable grants of special privileges or immunities.**—Daughdrill v. Ala. Life Ins. Co., 31 Ala., 91; Sadler

v. Langham, 34 Ala., 311; Clark v. Mobile School Commissioners, 36 Ala., 621; B. & P. M. St. Ry. Co. v. B. St. Ry. Co., 79 Ala. 465; Carter v. Coleman, 84 Ala., 256; Youngblood v. Birmingham Trust & Savings Co., 95 Ala. 521; Ex parte King, 102 Ala. 182.

§24. That the exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as individuals; but private property shall not be taken or applied for public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations other than municipal, without the consent of the owner. *Provided, however*, that the general assembly may, by law, secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner. *And provided*, that the right of eminent domain shall not be so construed as to allow taxation, or forced subscription, for the benefit of railroads, or any other kind of corporations other than municipal, or for the benefit of any individual or association.

Whatever is beneficially employed for the community is a public use.—Aldridge v. Tuscumbia R. Co., 2 S. & P. 199. **The taking of water to supply a city is a public use.**—Stein v. Burden, 24 Ala. 130; Stein v. Ashley, 24 Ala. 521; Burden v. Stein, 27 Ala. 104. **Also to run a public grist mill.**—Sadler v. Langham, 34 Ala. 311; Bottoms v. Brewer, 54 Ala. 288. **Also land for plank road or canal.**—Sadler v. Langham, 34 Ala. 311. **Right extends to all property,** whether under mortgage or owned by chartered corporation.—A. & F. R. Co. v. Kenny, 39 Ala. 307; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **But property and franchises of a corporation,** taken by it for public use, **may be only again taken for public use** by the legislature.—A. & C. R. Co. v. J. G. & A. R. Co., 82 Ala. 297. **Right may be given to railroad company.**—Aldridge v. Tuscumbia R. Co., 2 S. & P. 199; Davis v. Tuscumbia R. Co., 4 S. & P., 421; Jones v. N. O. R. Co., 70 Ala. 227; M. S. R. Co. v. Sayre, 72 Ala. 443. **Compensation must be made before or at the time of taking,** unless prepayment is waived.—N. O. R. Co. v. Jones, 68 Ala. 48; s. c., 70 Ala. 227; M. S. R. Co. v. Sayre, 72 Ala. 443; City Council v. Townsend, 80 Ala. 489; s. c., 84 Ala. 478; Faust v. Mayor, 83 Ala. 279; Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal Tel. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; Highland Ave. & B. R. Co. v. Matthews, 99 Ala. 24. **And this applies to the State itself.**—Smith v. Inge, 80 Ala. 283; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **The crossing of one railroad by another is a "taking."**—M. & G. Ry. Co. v. A. M. Ry. Co., 87 Ala. 501; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571; See citations to Art. XIV., Sec. 7. **Considerations governing compensations.**—A. & F. R. Co. v. Burkett, 46 Ala. 569. Owner of a ferry cannot claim compensation for loss of business from the building of a bridge.—Dyer v. Tuskaloosa Bridge Co., 2 Port. 296. **Private property may now be taken for private use, compensation being first made.**—State v. County Commissioners, 83 Ala. 304. **Appeal; trial by jury.**—M. S. Ry. Co. v. Sayre, 72 Ala. 443.

§25. That all navigable waters shall remain forever public highways, free to the citizens of the State and of the United States, without tax, impost, or toll; and that no tax, toll, impost, or wharfage shall be demanded or received from the owner of any merchandise or commodity, for the use of the shores, or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be expressly authorized by law.

The bed of a navigable stream and the fish and oysters therein are the property of the State.—State v. Harrub, 95 Ala. 176.

§26. That the citizens have a right in a peaceable manner to assemble together for the common good, and to apply to those invested with the power of government, for redress of grievances, or other purposes, by petition, address, or remonstrance.

§27. That every citizen has a right to bear arms in defense of himself and the State.

Law prohibiting the carrying of weapons concealed is a mere regulation and not violative.—State v. Reid, 1 Ala. 612. **Law making it an offense to point firearms at another does not violate;** has no application to cases of self-defense.—Davenport v. State, 112 Ala. 49.

§28. That no standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation for its support shall be made for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§29. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

§30. That no title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

To preserve the equality of citizens in public and private rights.—Horst v. Moses, 48 Ala. 129.

§31. That immigration shall be encouraged, emigration shall not be prohibited, and that no citizen shall be exiled.

License cannot be required of a person contracting to carry away laborers.—Joseph v. Randolph, 71 Ala. 499.

§32. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

§33. That no form of slavery shall exist in this State; and there shall be no involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

Convict, violating labor contract for fine and costs, may be punished criminally.—Smith v. State, 82 Ala. 40; Wynn v. State, 82 Ala. 55.

§34. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

§35. The people of this State accept as final the established fact, that from the Federal Union there can be no secession of any State.

§36. Foreigners who are, or may hereafter become, bona fide residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native-born citizens.

§37. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property; and when the government assumes other functions, it is usurpation and oppression.

Law taxing an attorney's fee as costs against railroad in certain cases violates.—S. & N. R. Co. v. Morris, 65 Ala. 193. Buying and selling of cotton in the seed in certain localities may be prohibited.—Mangan v. State, 76 Ala. 60.

§38. No educational or property qualification for suffrage or office, nor any restraint upon the same on account of race, color, or previous condition of servitude, shall be made by law.

§39. That this enumeration of certain rights shall not impair or deny others retained by the people.

Enumeration cannot be construed to disparage or deny other rights retained by the people.—Ex parte Dorsey, 7 Port. 293.

ARTICLE II.

STATE AND COUNTY BOUNDARIES.

§1. The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southerly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning.

§2. The boundaries of the several counties of this State, as heretofore established by law, are hereby ratified and confirmed. The general assembly may, by a vote of two-thirds of both houses thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new counties shall be hereafter formed of less extent than six hundred square miles; and no existing county shall be reduced to less extent than six hundred square miles, and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative, under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation.

ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

§1. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Distribution of powers.—Ex parte Screws, 49 Ala. 57; Scott v. Strobach, 49 Ala. 477; Fox v. McDonald, 101 Ala. 51. **Legislative power.**—Legislature exclusive judge of what is a public use.—Sadler v. Langham, 34 Ala. 311. Controls domestic affairs of the State.—Ex parte Norton, 44 Ala. 177. Determines who are its members.—Ex parte Screws, 49 Ala. 57; Scott v. Strobach, 49 Ala. 477. May remove administration of estate to another county without invading the judiciary.—Wright v. Ware, 50 Ala. 549. And transfer a cause to another court of co-ordinate jurisdiction.—Ex parte Hickey, 52 Ala. 228. And compromise and settle past due taxes.—Tallassee Mfg. Co. v. Glenn, 50 Ala. 489. And require a license or certificate of fitness of locomotive engineers.—McDonald v. State, 81 Ala. 279; N. C. & St. L. Ry. Co. v. State, 83 Ala. 71 (affirmed 128 U. S. 96); Smith v. State, 85 Ala. 341 (affirmed 124 U. S., 465); Baldwin v. State, 85 Ala. 619. And empower administrator to sell lands to pay debts.—Holman v. Bank of Norfolk, 12 Ala. 369. And regulate civil procedure, allowing real party in interest to intervene.—Perry v. Cabaniss, 70 Ala. 253. And declare that only certain of the State's liabilities shall be adjusted on a given basis.—State v. Cobb, 64 Ala. 127. **Extent of power to pass special laws for the sale of the property of minors, deceased persons, etc.**—Chappell v. Williamson, 49 Ala. 153; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindal v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala. 360; Mumford v. Pearce, 70 Ala. 452. **Cannot declare, in opposition to established procedure, that no appeal shall be discontinued except on motion.**—Carleton v. Goodwin, 41 Ala. 153. **Nor that conveyance already executed is invalid because not according to forms then prescribed.**—Ala. L. I. & T. Co. v. Boykin, 38 Ala. 510. **Nor declare certain**

judgments void.—Sanders v. Cabaniss, 43 Ala. 173; Weaver v. Lapsley, 43 Ala. 224; But see Ex parte Bibb, 44 Ala. 140; Ex parte Norton, 44 Ala. 177. **Nor authorize commissioners to treat a sale as rescinded** under certain conditions.—Hardy v. Bank, 15 Ala. 722. **Nor remit fines.**—Haley v. Clark, 26 Ala. 439. **But may remit penalty for failure to pay taxes.**—M. & G. R. Co. v. Peebles, 47 Ala. 317. **And cure defects in the organization of private corporations.**—C. A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120. **And exercise certain powers of forfeiture.**—M. & O. R. Co. v. State, 29 Ala. 573. **And bind the State by contract.**—T. & C. R. Co. v. Moore, 36 Ala. 371; State v. Cobb, 64 Ala. 127. **And establish rules of evidence within constitutional limitations.**—Stoudenmire v. Brown, 48 Ala. 699. **As to delegation of power,** see Art. IV., Sec. 1, and Art. XI. **Executive power.**—Power of appointment is given, not inherent.—Fox v. McDonald, 101 Ala. 51. Governor has no general authority to contract in the name of the State.—State v. Cobb, 64 Ala. 127. Must conform to legislative will.—Ex parte Screws, 49 Ala. 57. Law prohibiting distillation of grain except under the direction of the governor is no invasion of legislative functions.—Ingram v. State, 39 Ala. 247. Governor alone has power to remit fines.—Haley v. Clark, 26 Ala. 439. Mandamus lies to compel governor to exercise ministerial functions.—T. &. C. R. Co. v. Moore, 36 Ala. 371. See State v. Cobb, 64 Ala. 127. **Judicial power.**—Judiciary declare what the law is, legislature what it shall be.—Ala. L. & I. Co. v. Boykin, 38 Ala. 510. The forfeiture of a charter is the province of the courts.—M. & O. R. Co. v. State, 29 Ala. 573. Trial of the constitutional qualifications of a judge elected by the legislature is judicial, not political.—State v. Porter, 1 Ala. 688 (overruling State v. Paul, 5 S. & P. 40). Cannot control the speaker in the exercise of his functions.—Ex parte Echols, 39 Ala. 698. Will not condemn legislative construction of a contract unless clearly wrong.—Ex parte S. & G. R. Co., 45 Ala. 696. Can only interfere to control legislative mistakes when they involve a disregard of some constitutional limitations; nor interfere with the executive except as to purely ministerial duties. Ex parte Screws, 49 Ala. 57; Scott v. Strobach, 49 Ala. 477.

§2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

See citations to preceding section.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

§1. The legislative power of this State shall be vested in a general assembly, which shall consist of a senate and house of representatives.

The Constitution is a limitation, not a grant of power; legislative power is unlimited except as restrained by State or Federal Constitution.—Ex parte Dorsey, 7 Port. 293; State v. Reid, 1 Ala. 612; Ex parte Pickett. 24 Ala. 91; Stein v. Mayor, 24 Ala. 591; Noles v. State, 26 Ala. 31; Dorman v. State, 34 Ala. 216; Ingram v. State, 39 Ala. 249; A. & F. R. Co. v. Burkett, 42 Ala. 83; Gunter v. Dale Co., 44 Ala. 639; Ex parte S. & G. R. Co., 45 Ala. 696; Wright v. Ware, 50 Ala. 549; Board of Revenue v. Barber, 53 Ala. 589; Irwin v. Mayor, 57 Ala. 6; Harrison v. Grady, 57 Ala. 49; Williams v. State, 61 Ala. 33; Davis v. State, 68 Ala. 58; Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120; Van Hook v. Selma, 70 Ala. 361; Mangan v. State, 76 Ala. 60; Moog v. Randolph, 77 Ala. 597; Ex parte Lusk, 82 Ala. 519; Schultes v. Eberly, 82 Ala. 242; Hare v. Kennerly, 83 Ala. 608; Mayor v. Klein, 89 Ala. 461; Johnson v. State, 91 Ala. 70; State v. Melvin, 95 Ala. 176; Jones v. Jones, 95 Ala. 443; Adams v. Creen, 100 Ala. 218; Smith v. Boutwell, 101 Ala. 373; Fox v. McDonald, 101 Ala. 51; Ex parte Sikes, 102 Ala. 173. **The presumption is that power has not been exceeded.**—State v. Rogers, 107 Ala. 444. **Police power.**—Restrictions may be imposed on the sale of intoxicants in respect to quantity and purchasers.—Lodano v. State, 25 Ala. 64. And it may be regulated or prohibited in particular districts.—Harrison v. Gordy, 57 Ala. 49; Harrison v. State, 91 Ala. 62; Ex parte Sikes, 102 Ala. 173. But the importation from another State, and sale in original packages, cannot be interfered with.—Keith v. State, 91 Ala. 2; Rion v. State, 91 Ala. 2; Harrison v. State, 91 Ala. 62. Distillation of spirits except under direction of the Governor, may be prohibited.—Ingram v. State, 39 Ala. 247. Legislature may prohibit dealing in cotton in the seed in particular localities.—Mangan v. State, 76 Ala. 60. May require license of locomotive engineers.—McDonald v. State, 81 Ala. 279; N. C. & St. L. R. Co. v. State, 83 Ala. 71; (affirmed, 128 U. S. 96); Smith v. State, 85 Ala. 341; (affirmed, 124 U. S., 465); Baldwin v. State, 85 Ala. 619. And of a physician.—Brooks v. State, 88 Ala. 122. And of a lawyer.—Cousins v. State, 50 Ala. 113. And of a dealer in fertilizers; requiring sacks to be tagged also.—Steiner v. Ray, 84 Ala. 93; Brown v. Adair, 104 Ala. 652. May require a railroad to erect cattle-guards.—B. M. R. Co. v. Parsons, 100 Ala. 662. May require railroad employees to be examined for color-blindness.—L. & N. R. Co. v. Baldwin, 85 Ala. 619; N. C. & St. L. R. Co. v. State, 83 Ala. 71; (affirmed, 128 U. S. 96).

Power to pass special laws applicable to one or more designated counties or localities.—Holman v. Bank of Norfolk, 12 Ala. 369; Coltart v. Allen, 40 Ala. 155; Chappell v. Williamson, 49 Ala. 153; Wright v. Ware, 50 Ala. 549; Ex parte Hickey, 52 Ala. 228; VanHoose v. Bush, 54 Ala. 342; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindall v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala. 360; Mumford v. Pearce, 70 Ala. 452; Stanfill v. Dallas Co., 80 Ala. 287; Dunn v. Wilcox Co., 85 Ala. 144; McGraw v. Co. Comrs., 89 Ala. 407; Spigener v. Reeves, 104 Ala. 437. **To pass "stock laws."**—Stanfill v. Dallas Co., 80 Ala. 287; Spigener v. Reeves, 104 Ala. 437. **To pass special laws authorizing sales of property** of infants, transfer of administration, etc.—Holman v. Bank of Norfolk, 12 Ala. 369; Coltart v. Allen, 40 Ala. 155; Campbell v. Williamson, 49 Ala. 153; Wright v. Ware, 50 Ala. 549; Ex parte Hickey, 52 Ala. 228; Van Hoose v. Bush, 54 Ala. 342; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindall v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala., 360; Mumford v. Pearce, 70 Ala. 452. (As to power since adoption of this Constitution see Art. IV., Sec. 23.) To provide for **the removal of court-house.**—Ex parte Hill, 40 Ala. 121. To **dispense with formalities** required by incorporation laws.—Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120. To authorize **grant of new trials.**—Ex parte Norton, 44 Ala. 177. To provide for **the punishment of offense partly perpetrated without the State.**—Green v. State, 66 Ala. 40. **To change the garnishment law at pleasure.**—Adams v. Creen, 100 Ala. 218. **To exclude, or impose restrictions, on foreign corporations.**—Noble v. Mitchell, 100 Ala. 519; (affirmed, 164 U. S., 367.) See Art. XIV., Sec. 4. **To control fine and forfeiture fund.**—Herr v. Seymour, 76 Ala. 270; Sessions v. Boykin, 78 Ala. 328; Brown v. Parris, 93 Ala. 314; Harold v. Herrington, 95 Ala. 395. To elect a county solicitor to perform duties of, and to the exclusion of the circuit solicitor.—Ex parte Lusk, 82 Ala. 519. To bind the State by contract.—T. & C. R. Co. v. Moore, 36 Ala. 371; State v. Cobb, 64 Ala. 127. **To regulate occupations and businesses of all kinds;** but all members of a particular class must be equally amenable to the regulations.—Mayor v. Yuille, 3 Ala. 137; Ex parte Marshall, 64 Ala. 266; S. & N. R. Co. v. Morris, 65 Ala. 193; Smith v. L. & N. R. Co., 75 Ala. 449; Harrison v. Jones, 80 Ala. 412; McDonald v. State, 81 Ala. 279; Carter v. Coleman, 84 Ala. 256; L. & N. R. Co. v. Baldwin, 85 Ala. 619; Youngblood v. B. T. & S. Co., 95 Ala. 521. Legislative power **cannot be delegated except to counties and municipal corporations to a limited extent.**—Clark v. Mobile, 67 Ala. 217; Schultes v. Eberly, 82 Ala. 242; Dunn v. Wilcox Co., 85 Ala. 144. **Delegation of power to municipal corporations:** Power to delegate a reiteration of the common law.—Dunn v. Wilcox Co., 85 Ala. 144. May delegate power to levy taxes and impose licenses on every species of property and all occupations except when restrained by State or Federal Constitution.—Yuille v. Mayor, 3 Ala. 137; State v. Estabrook, 6 Ala. 653; Carroll v. Mayor, 12 Ala. 173; Osborne v. Mayor, 44 Ala. 493; City Council v. Shoemaker, 51 Ala. 114; Ex parte City Council, 64 Ala. 463; Van Hook v. Selma, 70 Ala., 361; Ex parte Byrd, 84 Ala. 17. To pass laws and ordinances having the force of laws of the legislature.—Marion v. Chandler, 6 Ala. 899; Mayor v. Rouse, 8 Ala. 515; Mayor v. Allaire, 14 Ala. 400; Moses v. Mayor, 52 Ala. 198. Under power to license and regulate retailing, prohibitory price cannot be charged for a license.—Ex parte Burnett, 30 Ala. 461; Craig v. Burnett, 32 Ala. 728; Miller v. Jones, 80 Ala. 89; Ex parte Cowert, 92 Ala. 94; Ex parte Mayor, 90 Ala. 516; Ex parte Sikes, 102 Ala. 173. But under power to license, regulate and restrain, prohibitory price may be charged for license to retail.—Marion v. Chandler, 6 Ala. 899. The power to license, if granted as a police power, cannot be used to raise revenue.—Ex parte Marshall, 64 Ala. 266; Van Hook v. Selma, 70 Ala. 361; Ex parte Byrd, 84 Ala. 17; Ex parte Sikes, 102 Ala. 173. **Holder of city license to retail is not exempted from payment of license fee to State, nor vice versa.**—State v. Estabrook, 6 Ala. 653; Mayor v. Rouse, 8 Ala. 515; Greensboro v. Mullins, 13 Ala. 341; West v. Greenville, 39 Ala. 69. **Municipality in prohibition district,** with power to suppress offenses against morality and decency, **may prohibit the sale of whiskey.**—Ex parte Russellville, 95 Ala. 19. **May delegate power** to license bakers and regulate the price of bread.—Mayor v. Yuille, 3 Ala. 137. To tax a steamboat owned by a citizen although registered under the laws of the United States.—Battle v. Mobile, 9 Ala. 234. To impose a tax on the sales of auctioneers, peddlers, etc., or license them.—Carroll v. Mayor, 12 Ala. 173. To levy a tax for local improvements.—Stein v. Mayor, 24 Ala. 591; Gibbons v. M. & G. N. R. Co., 36 Ala. 410. To license lawyers.—Goldthwaite v. City Council, 50 Ala. 486; Ex parte City Council, 64 Ala. 463. To levy a specific tax on an express company.—City council v. Shoemaker, 51 Ala. 114. To improve streets at the expense of adjacent property.—Irwin v. Mayor, 57 Ala. 6; Mayor v. Klein, 89 Ala. 461; (overruling Mayor v. Dargan, 45 Ala. 310; Mayor v. Royal St. R. Co., 45 Ala. 322.) To impound cattle taken damage feasant, and sell them, if not redeemed.—Dillard v. Webb, 55 Ala. 468. To establish and regulate markets.—Ex parte Byrd, 84 Ala. 17. To prohibit transfer agent from going into railroad station to solicit patronage.—Lindsay v. Mayor, 104 Ala. 257. See also Art. XI. **Delegation to counties:** Counties are not municipal corporations, but civil or political divisions of the State, and quasi legislative powers may be given to them.—Askew v. Hale Co., 54 Ala. 639; Standfill v. Dallas Co., 80 Ala. 287; Schultes v. Eberly, 82 Ala. 242; Dunn v. Wilcox Co., 85 Ala. 144; McGraw v. County Comrs., 89 Ala. 407. **Cannot interfere with interstate commerce; what is interstate commerce.**—Mobile v. Leloup, 76 Ala. 401; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; McDonald v. State, 81 Ala. 279; State v. Agee, 83 Ala. 110; Keith v. State, 91 Ala. 2; Rion v. State, 91 Ala.

2; Ware v. Hamilton B. S. Co., 92 Ala. 145; Nelms v. Edinburg Mfg. Co., 92 Ala. 157; Ex parte Murray, 93 Ala. 78; M. & O. R. Co. v. Dismukes, 94 Ala. 131; Cook v. Rome Brick Co., 98 Ala. 409; Culberson v. Am. T. & B. Co., 107 Ala. 457.

§2. The style of the laws of this State shall be: "Be it enacted by the General Assembly of Alabama." Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a Code, digest, or revision of statues; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

A Code of laws is valid if the bill by which it was adopted went through the prescribed forms.—Dew v. Cunningham, 28 Ala. 466; Hoover v. State, 59 Ala. 57; Bales v. State, 63 Ala. 30. **The valid adoption of a Code of laws re-enacts all the laws included therein,** although originally invalid because proper forms were not pursued. —Bales v. State, 63 Ala. 30. **Each law shall contain but one subject which shall be clearly expressed in the title, etc.**—Miles v. State, 40 Ala. 39; Ex parte Pollard, 40 Ala. 77; Tuskaloosa B. Co. v. Olmstead, 41 Ala. 9; Weaver v. Lapsley, 43 Ala. 224; Gunter v. Dale Co., 44 Ala. 639; Martin v. Hewitt, 44 Ala. 418; Ex parte S. & G. R. Co., 45 Ala. 696; Farley v. Dowe, 45 Ala. 324; Ex parte Upshaw, 45 Ala. 234; Falconer v Robinson, 46 Ala. 340; DeKalb Co. v. Smith, 47 Ala. 407; Lockhart v. Troy, 48 Ala. 579; Horst v. Moses, 48 Ala. 129; Walker v. State, 49 Ala. 329; Lowndes Co. v. Hunter, 49 Ala. 507; Tallassee Mfg. Co. v. Glenn, 50 Ala. 489; State v. Price, 50 Ala. 568; Giles v. State, 52 Ala. 29; Moses v. Mayor, 52 Ala. 198; Ex parte Hickey, 52 Ala. 228; Key v. Jones, 52 Ala. 238; Ex parte Buckley, 53 Ala. 42; Board Rev. v. Barber, 53 Ala. 589; Boyd v. State, 53 Ala. 601; State v. Buckley, 54 Ala. 599; Dillard v. Webb, 55 Ala. 468; Smith v. State, 55 Ala. 1; Adler v. State, 55 Ala. 16; Watson v. State, 55 Ala. 158; Evans v. M. &. C. R. Co., 56 Ala. 246; Dane v. McArthur, 57 Ala. 448; Rogers v. Torbut, 58 Ala. 523; Hoover v. State, 59 Ala. 57; Walker v. Griffith, 60 Ala. 361; Ex parte Moore, 62 Ala. 471; Bales v. State, 63 Ala. 30; Block v. State, 66 Ala. 493; Carson v. State, 69 Ala. 235; Montgomery Mut. B. & L. Assn. v. Robinson, 69 Ala. 413; Ballentyne v. Wickersham, 75 Ala. 533; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 411; Donnelly v. State, 78 Ala. 453; Dunbar v. Frazer, 78 Ala. 538; Miller v. Jones, 80 Ala. 89; Morgan v. State, 81 Ala. 72; Tatum v. State, 82 Ala. 5; Hare v. Kennerly, 83 Ala. 608; Ramagnano v. Crook, 85 Ala. 226; Gandy v. State, 86 Ala. 20; Bolling v. LeGrand, 87 Ala. 482; Judson v. Bessemer, 87 Ala. 240; Ex parte Reynolds, 87 Ala. 138; Montgomery v. State, 88 Ala. 141; Glenn v. Lynn, 89 Ala. 608; M. & G. R. Co. v. Comrs., 97 Ala. 105; Ex parte Cowert, 92 Ala. 94; State v. Harrub, 95 Ala. 176; State v. Melvin, 95 Ala. 176; Barnhill v. Teague, 96 Ala. 207; Woolf v. Taylor, 98 Ala. 254; Bradley v. State, 99 Ala. 177; State v. Hartford Ins. Co., 99 Ala. 221; Dean v. State, 100 Ala. 102; Fox v. McDonald, 101 Ala. 51; Yerby v. Cochrane, 101 Ala. 541; Randolph v. B. & P. Sup. Co., 106 Ala. 501; Burton v. State, 107 Ala. 108; Montgomery v. State, 107 Ala. 372; State v. Rogers, 107 Ala. 444; City Council v. National B. & L. Assn., 108 Ala. 336; Rice v. Westcott. 108 Ala. 353; Ex parte Gayles, 108 Ala. 514; Harper v. State, 109 Ala. 28, 66; Davenport v. State, 112 Ala. 49. **Premable of statutes.**—White v. Levy, 91 Ala. 175. **No law shall be revived, amended, extended, etc.**—Rogers v. Torbut, 58 Ala. 523; Clarke v. Mobile, 67 Ala. 217; Stewart v. County Comrs., 82 Ala. 209; State v. Warford, 84 Ala. 15; Todd v. State, 85 Ala. 339; Gandy v. State, 86 Ala. 20; Bolling v. LeGrand, 87 Ala. 482; Bay Shell Road Co. v. O'Donnell, 87 Ala. 376; Judson v. Bessemer, 87 Ala. 240; Ex parte Pierce, 87 Ala. 110; Maxwell v. State, 89 Ala. 150; Ex parte Cowert, 92 Ala. 94; Barnhill v. Teague, 96 Ala. 207; Childs v. State, 97 Ala. 49; Stewart v. State, 100 Ala. 1; Miller v. Berry, 101 Ala. 531; Burton v. State, 107 Ala. 108; Rice v. Westcott, 108 Ala. 353; Harper v. State, 109 Ala. 28, 66. **Sufficient to set out law as amended.**—Wilkerson v. Ketler, 59 Ala. 306; State v. Warford, 84 Ala. 15; Dunbar v. Frazer, 78 Ala. 538; Montgomery v. State, 107 Ala. 372. **Only applies to law which is strictly amendatory or revisory.**—Ex parte Pollard, 40 Ala. 77; State v. Rogers, 107 Ala. 444. **If the several clauses are perfectly distinct and separable, and are not interdependent, one part of a law may stand while the other is expunged.**—M. & O. R. Co. v. State, 29 Ala. 573; Ex parte Pollard, 40 Ala. 77; Lowndes Co. v. Hunter, 49 Ala. 507; Rogers v. Torbut, 58 Ala. 523; Ex parte Moore, 62 Ala. 471; Powell v. State, 69 Ala. 10; Ballentyne v. Wickersham, 75 Ala. 533; Stein v. Leeper, 78 Ala. 517; Montgomery v. State, 88 Ala. 141; Ex parte Cowert, 92 Ala. 94; Barnhill v. Teague, 96 Ala. 207; Woolf v. Taylor, 98 Ala. 254; State v. Hartford Ins. Co., 99 Ala. 221; Bradley v. State, 99 Ala. 177; Yerby v. Cochrane, 101 Ala. 541; Harper v. State, 109 Ala. 28, 66; Shehane v. Bailey, 110 Ala. 308.

§3. Senators and representatives shall be elected by the qualified electors, on the first Monday in August, eighteen hundred and seventy-six; and one-half of the senators and all the representatives shall be elected every two

years thereafter, unless the general assembly shall change the time of holding elections. The terms of office of the senators shall be four years, and that of the representatives two years, commencing on the day after the general election, except as otherwise provided in this Constitution.

§4. Senators shall be at least twenty-seven years of age, and representatives twenty-one years of age; they shall have been citizens and inhabitants of this State for three years, and inhabitants of their respective counties or districts one year next before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and they shall reside in their respective counties or districts during their terms of service.

§5. The general assembly shall meet biennially, at the capitol, in the senate chamber and in the hall of the house of representatives (except in cases of destruction of the capitol, or epidemics, when the governor may convene them at such place in the State as he may deem best) on the day specified in this Constitution, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under this Constitution, nor longer than fifty days at any subsequent session.

Legislature sits fifty working days, excluding Sundays and days on which, by concurrent resolution, the two houses do not sit.—Moog v. Randolph, 77 Ala. 597; Sayre v. Polland, 77 Ala. 608; Ex parte Cowert, 92 Ala. 94.

§6. The pay of the members of the general assembly shall be four dollars per day, and ten cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled.

§7. The general assembly shall consist of not more than thirty-three senators, and not more than one hundred members of the house of representatives; to be apportioned among the several districts and counties as prescribed in this Constitution.

§8. The senate, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members president thereof; and the house of representatives, at the beginning of each regular session, shall elect one of its members as speaker; and the president of the senate and the speaker of the house of representatives shall hold their offices respectively until their successors are elected and qualified. Each house shall choose its own officers, and shall judge of the election, returns and qualifications of its members.

§9. At the general election in the year eighteen hundred and seventy-six, senators shall be elected in the even-numbered districts to serve for two years, and in the odd-numbered districts to serve for four years, so that thereafter one-half the senators may be chosen biennially. Members of the house of representatives shall be elected at the general election every second year. The time of service of senators and representatives shall begin on the day after their election, except the terms of those elected in the year eighteen hundred and seventy-six, which shall not begin until the term of the present members shall have expired. Whenever a vacancy shall occur in either house, the governor for the time being shall issue a writ of election to fill such vacancy for the remainder of the term.

§10. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the

attendance of absent members, in such manner, and under such penalties, as each house may provide.

§11. Each house shall have power to determine the rules of its proceedings, and to punish its members, or other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its members against violence, or offers of bribes or corrupt solicitation; and, with the concurrence of two-thirds of either house, to expel a member, but not a second time for the same cause; and shall have all the powers necessary for the legislature of a free State.

§12. A member of either house expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

§13. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-tenth of the members present, be entered on the journals. Any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals.

Journal is a public record of which the courts will take judicial notice.—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Henderson v. State, 94 Ala. 95. **Must show affirmatively that the yeas and nays were taken; no other evidence received.**—State v. Buckley, 54 Ala. 599; Walker v. Griffith, 60 Ala. 361. **Except where the Constitution requires that a matter shall appear on the journal, its performance is presumed, unless the contrary affirmatively appears.**—Harrison v. Gordy, 57 Ala. 49; Perry Co. v. S. M. & M. R. Co., 58 Ala. 546; Walker v. Griffith, 60 Ala. 361; Clarke v. Jack, 60 Ala. 271; Hall v. State, 82 Ala. 562; Hare v. Kennerly, 83 Ala. 608. **Notice of a local law will be presumed** if the journal does not show the contrary.—Harrison v. Gordy, 57 Ala. 49; Clarke v. Jack, 60 Ala. 271; Walker v. Griffith, 60 Ala. 361; Hall v. State, 82 Ala. 562.

§14. Members of the general assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

§15. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

§16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§17. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

A member of the legislature cannot be elected by that body judge of a new circuit then created.—State v. Porter, 1 Ala. 688. **Nor appointed police judge of the city of Birmingham, the same being a civil office of profit under the State, created by the body of which he was a member.**—Montgomery v. State, 107 Ala. 372.

§18. No person hereafter convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this State.

§19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Compliance presumed unless the contrary shown.—State v. Buckley, 54 Ala. 599. **Bill may be amended, or a substitute adopted, so long as the original purpose be not changed.**—State v. Buckley, 54 Ala. 599; Harrison v. Gordy, 57 Ala. 49; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 411; Donnelly v. State, 78 Ala. 453; Dunbar v. Frazer, 78 Ala. 538; Hall v. State, 82 Ala. 562.

§20. No bill shall become a law until it shall have been referred to a committee of each house and returned therefrom.

Compliance presumed unless contrary shown.—State v. Buckley, 54 Ala. 599. **Committee may report an amendatory or substitutional bill.**—State v. Buckley 54 Ala. 599.

§21. Every bill shall be read on three different days in each house; and no bill shall become a law unless, on its final passage, it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journals, and a majority of each house be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

A bill **becomes a law only when it has gone through all the required forms;** court may search the journal, the record.—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608. **Does not require that everything to become law shall be read three times;** a Code may be enacted by bill read three times.—Dew v. Cunningham, 28 Ala. 466; Hoover v. State, 59 Ala. 57; Bales v. State, 63 Ala. 30. **Presumption is that bill was read three times.**—Walker v. Griffith, 60 Ala. 361. **Yeas and nays must appear affirmatively from the journal.**—State v. Buckley, 54 Ala. 599; Walker v. Griffith, 60 Ala. 361. **"Final passage"** is the vote on its passage in either house after three readings on three different days in that house.—State v. Buckley, 54 Ala. 599. **If a statute as engrossed and signed varies materially in substance and legal effect from the bill as passed, neither is a constitutional enactment.**—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 453; Dunbar v. Frazer, 78 Ala. 538.

§22. No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority thereof, taken by yeas and nays, and the names of those voting for and against recorded upon the journals; and reports of committees of conference shall in like manner be adopted in each house.

Yeas and nays must appear on the journal; compliance with certain other requirements presumed.—State v. Buckley, 54 Ala. 599.

§23. No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the general assembly for the benefit of any individual, corporation, or association.

Definition of a general law.—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557. **Whether a case can be provided for by a general law is a question of legislative discretion.**—Clarke v. Jack, 60 Ala. 271. It would seem that **"corporations" means private corporations.**—Ex parte City Council, 64 Ala. 463. **Does not prevent the exception** from a general law **of persons or things otherwise included.**—Ex parte City Council, 64 Ala. 463. **Law authorizing the people to vote on the question of removal of county-site is not a "special or local law."**—Clarke v. Jack, 60 Ala. 271. **Divorce cannot be granted by special law.**—Jones v. Jones, 95 Ala. 443. Authorizing county superintendent to pay debts contracted by school trustees, **is a healing statute and constitutional.**—McKennie v. Gordon, 68 Ala. 442. **Quære, as to the power to pass special laws for the sale of property of minors, etc., since the adoption of this Constitution.**—Mumford v. Pearce, 70 Ala. 452. See Art. IV., Sec. 1. **Suspending general law.**—State v. Webb, 110 Ala. 214.

§24. No local or special law shall be passed on a subject which cannot be provided for by a general law, unless notice of the intention to apply there-

for shall have been published in the locality where the matter or things to be affected may be situated; which notice shall be at least twenty days prior to the introduction into the general assembly of such bill, and the evidence of such notice having been given shall be exhibited to the general assembly before such bill shall be passed. *Provided*, that the provisions of this Constitution, as to special or local laws, shall not apply to public or educational institutions of or in this State, nor to industrial, mining, immigration or manufacturing corporations or interests, or corporations for constructing canals, or improving navigable rivers or harbors of this State.

Where the journal does not show the contrary, notice of a local law is presumed.—Harrison v. Gordy, 57 Ala. 49; Clarke v. Jack, 60 Ala. 271; Walker v. Griffith, 60 Ala. 361; Hall v. Steele, 82 Ala. 562; Jennings v. Russell, 92 Ala. 603. **Does not apply to curative or healing statutes.**—McKennie v. Gordon, 68 Ala. 442; State v. Webb, 110 Ala. 214. **Definition of general law.**—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557.

§25. The general assembly shall pass general laws, under which local and private interests shall be provided for and protected.

Definition of a general law.—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557.

§26. The general assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift-enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State; and all acts, or parts of acts, heretofore passed by the general assembly of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

Loiseau v. State, Ala; (22 So. 138).

§27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the general assembly, after the titles have been publicly read immediately before signing, and the fact of signing shall be entered on the journal.

§28. The general assembly shall prescribe by law the number, duties, and compensation of the officers and employes of each house; and no payment shall be made from the state treasury, or be in any way authorized to any person, except to an acting officer or employe, elected or appointed in pursuance of law.

§29. No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after the service shall have been rendered, or contract made; nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law.

§30. All stationery, printing, paper, and fuel used in the legislative and other departments of government, shall be furnished, and the printing, binding, and distribution of laws, journals, department reports, and all other printing and binding, and repairing and furnishing the halls and rooms used for the meetings of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder below a maximum price, and under such regulations as shall be prescribed by law; no member or officer of any department of the government shall be in any way interested in such contracts, and all such contracts shall be subject to the approval of the governor, state auditor, and state treasurer.

Not self-executing.—Brown. v. Seay, 86 Ala. 122.

§31. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in other bills.

Mandatory.—Perry Co. v. S. M. & M. R. Co., 58 Ala. 546. **"Raising revenue"** is the levy of a tax as the means of collecting revenue whether receipts are increased or diminished.—Perry Co. v. S. M. &. M. R. Co., 58 Ala. 546. A statute **regulating the granting of licenses to retail is not a bill to raise revenue.**—Dunbar v. Frazer, 78 Ala. 538.

§32. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State, interest on the public debt, and for the public schools; all other appropriations shall be made by separate bills, each embracing but one subject.

Appropriation for a local school must be by separate bill.—Woolf v. Taylor, 98 Ala. 254.

§33. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

Conservative, not restrictive of legislative power.—Smith v. Speed, 50 Ala. 276. **A resolution of the senate is not a law.**—Reynolds v. Blue, 47 Ala. 711.

§34. No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each house.

Elsberry v. Seay, 83 Ala. 614.

§35. No act of the general assembly shall authorize the investment of any trust fund by executors, administrators, guardians, and other trustees, in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made.

§36. The power to change the venue, in civil and criminal causes, is vested in the courts, to be exercised in such manner as shall be provided by law.

§37. When the general assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session.

§38. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture, or commodity; but any county or municipality may appoint such officers, when authorized by law.

§39. No act of the general assembly changing the seat of government of the State shall become a law until the same shall have been submitted to the qualified electors of the State at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location.

§40. A member of the general assembly, who shall corruptly solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same; or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another, as the consideration of his vote or official influence,

or for withholding the same; or shall give or withhold his vote or influence, in consideration of the payment or promise of such money, advantage, matter, or thing, to another, shall be guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is, or shall be, provided by law.

§41. Any person who shall, directly or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the general assembly, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

§42. The offense of corrupt solicitation of members of the general assembly, or of public officers of this State, or of any municipal division thereof, and any occupation or practice of solicitation of such members, or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

§43. A member of the general assembly, who has a personal or private interest in any measure or bill, proposed or pending before the general assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

§44. In all elections by the general assembly, the members shall vote *viva voce*, and the votes shall be entered on the journals.

§45. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that mode of adjustment.

§46. It shall be the duty of the general assembly, at its first session after the ratification of this Constitution, and within every subsequent period of ten years, to make provision by law for the revision, digesting and promulgation of the public statutes of this State of a general nature, both civil and criminal.

§47. The general assembly shall pass such penal laws as they may deem expedient to suppress the evil practice of dueling.

§48. It shall be the duty of the general assembly to regulate by law the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deductions.

§49. It shall be the duty of the general assembly to require the several counties of this State to make adequate provision for the maintenance of the poor.

§50. The general assembly shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this State.

"General law" is a law operative throughout the entire State; if there are excepted parts, the law is public, not general.—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557. **Not intended to prevent the delegation to counties of quasi legislative powers.**—Askew v. Hale Co., 54 Ala. 639; Stanfill v. Dallas Co., 80 Ala. 287; Dunn v. Wilcox Co., 85 Ala. 144. **Nor to limit legislature in conferring police powers on municipal corporations.**—Ex parte Cowert, 92 Ala. 94.

§51. In the event of annexation of any foreign territory to this State, the general assembly shall enact laws extending to the inhabitants of the acquired territory all the rights and privileges which may be required by the

terms of the acquisition, anything in this Constitution to the contrary notwithstanding.

§52. The general assembly shall not tax the property, real and personal, of the State, counties, or other municipal corporations, or cemeteries; nor lots in incorporated cities or towns, or within one mile of any city or town, to the extent of one acre, nor lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; nor such property, real or personal, to an extent not exceeding twenty-five thousand dollars in value, as may be used exclusively for agricultural or horticultural associations of a public character.

§53. The general assembly shall by law prescribe such rules and regulations as may be necessary to ascertain the value of personal and real property exempted from sale under legal process by this Constitution, and to secure the same to the claimant thereof as selected.

§54. The State shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation.

§55. The general assembly shall have no power to authorize any county, city, town, or other subdivision of this State, to lend its credit, or to grant public money or thing of value, in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds, or otherwise.

No power to authorize a county to build a railroad bridge whether to be used free of rent by the railroad, or to be leased to it.—Garland v. Board of Revenue, 87 Ala. 223.

§56. There can be no law of this State impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the general assembly shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State.

Substantially lessening or impairing the value of the contract is what is forbidden; no reference to the degree of impairment.—Edwards v. Williamson, 70 Ala. 145; Adams v. Creen, 100 Ala. 218. **The remedy may be changed, so it remains fully adequate to the enforcement of the contract.**—Edwards v. Williamson, 70 Ala. 145; Osborn v. Johnson W. P. Co., 99 Ala. 309. **Does not apply to claims against the State, or against a special fund controlled by it as the fine and forfeiture fund.**—Palmer v. Fitts, 51 Ala. 489; Sessions v. Boykin, 78 Ala. 328; Brown v. Parris, 93 Ala. 314; Harold v. Herrington, 95 Ala. 395; See also citations to Art. I., Sec. 23.

ARTICLE V.

EXECUTIVE DEPARTMENT.

§1. The executive department shall consist of a governor, secretary of state, state treasurer, state auditor, attorney-general and superintendent of education, and a sheriff for each county.

Fox v. McDonald, 101 Ala. 51. See citations to Art. III.

§2. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama."

Mandamus lies to compel the governor to perform his ministerial duties.—T. & C. R. Co. v. Moore, 36 Ala. 371; State v. Cobb, 64 Ala. 127. Power of appointment does not belong inherently to the executive.—Fox v. McDonald, 101 Ala. 51.

§3. The governor, secretary of state, state treasurer, state auditor, and attorney-general shall be elected by the qualified electors of this State, at the same time and places appointed for the election of members of the general assembly.

§4. The returns of every election for governor, secretary of state, state auditor, state treasurer, and attorney-general shall be sealed up and transmitted by the returning officers to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session to which said returns shall be made, open and publish them in the presence of both houses of the general assembly in joint convention. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more shall have an equal and the highest number of votes for the same office, the general assembly, by joint vote, without delay, shall choose one of said persons for said office. Contested elections for governor, secretary of state, state auditor, state treasurer, and attorney-general shall be determined by both houses of the general assembly, in such manner as may be prescribed by law.

§5. The governor, secretary of state, state treasurer, state auditor, and attorney-general shall hold their respective offices for the term of two years from the time of their installation in office, and until their successors shall be elected and qualified.

§6. The governor shall be at least thirty years of age when elected, and shall have been a citizen of the United States ten years, and a resident citizen of this State at least seven years next before the day of his election.

§7. The governor, secretary of state, state treasurer, state auditor, and attorney-general shall reside at the seat of government of this State during the time they continue in office, except in case of epidemics; and they shall receive compensation for their services, which shall be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected.

§8. The governor shall take care that the laws be faithfully executed.

§9. The governor may require information in writing, under oath, from the officers of the executive department, on any subject relating to the duties of their respective offices; and he may, at any time, require information in writing, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management, and expenses of their respective offices and institutions; and any such officer or manager who makes a false report, shall be guilty of perjury, and punished accordingly.

§10. The governor may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if, since their last adjournment, that shall have become dangerous from an enemy, or from infectious or contagious diseases; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

§11. The governor shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient; and, at the commencement of each session of the general assembly, and at the close of his term of office,

give information, by written message, of the condition of the State; and he shall account to the general assembly, as may be prescribed by law, for all moneys received and paid out by him, from any funds subject to his order, with the vouchers therefor; and he shall, at the commencement of each regular session, present to the general assembly estimates of the amount of money required to be raised by taxation for all purposes.

§12. The governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law, and after conviction, to grant reprieves, commutation of sentence, and pardons, except in cases of treason and impeachment; but pardons, in cases of murder, arson, burglary, rape, assault with intent to commit rape, perjury, forgery, bribery, and larceny, shall not relieve from civil and political disability, unless specifically expressed in the pardon. Upon conviction of treason, the governor may suspend the execution of the sentence, and report the same to the general assembly at the next regular session, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, with his reasons therefor, stating the name and crime of the convict, the sentence, its date, and the date of the reprieve, commutation, or pardon.

Fines and forfeitures can only be remitted by the governor.—Haley v. Clark, 26 Ala. 439. Power confined to offenses for which there may be conviction and punishment.—M. & G. R. Co. v. Peebles, 47 Ala. 317.

§13. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor; if he approve, he shall sign it; but, if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large upon the journals; and the house to which such bill shall be returned shall proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall vote for the passage of such bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law; but in such case the votes of both houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered upon the journals of each house respectively. If any bill shall not be returned by the governor within five days, (Sundays excepted), after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law. And every vote, order, or resolution, to which the concurrence of both houses may be necessary (except questions of adjournment, and of bringing on elections by the two houses, and of amending this Constitution), shall be presented to the governor, and, before the same shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

A bill signed by the governor materially differing from the bill as passed, does not become a law.—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala., 115; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 411.

§14. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items; and the

part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto; and he shall, in writing, state specifically the item or items he disapproves.

§15. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, absence from the State, or other disability, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time appointed for the election of governor shall arrive, or until the governor who is absent, or impeached, shall return or be acquitted, or other disability be removed; and if during such vacancy in the office of governor the president of the senate shall be impeached, removed from office, refuse to qualify, die, resign, be absent from the State, or be under any other disability, the speaker of the house of representatives shall, in like manner, administer the government. If the governor shall be absent from the State over twenty days, the secretary of state shall notify the president of the senate, who shall enter upon the duties of governor; and if the governor and president of the senate shall both be absent from the State over twenty days, the secretary of state shall notify the speaker of the house of representatives; and in such case he shall enter upon and discharge the duties of governor, until the return of the governor or president of the senate.

§16. The president of the senate and speaker of the house of representatives shall, during the time they respectively administer the government, receive the same compensation which the governor would have received if he had been employed in the duties of his office. *Provided*, that if the general assembly shall be in session during such absence, they, or either of them, shall receive no compensation as members of the general assembly while acting as governor.

§17. No person shall, at one and the same time, hold the office of governor of this State and any other office, civil or military, either under this State, the United States, or any other State or government, except as otherwise provided in this Constitution.

§18. The governor shall be commander-in-chief of the militia and volunteer forces of this State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws, suppress insurrection, and repel invasion; but he need not command in person unless directed to do so by a resolution of the general assembly; and when acting in the service of the United States he shall appoint his staff, and the general assembly shall fix his rank.

§19. No person shall be eligible to the office of secretary of state, state treasurer, state auditor, or attorney-general, unless he shall have been a citizen of the United States at least seven years, and shall have resided in this State at least five years next preceding his election, and shall be at least twenty-five years old when elected.

§20. There shall be a great seal of the State, which shall be used officially by the governor; and the seal now in use shall continue to be used until another shall have been adopted by the general assembly. The said seal shall be called the "Great Seal of the State of Alabama."

§21. The secretary of state shall be the custodian of the seal of the State, and shall authenticate therewith all official acts of the governor, his approval of laws and resolutions excepted. He shall keep a register of the official acts of the governor, and when necessary, shall attest them, and lay copies of the same, together with copies of all papers relative thereto, before either house of the general assembly, when required to do so, and shall perform such other duties as may be prescribed by law.

§22. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the great seal, and signed by the governor, and countersigned by the secretary of state.

§23. Should the office of secretary of state, state treasurer, state auditor, attorney-general, or superintendent of education become vacant for any cause specified in section fifteen of this article, the governor shall fill the vacancy, until the disability is removed, or a successor elected and qualified.

§24. The state treasurer, state auditor, and attorney-general shall perform such duties as may be prescribed by law. The state treasurer and state auditor shall, every year, at a time the general assembly may fix, make a full and complete report to the governor, showing all receipts and disbursements of revenue of every character, all claims audited and paid by the State, by items, and all taxes and revenue collected and paid into the treasury, and from what sources; and they shall make reports oftener on any matter pertaining to their office, if required to do so by the governor or the general assembly.

§25. The state auditor, state treasurer and secretary of state shall not, after the expiration of the terms of those now in office, receive to their use any fees, costs, perquisites of office, or compensation, other than their salaries as prescribed by law; and all fees that may be payable by law, for any services performed by either of such officers, shall be paid in advance into the state treasury.

§26. A sheriff shall be elected in each county, by the qualified electors thereof, who shall hold his office for the term of four years, unless sooner removed, and shall be ineligible to such office as his own successor. *Provided*, that sheriffs elected on the first Monday in August, 1877, or at such other time as may be prescribed by law for the election in that year, shall hold their offices for the term of three years, and until their successors shall be elected and qualified. In the year 1880, at the general election for members to the general assembly, sheriffs shall be elected for four years as herein provided. Vacancies in the office of sheriff shall be filled by the governor, as in other cases; and the person appointed shall continue in office until the next general election in the county for sheriff, as provided by law.

ARTICLE VI.

JUDICIAL DEPARTMENT.

§1. The judicial power of the State shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, chancery courts, courts of probate, such inferior courts of law and equity, to consist of not more than five members, as the general assembly may from time to time establish, and such persons as may be by law invested with powers of a judicial nature.

The courts named are constitutional and cannot be abolished by legislature; inferior courts are statutory, may be abolished and term and salary of judge ends with the court.—Perkins v. Corbin, 45 Ala. 103; Ex parte Roundtree, 51 Ala. 42. **An inferior court is one whose judgments can be reviewed by a higher tribunal, the circuit or supreme court.**—Nugent v. State, 18 Ala. 521: Perkins v. Corbin, 45 Ala. 103; Ex parte Roundtree, 51 Ala. 42; Sanders v. State, 55 Ala. 42. **Competent to divide a circuit court into two divisions, each sitting in a different part of the county.**—Lowery v. State, 103 Ala. 50; Triest v. Enslen, 106 Ala. 180.

§2. Except in cases otherwise directed in the Constitution, the supreme court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law; *Provided*, that said court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

The supreme court **has only appellate jurisdiction, with exceptions named.**—State v. Flinn, Minor 8; Johnston v. Atwood, 2 Stew. 225. **Rendition of judgment against sureties on an appeal bond** is not assuming original jurisdiction.—Johnston v. Atwood, 2 Stew. 225. **Legislature can control appellate, but not original jurisdiction; the latter being constitutional.**—Thompson v. Lea, 28 Ala. 453; Ex parte Bibb, 44 Ala. 140; Ex parte Candee, 48 Ala. 386. **Jurisdiction is in general, revisory, and application must be first refused by inferior court; but supreme court may first award either of the designated writs.**—Davis v. Tuscumbia R. Co., 4 S. & P. 421; State v. Paul, 5 S. & P. 40; Ex parte Simonton, 9 Port. 383; State v. Porter, 1 Ala. 688; John v. State, 1 Ala. 95; Ex parte Mansony, 1 Ala. 98; State v. Williams, 1 Ala. 342; Ex parte Tarleton, 2 Ala. 36; Ex parte Chaney, 8 Ala. 424; Ex parte Smith, 23 Ala. 94; Ex parte City Council, 24 Ala. 98; Ex parte Henry, 24 Ala. 638; Ex parte Pickett, 24 Ala. 91; Ex parte Burnett, 30 Ala. 461; Thompson v. Lea, 28 Ala. 453; Ex parte Floyd, 40 Ala. 116; Ex parte Henderson, 43 Ala. 392; Ex parte Bibb, 44 Ala. 140; Ex parte Candee, 48 Ala. 386; Ex parte Jones, 94 Ala. 33. **Will award original mandamus** to compel the speaker to certify to the pay of a legislator.—Ex parte Pickett, 24 Ala. 91. **When may issue writ of prohibition.**—Ex parte Smith. 23 Ala. 94; Ex parte Walker, 25 Ala. 81; Ex parte Green, 29 Ala. 52; Ex parte Russell, 29 Ala. 717; Ex parte Roundtree, 51 Ala. 42.

§3. The supreme court shall be held at the seat of government, but if that shall have become dangerous from any cause, it may adjourn to a different place.

State v. Tally, 102 Ala. 25, 33.

§4. The State shall be divided by the general assembly into convenient circuits, not to exceed eight in number, unless increased by a vote of two-thirds of the members of each house of the general assembly, and no circuit shall contain less than three nor more than twelve counties; and for each circuit there shall be chosen a judge, who shall, for one year next preceding his election, and during his continuance in office, reside in the circuit for which he is elected.*

Within prescribed limits circuits may be changed at will.—Ex parte Lusk, 82 Ala. 519.

§5. The circuit court shall have original jurisdiction in all matters, civil and criminal, within the State, not otherwise excepted in this Constitution; but in civil cases only when the matter or sum in controversy exceeds fifty dollars.

Original jurisdiction is constitutional and does not require legislation to effectuate it; appellate is statutory and limited.—Carew v. Lillienthall, 50 Ala. 44; Dunbar v. Frazer, 78 Ala. 529. **Has no chancery jurisdiction except power to issue injunctions.**—Nugent v. State, 18 Ala. 521. **Summary proceedings against public officer for dereliction of duty is not a "civil cause" within this section.**—Huggins v. Ball, 19 Ala. 587; Nowlin v. McCalley, 31 Ala. 678. **If complaint shows cause of action for only a nominal sum, court has no jurisdiction.**—Cahuzac v. Samini, 29 Ala. 288. **If debt is in-**

*The words, "two-thirds of the members of each house," construed by the senate to mean "two-thirds of each house present and voting."—Journal 1892-93, pp. 708-710.

creased to more than fifty dollars, although by interest, **court has jurisdiction.**—Hogan v. Odam, 3 Stew. 59; Hargrove v. Smith, 1 Ala. 80. **Between fifty and one hundred dollars the jurisdiction is concurrent with justices of the peace.**—Carew v. Lillienthal, 50 Ala. 44; K. C., M. & B. R. Co. v. Whitehead, 109 Ala. 495. **The amount in controversy is the amount claimed by the plaintiff, and not the amount of the recovery.**—Haws v. Morgan, 59 Ala. 508; M. & C. R. Co. v. Hembree, 84 Ala. 182; Camp v. Marion Co., 91 Ala. 240.

§6. A circuit court shall be held in each county in the State at least twice in every year, and the judges of the several circuits may hold courts for each other, when they deem it expedient, and shall do so when directed by law; *Provided*, that the judges of the several circuit courts shall have power to issue writs of injunction returnable into courts of chancery.

§7. The general assembly shall have power to establish a court or courts of chancery, with original and appellate jurisdiction. The State shall be divided by the general assembly into convenient chancery divisions, not exceeding three in number, unless an increase shall be made by a vote of two-thirds of each house of the general assembly, taken by yeas and nays and entered upon the journals; and the divisions shall be divided into districts; and for each division there shall be a chancellor, who shall, at the time of his election or appointment, and during his continuance in office, reside in the division for which he shall have been elected or appointed.

Nugent v. State, 18 Ala. 521.

§8. A chancery court shall be held in each district, at a place to be fixed by law, at least once in each year; and the chancellors may hold courts for each other, when they deem it necessary.

Does not confine the venue to county of defendant's residence or in which the property is located.—Fulmore v. Brady, 44 Ala. 218.

§9. The general assembly shall have power to establish in each county within the State a court of probate, with general jurisdiction for the granting of letters testamentary and of administration, and for orphans' business.

A specific grant of unrestricted and general jurisdiction over the granting of letters testamentary and of administration and for orphans' business.—Ikelheimer v. Chapman, 32 Ala. 676; Gray v. Cruise, 36 Ala. 559; Coltart v. Allen, 40 Ala. 155; Balkum v. State, 40 Ala. 671; Carswell v. Spencer, 44 Ala. 204; Hall v. Hall, 47 Ala. 290; Wright v. Ware, 50 Ala. 549; Bean v. Chapman, 62 Ala. 58; Sims v. Waters, 65 Ala. 442; Hatchett v. Billingslea, 65 Ala. 16; Steele v. Tutwiler, 68 Ala. 107; Landford v. Dunklin, 71 Ala. 594; Morgan v. Casey, 73 Ala. 222; Barclift v. Treece, 77 Ala. 528. **But there is a class of cases involving testamentary trusts and powers of which the probate court has not jurisdiction.**—Ex parte Dickson, 64 Ala. 188; Penny v. Werborn, 72 Ala. 58; Foxworth v. White, 72 Ala. 224; Hinson v. Williamson, 74 Ala. 180; Creamer v. Holbrook, 99 Ala. 52. **Power of chancery court to appoint administrator ad litem.**—Malone v. Hill, 60 Ala. 225. **No prohibition against conferring on probate courts judicial cognizance of matters also within the jurisdiction of other courts.**—Balkum v. State, 40 Ala. 671; Randolph v. Baldwin, 41 Ala. 305. **The office of probate judge is the creature of statute under which it exists, and by which its character is defined.**—Thompson v. Holt, 52 Ala. 491.

§10. The judges of the supreme court, circuit courts, and chancellors shall, at stated times, receive for their services a compensation which shall not be diminished during their official terms; but they shall receive no fees or perquisites, nor hold any office (except judicial offices) of profit or trust under this State or the United States, or any other power, during the term for which they have been elected.

Protection extended only to judges of the supreme and circuit courts and chancellors; not to judges of inferior statutory courts.—Perkins v. Corbin, 45 Ala. 103; Ex parte Rountree, 51 Ala. 42; Ex parte Amos, 51 Ala. 57.

§11. The supreme court shall consist of one chief justice and such number of associate justices as may be prescribed by law.

§12. The chief justice and associate justices of the supreme court, judges of the circuit courts, probate courts, and chancellors shall be elected by the qualified electors of the State, circuits, counties, and chancery divisions, for which such courts may be established, at such times as may be prescribed by law.

Legislature cannot make the judge of the circuit court, in whose circuit an inferior court is established, the judge thereof.—Ex parte Roundtree, 51 Ala. 42. **The office of probate judge is statutory; a bond may be required of him for the faithful performance of ministerial duties.**—Thompson v. Holt, 52 Ala. 491.

§13. The judges of such inferior courts of law and equity as may be by law established, shall be elected or appointed in such mode as the general assembly may prescribe.

County courts may be established, of which the judge of probate is ex officio judge.—Balkum v. State, 40 Ala. 671; Randolph v. Baldwin, 41 Ala. 305. **City courts of which the judges may be elected or appointed, and the court and office** abolished at will.—Perkins v. Corbin, 45 Ala. 103. **And jurisdiction of circuit court may be conferred upon judge of probate.**—Moore v. State, 68 Ala. 360.

§14. The judges of the supreme court, circuit courts, and chancellors, and the judges of city courts shall have been citizens of the United States and of this State for five years next preceding their election or appointment, and shall be not less than twenty-five years of age, and learned in the law.

§15. The chief justice and associate justices of the supreme court, circuit judges, chancellors, and probate judges shall hold office for the term of six years, and until their successors are elected or appointed and qualified; and the right of such judges and chancellors to hold their offices for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit, division, or county in the mode or time of election.

§16. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; the judges of the circuit courts, within their respective circuits, and the judges of the inferior courts within their respective jurisdictions, shall, in like manner, be conservators of the peace.

§17. Vacancies in the office of any of the judges or chancellors of this State shall be filled by appointment by the governor; and such appointee shall hold his office for the unexpired term, and until his successor is elected or appointed and qualified.

Winter v. Sayre, (*ms*).

§18. If in any case, civil or criminal, pending in any circuit, chancery, or city court in this State, the presiding judge or chancellor shall, for any legal cause, be incompetent to try, hear, or render judgment in such cause, the parties or their attorneys of record, if it be a civil case, or the solicitor or other prosecuting officer, and the defendant or defendants, if it be a criminal case, may agree upon some disinterested person practicing in the court and learned in the law, to act as special judge or chancellor, to sit as a court, and to hear, decide, and render judgment in the same manner and to the same effect as a judge of the circuit or city court, or chancellor sitting as a court might do in such case. If the case be a civil one, and the parties or their attorneys of record do not agree, or if the case be a criminal one, and the prosecuting officer and the defendant or defendants do not agree upon a special judge or chancellor, or if either party in a civil cause is not represented in court, the clerk of the circuit or city court, or register in chan-

cery, of the court in which said cause is pending, shall appoint the special judge or chancellor, who shall preside, try, and render judgment as in this section provided.

If a disqualified judge arranges for another judge to hold the term, he may try and determine the issues arising in the case in which the regular judge is disqualified.—Payne v. State, 60 Ala. 80. **Relationship within the fourth degree of consanguinity or affinity disqualifies.**—Gill v. State, 61 Ala. 169. **Statutory provisions are not exclusive of disqualifications imposed by the common law.**—Medlin v. Taylor, 101 Ala. 239; Pegues v. Baker, 110 Ala. 251.

§19. The general assembly shall have power to provide for the holding of circuit and chancery courts in this State, when the judges or chancellors thereof fail to attend regular terms.

§20. No judge of any court of record in this State shall practice law in any of the courts of this State or of the United States.

§21. Registers in chancery shall be appointed by the chancellors of the divisions, and shall hold office during the term of the chancellor making such appointment; and such registers shall receive as compensation for their services only such fees and commissions as may be specifically prescribed by law.

§22. A clerk of the supreme court shall be appointed by the judges thereof, and shall hold office during the term of the judges making the appointment; and clerks of such inferior courts as may be established by law shall be appointed by the judges thereof, and shall hold office during the term of the judge making such appointment.

§23. Clerks of the circuit court shall be elected by the qualified electors in each county for the term of six years. Vacancies in such office shall be filled by the governor for the unexpired term.

§24. The clerk of the supreme court and registers in chancery may be removed from office by the judges of the supreme court and chancellors respectively, for cause, to be entered at length upon the records of the court.

§25. A solicitor for each judicial circuit shall be elected by joint ballot of the general assembly, who shall be learned in the law, and who shall, at the time of his election, and during his continuance in office, reside in the circuit for which he is chosen, and whose term of office shall be for six years; *Provided*, that the general assembly, at the first session thereof after the ratification of this Constitution, shall, by joint ballot, elect a solicitor for each judicial circuit of the State, whose term of office shall begin on Tuesday after the first Monday in November, eighteen hundred and seventy-six, and continue for four years; *And provided*, that the general assembly may, when necessary, provide for the election or appointment of county solicitors.

Mandatory as to circuit solicitors; permissive as to county.—Ex parte Lusk, 82 Ala. 519.

§26. There shall be elected by the qualified electors of each precinct of the counties not exceeding two justices of the peace and one constable. Such justices shall have jurisdiction in all civil cases wherein the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery, and ejectment. In all cases tried before such justices the right of appeal, without prepayment of costs, shall be secured by law; *Provided*, that the governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, shall have

and exercise the same jurisdiction as justices of the peace within the precincts and wards for which they are respectively appointed; *And provided*, that notaries public without such jurisdiction may be appointed. The term of office of such justices and notaries public shall be prescribed by law.

Not self-executing.—Pearce v. Pope, 42 Ala. 319; Taylor v. Woods, 52 Ala. 474; Carter v. Alford, 64 Ala. 236; K. C. M. & B. R. Co. v. Whitehead, 109 Ala. 495. **Jurisdiction generally.** Jurisdiction, **in case of moneyed demand,** is determined by the amount legally due or actually claimed, not by recovery.—Cothran v. Weir, 3 Ala. 24; Crabtree v. Cliatt, 22 Ala. 181; Carter v. Alford, 64 Ala. 236. **Concurrent with circuit court where amount involved is between fifty and one hundred dollars.**—Carew v. Lillienthall, 50 Ala. 44. **If debt above jurisdiction is divided** and notes given each within the amount, suit may be brought on each note before justice of the peace.—Herrin v. Buckalew, 37 Ala. 585. **Plaintiff in an action on a contract may remit the excess** so as to bring the debt within jurisdiction, against defendant's objection.—King v. Dougherty, 2 S. 487; Nibbs v. Moody, 5. S. & P. 198; Bentley v. Wright, 3 Ala. 607; Henderson v. Plumb, 18 Ala. 74; Crabtree v. Cliatt, 22 Ala. 181; Solomon v. Ross, 49 Ala. 198; Carter v. Alford, 64 Ala. 236; Davis v. Bedsole, 69 Ala. 362; Wharton v. King, 69 Ala. 365. **Entry and detainer.** Has jurisdiction of forcible entry and detainer.—Ward v. Lewis, 1 Stew. 26. Legislature cannot give the right to try title to real estate by calling it unlawful detainer.—Ex parte Webb, 58 Ala. 109; Webb v. Carlisle, 65 Ala. 313. Right of appeal must be secured.—Tims v. State, 26 Ala. 165; Ex parte Houghton, 38 Ala. 570. **Notary, with jurisdiction of justice of the peace:** May exercise both the civil and criminal jurisdiction of a justice.—Carroll v. State, 58 Ala. 396. Has power to issue attachments returnable before himself in causes of which he has jurisdiction.—Griffin v. Appleby, 69 Ala. 409; Rice v. Watts, 71 Ala. 593. But not, before statute, returnable before circuit or city court.—Vann v. Adams, 71 Ala. 475; Nordlinger v. Gordon, 72 Ala. 239; Jackson v. Bain, 74 Ala. 328. Not necessary, but proper, to add "Ex officio justice of the peace" to his signature.—Coleman v. State, 63 Ala. 93.

§27. An attorney-general shall be elected by the qualified electors of the State at the same time and places of election of members of the general assembly, whose term of office shall be for two years, and until his successor is elected and qualified. After his election he shall reside at the seat of government, and shall be the law officer of the State, and shall perform such duties as may be required of him by law.

§28. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the same, and shall conclude, "Against the peace and dignity of the State."

Criminal prosecutions triable without indictment by a grand jury need not conclude "against the peace," etc.—Thomas v. State, 107 Ala. 61; Simpson v. State, 111 Ala. 6. **Information in impeachment should so conclude.**—Thomas v. State, 107 Ala. 61, 64.

ARTICLE VII.

IMPEACHMENTS.

§1. The governor, secretary of state, auditor, treasurer, attorney-general, superintendent of education and judges of the supreme court may be removed from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the senate, sitting as a court for that purpose, under oath or affirmation, on articles or charges preferred by the house of representatives.

§2. The chancellors, judges of the circuit courts, judges of the probate courts, solicitors of the circuits, and judges of inferior courts from which an appeal may be taken directly to the supreme court, may be removed from office for any of the causes specified in the preceding section, by the supreme court, under such regulations as may be prescribed by law.

State v. Buckley, 54 Ala. 599; State v. Savage, 89 Ala. 1; State v. Tally, 102 Ala. 25; State v. Robinson, 111 Ala. 482.

§3. The sheriffs, clerks of the circuit, city, or criminal courts, tax collectors, tax assessors, county treasurers, coroners, justices of the peace, notaries public, constables, and all other county officers, mayors, and intendants of incorporated cities and towns in this State, may be removed from office for any of the causes specified in section one of this article, by the circuit, city, or criminal court of the county in which such officers hold their office, under such regulations as may be prescribed by law. *Provided*, that the right of trial by jury and appeal in such cases be secured.

State v. Seawell, 64 Ala. 225; Ex parte Wiley, 54 Ala. 226.

§4. The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualification from holding office under the authority of this State, for the term for which he was elected or appointed; but the accused shall be liable to indictment, trial, and punishment, as prescribed by law.

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

§1. Every male citizen of the United States, and every male person of foreign birth, who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is twenty-one years old or upwards, possessing the following qualifications, shall be an elector, and shall be entitled to vote at any election by the people, except as hereinafter provided:

First.—He shall have resided in the State at least one year immediately preceding the election at which he offers to vote.

Second.—He shall have resided in the county for three months, and in the precinct or ward for thirty days immediately preceding the election at which he offers to vote; *Provided*, that the general assembly may prescribe a longer or shorter residence in any precinct in any county or in any ward in any incorporated city or town having a population of more than five thousand inhabitants, but in no case to exceed three months; *And provided*, that no soldier, sailor or marine in the military or naval service of the United States, shall acquire a residence by being stationed in this State.

§2. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be viva voce.

§3. The following classes shall not be permitted to register, vote or hold office:

First.—Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.

Does not impinge the Federal Constitution; nature of the elective franchise; forfeited by the commission of any of the crimes here mentioned, or any grade of them.—Washington v. State, 75 Ala. 582; Anderson v. State, 72 Ala. 187; Gandy v. State, 82 Ala. 61, 86 Ala. 20.

Second.—Those who are idiots or insane.

§4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

§5. The general assembly shall pass laws, not inconsistent with this Constitution, to regulate and govern elections in this State, and all such laws shall be uniform throughout the State. The general assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided, no person shall vote at any election unless he shall have registered as required by law.

§6. It shall be the duty of the general assembly to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

§7. Returns of elections for all civil officers who are to be commissioned by the governor, except secretary of state, state auditor, state treasurer and attorney-general, and for members of the general assembly, shall be made to the secretary of state.

ARTICLE IX.

REPRESENTATION.

§1. The whole number of senators shall be not less than one-fourth or more than one-third the whole number of representatives.

§2. The house of representatives shall consist of not more than one hundred members, who shall be apportioned by the general assembly among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States for the year eighteen hundred and eighty; which apportionment, when made, shall not be subject to alteration until the first session of the general assembly after the next decennial census of the United States shall have been taken.

§3. It shall be the duty of the general assembly, at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of representatives, and apportion them among the several counties of the State; *Provided*, that each county shall be entitled to at least one representative.

§4. It shall be the duty of the general assembly at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of senators, and to divide the State into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and which districts, when formed, shall not be changed until the next apportioning session of the general assembly after the next decennial census of the United States shall have been taken. No county shall be divided between two districts, and no district shall be made of two or more counties not contiguous to each other.

§5. Should the decennial census of the United States, from any cause, not be taken, or if, when taken, the same as to this State is not full and satisfactory, the general assembly shall have power, at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, and once in each ten years

thereafter, upon which it shall be the duty of the general assembly to make the apportionment of representatives and senators as provided for in this article.

§6. Until the general assembly shall make an apportionment of representatives among the several counties, after the first decennial census of the United States, as herein provided, the counties of Autauga, Baldwin, Bibb, Blount, Calhoun, Chilton, Cherokee, Choctaw, Clark, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Dale, DeKalb, Elmore, Etowah, Escambia, Fayette, Franklin, Geneva, Henry, Lauderdale, Marion, Morgan, Monroe, Marshall, Randolph, Sanford, Shelby, St. Clair, Walker, Washington, and Winston shall each have one representative; the counties of Barbour, Bullock, Butler, Chambers, Greene, Hale, Jackson, Jefferson, Limestone, Lawrence, Lowndes, Lee, Macon, Marengo, Perry, Pickens, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuskaloosa, and Wilcox shall have each two representatives; the county of Madison shall have three representatives; the counties of Dallas and Montgomery shall have each four representatives; and the county of Mobile shall have five representatives.

§7. Until the general assembly shall divide the State into senatorial districts, as herein provided, the senatorial districts shall be as follows:

First district, Lauderdale and Limestone; second district, Colbert and Lawrence; third district, Morgan, Winston, and Blount; fourth district, Madison; fifth district, Marshall, Jackson, and DeKalb; sixth district, Cherokee, Etowah, and St. Clair; seventh district, Calhoun and Cleburne; eighth district, Talladega and Clay; ninth district, Randolph and Chambers; tenth district, Macon and Tallapoosa; eleventh district, Bibb and Tuskaloosa; twelfth district, Franklin, Marion, Fayette, and Sanford; thirteenth district, Walker, Jefferson, and Shelby; fourteenth district, Greene and Pickens; fifteenth district, Coosa, Elmore, and Chilton; sixteenth district, Lowndes and Autauga; seventeenth district, Butler and Conecuh; eighteenth district, Perry; nineteenth district, Choctaw, Clark, and Washington; twentieth district, Marengo; twenty-first district, Monroe, Escambia, and Baldwin; twenty-second district, Wilcox; twenty-third district, Henry, Coffee, Dale, and Geneva; twenty-fourth district, Barbour; twenty-fifth district, Pike, Crenshaw, and Covington; twenty-sixth district, Bullock; twenty-seventh district, Lee; twenty-eighth district, Montgomery; twenty-ninth district, Russell; thirtieth district, Dallas; thirty-first district, Sumter; thirty-second district, Hale; thirty-third district, Mobile.

ARTICLE X.

EXEMPTED PROPERTY.

§1. The personal property of any resident of this State, to the value of one thousand dollars, to be selected by such resident, shall be exempted from sale on execution, or other process of any court, issued for the collection of any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution.

Must be liberally construed.—Webb v. Edwards, 46 Ala. 17; Fearn v. Ward, 65 Ala. 33. **The right of selection belongs to the debtor** and is beyond the reach of legislative or judicial restraint before sale.—Bray v. Laird, 44 Ala. 295; Brewer v. Granger, 45 Ala. 580; Webb v. Edwards, 46 Ala. 17; Ala. Conference v. Vaughan, 54 Ala. 443; Williamson v. Harris, 57 Ala. 40; Enzor v. Hurt, 76 Ala. 595. **A mere personal privilege to be ex-**

ercised or not at the option of the debtor.—Graham v. Walker, 10 Ala. 370; Ross v. Hannah, 18 Ala. 125; Bell v. Davis, 42 Ala. 460; Brown v. Lietch, 60 Ala. 313; Sherry v. Brown, 66 Ala. 51; Randolph v. Little, 62 Ala. 396; Patillo v. Taylor, 83 Ala. 230; Stanley v. Ehrman, 83 Ala. 215; Motley v. Jones, 98 Ala. 443; Kennedy v. Bank, 107 Ala. 170. **The claim must show that the debt was contracted since the ordination and enactment of the exemption laws.**—Randolph v. Little, 62 Ala. 396; Young v. Hubbard, 102 Ala. 373; Ely v. Blacker, 112 Ala. 311. **As between debtor and creditor the right depends on the law existing at the creation of the debt.**—Ala. Conference v. Vaughan, 54 Ala. 443; Wilson v. Brown, 58 Ala. 62; Nelson v. McCrary, 60 Ala. 301; Blum v. Carter, 63 Ala. 235; Fearn v. Ward, 65 Ala. 33; Giddens v. Williamson, 65 Ala. 439; Carlisle v. Godwin, 68 Ala. 137; Keel v. Larkin, 72 Ala. 493; Cochran v. Miller, 74 Ala. 50; Park v. Spencer, 75 Ala. 49. **"Personal property" is used in its largest sense, and includes choses in action, money or any other personal property.**—Webb v. Edwards, 46 Ala. 17; Dane v. Loomis, 51 Ala. 487; Williamson v. Harris, 57 Ala. 40; Alley v. Daniel, 75 Ala. 403; Enzor v. Hurt, 76 Ala. 595; Kennedy v. Smith, 99 Ala. 83. **Residence within the State essential.**—Auerbach v. Pritchett, 58 Ala. 451; Talmadge v. Talmadge, 66 Ala. 199; McCrary v. Chase, 71 Ala. 540. **A resident need not have a family to be entitled.**—Webb v. Edwards, 46 Ala. 17. **May be claimed by a married woman.**—Bender v. Meyer, 55 Ala. 576; Scheussler v. Wilson, 56 Ala. 516. **Doubtful whether an absconding debtor entitled.**—McBrayer v. Dillard, 49 Ala. 174. **Neither a partnership, nor the partners during the continuance of the relation, can claim** individual exemption in partnership property levied on for partnership debt.—Giovanni v. First Nat'l. Bank, 55 Ala. 305; (overruling Howard v. Jones, 50 Ala. 67; Dunklin v. Kimball, 50 Ala. 251; Giovanni v. First Nat'l. Bank, 51 Ala. 177); Terrell v. Hurst, 76 Ala. 588; Levy v. Williams, 79 Ala. 171; Schlapback v. Long, 90 Ala. 525; Aiken v. Steiner, 98 Ala. 355. **Costs in a civil suit is a debt** against which exemption may be claimed.—Clingman v. Kemp, 57 Ala. 195. **May not be claimed against judgment for a penalty** imposed by statute.—Williams v. Bowden, 69 Ala. 433. **Nor against lien on personal property created by contract to secure a debt.**—Brown v. Coats, 56 Ala. 439. **Nor against statutory lien for rent.**—Ex parte Barnes, 84 Ala. 540. **Nor against claim by State for defalcation.**—Vincent v. State, 74 Ala. 274. **Nor against judgment for tort.**—Meredith v. Holmes, 68 Ala. 190; Vincent v. State, 74 Ala. 274; Wright v. Jones, 103 Ala. 539. **Nor by executor against liability for a devastavit.**—Dangaix v. Lunsford, 112 Ala. 403. **Nor against judgment for damages in detinue.**—Stuckey v. McKibbon, 92 Ala. 622; (limiting Clingman v. Kemp, 57 Ala. 195). **Double exemption not allowed;** when may be claimed a second time.—Weis v. Levy, 69 Ala. 209. **When money in the hands of a garnishee is claimed the claim must be filed before judgment of condemnation.**—Randolph v. Little, 62 Ala. 396; (overruling Webb v. Edwards, 46 Ala. 17); Roden v. Brown, 103 Ala. 324.

§2. Every homestead, not exceeding eighty acres, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any city, town, or village, or in lieu thereof, at the option of the owner, any lot in the city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this State, and not exceeding the value of two thousand dollars, shall be exempted from sale on execution, or any other process from a court, for any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife to the same.

Legislature may increase constitutional exemptions but may not diminish them; self-executing.—Miller v. Marx, 55 Ala. 322; David v. David, 56 Ala. 49. **Must be liberally construed in favor of the exemption.**—McGuire v. Van Pelt, 55 Ala. 344; Webber v. Short, 55 Ala. 311; Kennedy v. First Nat. Bank, 107 Ala. 170. **Limited to debts contracted after the adoption of the Constitution.**—Miller v. Marx, 55 Ala. 322; Preiss v. Campbell, 59 Ala. 635. **Essentials to, and extent of homestead;** protection is only extended to residents; and only covers land owned, used and actually occupied, as a home, dwelling-place, family seat, mansion.—Koster v. McWilliams, 41 Ala. 302; McGuire v. Van Pelt, 55 Ala. 344; McConnaughy v. Baxter, 55 Ala. 379; Chambers v. McPhaul, 55 Ala. 367; David v. David, 56 Ala. 49; Dexter v. Strobach, 56 Ala. 233; Lyons v. Connor, 57 Ala. 181; Daniel v. Collins, 57 Ala. 625; Boyle v. Shulman, 59 Ala. 566; Preiss v. Campbell, 59 Ala. 635; Stow v. Lillie, 63 Ala. 257; Blum v. Carter, 63 Ala. 235; Martin v. Lile, 63 Ala. 406; Watts v. Gordon, 65 Ala. 546; Lehman v. Bryan, 67 Ala. 558; Talmadge v. Talmadge, 66 Ala. 199; Hudson v. Kelley, 70 Ala. 393; Lyne v. Wann, 72 Ala. 43; Scaife v. Argall, 74 Ala. 473; Murphy v. Hunt, 75 Ala. 438; Ex parte Pearson, 76 Ala. 521; Beard v. Johnson, 87 Ala. 729; Jaffrey v. McGough, 88 Ala. 648; Garrett v. Jones, 95 Ala. 96;

Winston v. Hodges, 102 Ala. 304; Turner v. Turner, 107 Ala. 465. **Abandonment;** temporarily leaving homestead.—McConnaughy v. Baxter, 55 Ala. 379 (overruling Milton v. Andrews, 45 Ala. 454); Boyle v. Shulman, 59 Ala. 566; Stow v. Lillie, 63 Ala. 257; Scaife v. Argall, 74 Ala. 473; Hines v. Duncan, 79 Ala. 112; Caldwell v. Pollak, 91 Ala. 353; S. C., 94 Ala. 149; Sides v. Scharff, 93 Ala. 106; Garrett v. Jones, 95 Ala. 96; Fuller v. Whitlock, 99 Ala. 411; Metcalf v. Smith, 106 Ala. 301; Herzfeld v. Beasley, 106 Ala. 447; Blackman v. Moore-Handley Hdw. Co., 106 Ala. 458; Turner v. Turner, 107 Ala. 465. **The quantum or quality of the estate or interest** is unimportant, if required conditions prevail; exemption may be claimed in leased premises.—McGuire v. Van Pelt, 55 Ala. 344 (doubting Pizzala v. Campbell, 46 Ala. 35); Webber v. Short, 55 Ala. 311; Chambers v. McPhaul, 55 Ala. 367; Watts v. Gordon, 65 Ala. 546; Tyler v. Jewett, 82 Ala. 93; Winston v. Hodges, 102 Ala. 304. **But it is governed and controlled by the law in force at the creation** of the debt.—Miller v. Marx, 55 Ala. 322; Watts v. Barnett, 56 Ala. 340; Wilson v. Brown, 58 Ala. 62; Horn v. Wiatt, 60 Ala. 297; Nelson v. McCrary, 60 Ala. 301; Johnson v. Murphy, 60 Ala. 288; Garner v. Bond, 61 Ala. 84; Hardy v. Sulzbacher, 62 Ala. 44; Blum v. Carter, 63 Ala. 235; Smith v. Cockrell, 66 Ala. 64; Carr v. Shackelford, 68 Ala. 241; Slaughter v. McBride, 69 Ala. 510; Peevey v. Cabaniss, 70 Ala. 253; Cochran v. Miller, 74 Ala. 50; DeGraffenreid v. Clark, 75 Ala. 425; Clark v. Spencer, 75 Ala. 49; Paull v. McLeod, 76 Ala. 418. **Selection; when necessary; homestead in several detached parcels of land.**—Andrews v. Milton, 51 Ala. 400; Hardy v. Sulzbacher, 62 Ala. 44; DeGraffenreid v. Clark, 75 Ala. 425; Dicus v. Hall, 83 Ala. 159; Beard v. Robinson, 87 Ala. 729; Jaffrey v. McGough, 88 Ala. 648; Alford v. Alford, 88 Ala. 656; Pollock v. McNeil, 100 Ala. 203; Shubert v. Winston, 95 Ala. 159; Hodge v. Winston, 95 Ala. 514; s. c., 102 Ala. 304; Kennedy v. Bank, 107 Ala. 170; Turner v. Turner, 107 Ala. 465. **It is legally impossible for two homesteads of the same person to coexist.**—Boyle v. Shulman, 59 Ala. 569; Woodstock I. Co. v. Richardson, 94 Ala. 629. **The limitation of two thousand dollars extends to the country.**—Miller v. Marx, 55 Ala. 322. If proper conditions concur, **a married woman may claim homestead in her separate estate.**—Bender v. Meyer, 55 Ala. 576; Weiner v. Sterling, 61 Ala. 98; Beard v. Johnson, 87 Ala. 729. **Fraudulent grantor may claim in land the deed to which has been annulled at the suit of creditors.**—Fellows v. Lewis, 65 Ala. 343; Smith v. Cockrell, 66 Ala. 64; Kennedy v. Bank, 107 Ala. 170. **And so, in land, pending a direct proceeding to condemn it.**—Randolph v. Little, 62 Ala. 396; Sherry v. Brown, 66 Ala. 51; Stanley v. Ehrman, 83 Ala. 215; Kennedy v. Bank, 107 Ala. 170. **Cannot be so asserted as to affect valid liens.**—Blum v. Carter, 63 Ala. 235; Newbold v. Smart, 67 Ala. 326; Ross v. Perry, 105 Ala. 533. **Meaning of "debts contracted"; cannot be claimed when judgment is in tort.**—Meredith v. Holmes, 68 Ala. 190; Williams v. Bowden, 69 Ala. 433; Vincent v. State, 74 Ala. 274; Wright v. Jones, 103 Ala. 539. **Law conferring exemption must be of force when it is claimed.**—Nelson v. McCrary, 60 Ala. 301; Lovelace v. Webb, 62 Ala. 271; Clark v. Snodgrass, 66 Ala. 233. **Alienation:** Since the Constitution of 1868 a mortgage, or other conveyance of the homestead, without the voluntary signature and assent of the wife, is inoperative.—Miller v. Marx, 55 Ala. 322; Peters v. McKinney, 56 Ala. 41; McGuire v. Van Pelt, 55 Ala. 344; Balkum v. Wood, 58 Ala. 642; Halso v. Seawright, 65 Ala. 431; Seaman v. Nolen, 68 Ala. 463; Slaughter v. McBride, 69 Ala. 510; DeGraffenreid v. Clark, 75 Ala. 425; Alford v. Lehman, 76 Ala. 526; Watson v. Mansill, 76 Ala. 600; Crim v. Nelms, 78 Ala. 604; Strauss v. Harrison, 79 Ala. 324; Moses v. McLain, 82 Ala. 370; Smith v. Pearce, 85 Ala. 264; Cox v. Holcomb, 87 Ala. 589; Griffith v. Ventress, 91 Ala. 366; Hodges v. Winston, 95 Ala. 514; Woodstock I. Co. v. Richardson, 94 Ala. 629; Parks v. Barnett, 104 Ala. 438. Though the wife be insane.—Thompson v. N. E. Mfg. Soc. Co., 110 Ala. 400. Prior to 1873, if the wife join in the execution of a conveyance, and it was regularly executed as other conveyances, the homestead passed.—Miller v. Marx, 55 Ala. 322; Lyons v. Connor, 57 Ala. 181; Preiss v. Campbell, 59 Ala. 635; Cahall v. Cit. Mut. Bldg. Assn., 61 Ala. 232; Forsyth v. Preer, 62 Ala. 443; Rogers v. Adams, 66 Ala. 600; Scott v. Simons, 70 Ala. 352; Butts v. Broughton, 72 Ala. 294; Jones v. Roper, 86 Ala. 210. Since 1873 the form then prescribed must be regarded as a negation on all other methods of alienation and must be followed.—Scott v. Simons, 70 Ala. 352. But the requirement applies only to conveyances perfected by delivery.—Jenkins v. Harrison, 66 Ala. 345. Separate examination of wife not essential to convey her separate estate.—Weiner v. Sterling, 61 Ala. 98; Dawson v. Burruss, 73 Ala. 111. Voluntary signature and assent is all that is required; wife need not be named as grantor if she joins in power of sale in a mortgage.—Dooley v. Villalonga, 61 Ala. 129; Hood v. Powell, 73 Ala. 171; Shelton v. Aultman, 82 Ala. 315. A deed or mortgage, inoperative to pass the homestead, if regularly executed passes any excess above homestead that may be described.—Miller v. Marx, 55 Ala. 322; McGuire v. Van Pelt, 55 Ala. 344; Pettus v. McKinney, 56 Ala. 41; Barner v. Bond, 61 Ala. 84; Snedecor v. Freeman, 71 Ala. 140; DeGraffenreid v. Clark, 75 Ala. 425. But if wife joins "solely for the purpose of releasing dower" the homestead will not pass although the acknowledgment is sufficient.—Thompson v. Sheppard, 85 Ala. 611. Sufficiency of certificate showing "voluntary signature and assent."—Scott v. Simmons, 70 Ala. 352; Motes v. Carter, 73 Ala. 553. **Acknowledgment may be after execution, but not so as to affect intervening rights.**—Cahall v. Cit. Mut. Bldg. Assn., 61 Ala. 232; Hood v. Powell, 73 Ala. 171; Winston v. Hodges, 102 Ala. 304. **But not after the death of the husband.**—Richardson v. Woodstock I. Co., 90 Ala. 266; s. c., 94 Ala. 629; Hodges v. Winston, 95 Ala. 514; Parks v. Barnett, 104 Ala. 438. **Nor after sale**

under execution.—Smith v. Pearce, 85 Ala. 264. **Under Constitution of 1868,** if homestead was a lot in a town worth over two thousand dollars, and incapable of reduction, there was no exemption and no restraint on its alienation.—Miller v. Marx, 55 Ala. 322; Watts v. Barnett, 56 Ala. 340; Garner v. Bond, 61 Ala. 84. **A conveyance of the homestead by the husband, direct to the wife, is not void, but passes the legal title, subject to all pre-existing homestead rights.**—Turner v. Bernheimer, 95 Ala. 241. **Conveyance of right of way over homestead invalid** unless wife joins.—McGhee v. Wilson, 111 Ala. 615.

§3. The homestead of the family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted since the thirteenth day of July, one thousand eight hundred and sixty-eight, or after the ratification of this Constitution, in all cases, during the minority of the children.

It is the actual homestead at the time of the death which is exempt; other land cannot be selected.—Chambers v. McPhaul, 55 Ala. 367; David v. David, 56 Ala. 49; Turner v. Turner, 107 Ala. 465. May be claimed **in property purchased with declared intention of using it as a homestead,** but the use of which was prevented by death.—Englehardt v. Yung, 76 Ala. 534. **For the benefit of actual residence;** widow must be resident at the time of husband's death.—Allen v. Manasses, 4 Ala. 554; Ex parte Pearson, 76 Ala. 521. **Exemption free from administration;** vests at death of owner; continues during life of widow and minority of children and then reverts.—Webber v. Short, 55 Ala. 311; Miller v. Marx, 55 Ala. 322; Hunter v. Law, 68 Ala. 365; Barber v. Williams, 74 Ala. 331; Norton v. Norton, 94 Ala. 481; Cofer v. Scroggins, 98 Ala. 342. **Equitable title sufficient.**—Munchus v. Harris, 69 Ala. 506. **Cannot be cut off by attempted disposition by will.**—Bell v. Bell, 84 Ala. 64. **Adopted child entitled to exemption.**—Cofer v. Scroggins, 98 Ala. 342. **The fact that a widow has a separate estate does not lessen her right.**—Darden v. Reese, 62 Ala. 311. **Exemption takes effect at the death of owner of homestead and is controlled by the then law; the quantity** is controlled by the law of force at the creation of the debt.—Taylor v. Pettus, 52 Ala. 287; Taylor v. Taylor, 53 Ala. 135; Rottenberry v. Pipes, 53 Ala. 447; Miller v. Marx, 55 Ala. 322; Davis v. Davis, 63 Ala. 293; Slaughter v. McBride, 69 Ala. 510; Skinner v. Chapman, 78 Ala. 376; McDonald v. Berry, 90 Ala. 464.

§4. The provisions of sections one and two of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

§5. If the owner of a homestead die, leaving a widow, but no children, such homestead shall be exempt, and the rents and profits thereof shall enure to her benefit.

Gives a mere right to occupy, without power to convey or charge; at death of widow reverts to estate of owner.—Miller v. Marx, 55 Ala. 322; Barber v. Williams, 74 Ala. 331. **Attempted alienation as an abandonment.**—Barber v. Williams, 74 Ala. 331. **Exemption is in the actual homestead;** if that is leased merely, or mortgaged, other property cannot be selected.—Chambers v. McPhaul, 55 Ala. 367. See also Citations to Art. X., Sec. 3.

§6. The real and personal property of any female in this State, acquired before marriage, and all property, real and personal, to which she may afterwards be entitled by gift, grant, inheritance, or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, obligations and engagements of her husband, and may be devised or bequeathed by her, the same as if she were a *femme sole*.

Abrogates the right of married woman to disaffirm at any time a purchase of property made by her.—McAnally v. Heflin, 105 Ala. 525. **If not induced by improper influence, an absolute conveyance of the wife's land in payment of her husband's debt is valid.**—Perryman v. Greer, 39 Ala. 133; Holt v. Agnew, 67 Ala. 360; Hubbard v. Sayre, 105 Ala. 440; Giddens v. Powell, 108 Ala. 621. **Married woman may enter into business partnership with her husband.**—Leinkauff v. Frenkle, 80 Ala. 136; LeGrand v. Eufaula Nat. Bank, 81 Ala. 123; Rabbitte v. Orr, 83 Ala. 185; Schlapback v. Long, 90 Ala. 525; Belser v. Tuscumbia Banking Co., 105 Ala. 514. **But may not become surety for her husband;** mortgage of wife's land to secure husband's debt not binding.—Steed v. Knowles, 79 Ala. 446; Heard v. Hicks, 82 Ala. 484; Union Nat. Bank v. Hartwell, 84 Ala. 379; Landsden v. Bone, 90 Ala. 446; Vincent v. Walker, 93 Ala. 165; Schening v.

Cofer, 97 Ala. 726; McNeil v. Davis, 105 Ala. 657. **The husband is still the head of the household as at common law.**—Strouse v. Leipf, 101 Ala. 433.

§7. The right of exemptions hereinbefore secured may be waived by an instrument in writing, and when such waiver relates to realty, the instrument must be signed by both the husband and the wife, and attested by one witness.

Exemption of personal property could be waived by stipulation in a note prior to Constitution.—Brown v. Leitch, 60 Ala. 313. **Waiver must be in writing and the intention clear.**—Knox v. Wilson, 77 Ala. 309. **Waiver of exemptions as to personalty may be expressed in any written contract;** if of the homestead it must be by separate instrument.—Neely v. Henry, 63 Ala. 261; Terrell v. Hurst, 76 Ala. 588; Wagnon v. Keenan, 77 Ala. 519; Agnew v. Walden, 95 Ala. 108; Reed Lumber Co. v. Lewis, 94 Ala. 626. **If waiver only as to part of exempt property such part must be specified; not so if general.**—Neely v. Henry, 63 Ala. 261. **Waiver in partnership note operates to waive the individual exemptions in personalty of the partner executing the note;** but not of the other partner unless signer was specially authorized.—Terrell v. Hurst, 76 Ala. 588; Reed Lumber Co. v. Lewis, 94 Ala. 626. **Law prohibiting garnishments except where exemptions are waived and the debt was contracted for necessaries not a restraint on the right to waive.**—Adams v. Creen, 100 Ala. 218. **A note waiving exemptions is a mere engagement and does not create a lien on property.**—Craft v. Stoutz, 95 Ala. 245. **And is ineffectual as against the widow and minor children of the deceased maker.**—Wiggins v. Mertins, 111 Ala. 164.

ARTICLE XI.

TAXATION.

§1. All taxes levied on property in this State shall be assessed in exact proportion to the value of such property; *Provided, however*, the general assembly may levy a poll-tax, not to exceed one dollar and fifty cents on each poll, which shall be applied exclusively in aid of the public school fund in the county so paying the same.

"Taxes" and "taxation" have respectively the same meaning in this article.—Mayor v. Klein, 89 Ala. 461. **The right to tax is a limitation, not a grant of power.**—Dorman v. State, 34 Ala. 216; Irwin v. Mobile, 57 Ala. 6; Shultes v. Eberly, 82 Ala. 242; Hare v. Kennerly, 83 Ala. 608; Mayor v. Klein, 89 Ala. 461; Elyton Land Co. v. Mayor, 89 Ala. 477. Article **intended to provide for, regulate and limit only general taxation for general government purposes,** State, county and municipal.—Mayor v. Klein, 89 Ala. 461. **All taxation must be in exact proportion to value,** but approximate equality is sufficient.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; Board v. A. C. R. Co., 59 Ala. 551; Board of Rev. v. Mont. Gas L. Co., 64 Ala. 269; Moog v. Randolph, 77 Ala. 597; W. U. Tel. Co. v. State, Bd. Assmt., 80 Ala. 273; Elyton Land Co. v. Mayor, 89 Ala. 477; Mayor v. Klein, 89 Ala. 461; State Bank v. Board of Rev., 91 Ala. 217. **Not to be construed to prohibit exemptions from taxation;** nor a reasonable classification, nor to require the taxation of all property at precisely the same rate.—M. &. G. R. Co. v. Peebles, 47 Ala. 317; S. &. N. R. Co. v. Morris, 65 Ala. 193; Mayor v. Stonewall Ins. Co., 53 Ala. 570; Clark v. Mobile, 67 Ala. 217; Dauphin St. Ry. Co. v. Kennedy, 74 Ala. 583; Moog v. Randolph, 77 Ala. 597; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; State Bank v. Bd. Rev., 91 Ala. 217. **Cannot prescribe or declare an arbitrary or artificial value under the guise of classification;** taxation must not be spoliation.—Assmt. Bd. v. A. C. R. Co., 59 Ala. 551; Moog v. Randolph, 77 Ala. 597. **Has no application to local assessments for local street improvement, as paving;** such power is referable to the general inherent power of taxation, not here limited or restrained.—Irwin v. Mobile, 57 Ala. 6; Mayor v. Klein, 89 Ala. 461 (overruling Mobile v. Dargan, 45 Ala. 310, and Mobile v. Royal St. Ry., 45 Ala. 322). **Incomes, salaries, etc.**—Lott v. Hubbard, 44 Ala. 593; Board of Rev. v. Montgomery Gas L. Co., 64 Ala. 269. **Does not forbid taxation of credits secured by mortgage on property which is also taxed.**—Ala. Gold Life Ins. Co. v. Lott, 54 Ala. 499.

§2. No power to levy taxes shall be delegated to individuals or private corporations.

Power can only be delegated to counties and municipal corporations.—President v. Board of Improvement, 45 Ala. 399; Clark v. Mobile, 67 Ala. 17; Schultes v. Eberly, 82 Ala. 242; Spigener v. Rives, 104 Ala. 437.

§3. After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, except to repel in-

vasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each house of the general assembly, and the vote shall be taken by yeas and nays and entered on the journals; and any act creating or incurring any new debt against this State, except as herein provided for, shall be absolutely void; *Provided*, the governor may be authorized to negotiate temporary loans, never to exceed one hundred thousand dollars, to meet deficiencies in the treasury; and until the same is paid, no new loan shall be negotiated; *Provided further*, that this section shall not be so construed as to prevent the issuance of bonds in adjustment of existing State indebtedness.

§4. The general assembly shall not have the power to levy, in any one year, a greater rate of taxation than three-fourths of one per centum on the value of the taxable property within this State.

Limitation applies only to State taxes levied for State purposes.—Hare v. Kennerly, 83 Ala. 608. **The term "taxable property," as here used, does not include all the subjects of taxation;** it shows that which is made, not which the legislature may make, liable.—Lott v. Rose, 38 Ala. 156; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; Capital City Water Co. v. Bd. Rev., Ala. (MS.). **A distinction is made between the taxation of property, as such, and a license or privilege tax;** a business is not "taxable property" as here meant.—W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; Anniston v. So. Ry. Co., 112 Ala. 557; Capital City Water Co. v. Bd. Rev., Ala. (MS.). **Cannot levy for several years' past taxes,** to be paid at one time, exceeding the limit; this is not an assessment of escaped taxes.—Maguire v. Board of Rev., 71 Ala. 401.

§5. No county in this State shall be authorized to levy a larger rate of taxation, in any one year, on the value of the taxable property therein, than one-half of one per centum. *Provided*, that to pay debts existing at the ratification of this Constitution, an additional rate of one-fourth of one per centum may be levied and collected which shall be exclusively appropriated to the payment of such debts or the interest thereon. *Provided further*, that to pay any debt or liability now existing against any county, incurred for the erection of the necessary public buildings or other ordinary county purposes, or that may hereafter be created for the erection of necessary public buildings or bridges, any county may levy and collect such special taxes as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected.

Limitation applies only to county taxes levied for county purposes.—Hare v. Kennerly, 83. Ala. 608. **A railroad bridge to be used and operated by a private corporation is not such a bridge as for the erection of which a special tax may be levied by a county.**—Garland v. Board of Rev., 87 Ala. 223. **Law authorizing a county to levy a special tax on a proposed "stock district," to be used in fencing it in is constitutional.**—Spigener v. Rives, 104 Ala. 437.

§6. The property of private corporations, associations and individuals of this State, shall forever be taxed at the same rate; *Provided*, this section shall not apply to institutions or enterprises devoted exclusively to religious, educational, or charitable purposes.

If a tax is imposed on a species of property all property of that species must be taxed at the same rate, whether belonging to an individual, association of persons or a private corporation.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; Board of Assmt. v. A. C. R. Co., 59 Ala. 551; Nat. Com. Bank v. Mayor, 62 Ala. 284; Sumter Co. v. Nat. Bank, 62 Ala. 464; Board of Rev. v. Montgomery Gas L. Co., 64 Ala. 269; Auditor v. Jackson Co., 65 Ala. 142; Perry Co. v. R. Co., 65 Ala. 391; Pollard v. Zuber, 65 Ala. 628; State v. Rev. Board, 73 Ala. 65; Quartlebaum v. State, 79 Ala. 1; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; State Bank v. Bd. Rev., 91 Ala. 217. **Should the legislature leave a species of property free from taxation by failure to provide machinery for assessment,** the courts are powerless.—Pollard v. Zuber, 65 Ala. 628; Auditor v. Jackson Co., 65 Ala. 142; State v. Bd. Rev., 73 Ala. 65; Maguire v. Board of Revenue, 71 Ala. 401. **Tax-**

payer may be authorized to deduct his indebtedness from his solvent credits.—Moog v. Randolph, 77 Ala. 597; State Bank v. Bd. Rev., 91 Ala. 217. **Law requiring auditor to assess and collect taxes on the road-bed and rolling-stock of railroad** and relieving these items from county taxation, was valid.—M. & G. R. Co. v. Peebles, 47 Ala. 317. **A specific commutation granted a corporation in lieu of an ad valorem tax is void.**—Mayor v. Stonewall Ins. Co., 53 Ala. 570; Sumter Co. v. Nat. Bank, 62 Ala. 464. **The word "person" in the income tax of 1867 was construed to embrace corporations.**—Bd. Rev. v. Montgomery Gas L. Co., 64 Ala. 269; State v. Rev. Bd., 73 Ala. 65.

§7. No city, town or other municipal corporation other than provided for in this article, shall levy or collect a larger rate of taxation, in any one year, on the property thereof, than one-half of one per centum of the value of such property, as assessed for State taxation during the preceding year; *Provided*, that for the payment of debts existing at the time of the ratification of this Constitution and the interest thereon, an additional rate of one per centum may be collected, to be applied exclusively to such indebtedness; *And provided*, this section shall not apply to the city of Mobile, which city may, until the first day of January, one thousand eight hundred and seventy-nine, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed the rate of three-fourths of one per centum, to pay expenses of the city government, and may also, until the first day of January, one thousand eight hundred and seventy-nine, levy a tax not to exceed the rate of one per centum, and from and after that time, a tax not to exceed the rate of three-fourths of one per centum, to pay existing indebtedness of said city, and the interest thereon.

Intended to define the extent of direct municipal tax on property; has no reference to specific tax on privileges.—Ex parte City Council, 64 Ala. 463. **Nor on local assessments for purposes of local street improvements.**—Mayor v. Klein, 89 Ala. 461. **Limits rate of taxation and makes the State assessment for the preceding year the only basis of value,** regardless of any increase.—Mayor v. Klein, 89 Ala. 461; Elyton Land Co. v. Mayor, 89 Ala. 477. **Legislature has the right to levy and collect a tax on property in Mobile for the purpose of paying its debts,** up to the limit here fixed.—Hare v. Kennerly, 83 Ala. 608.

§8. At the first session of the general assembly after the ratification of this Constitution, the salaries of the following officers shall be reduced at least twenty-five per centum, viz.: Governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of education, judges of the supreme and circuit courts, and chancellors; and after said reduction, the general assembly shall not have the power to increase the same, except by a vote of a majority of all the members elected to each house, taken by yeas and nays, and entered on the journals; *Provided*, this section shall not apply to any of said officers now in office.

§9. The general assembly shall not have the power to require the counties or other municipal corporations to pay any charges which are now payable out of the State treasury.

ARTICLE XII.

MILITIA.

§1. All able-bodied male inhabitants of this State, between the ages of eighteen years and forty-five years, who are citizens of the United States, or have declared their intention to become such citizens, shall be liable to military duty in the militia of the State.

§2. The general assembly, in providing for the organization, equipment, and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

§3. Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law, they may be appointed by the governor.

§4. Volunteer organizations of infantry, cavalry, and artillery may be formed in such manner, and under such restrictions, and with such privileges, as may be provided by law.

§5. The militia and volunteer forces shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at musters, parades, and elections, and in going to and returning from the same.

§6. The governor shall, except as otherwise provided herein, be commander-in-chief of the militia and volunteer forces of the State, except when in the service of the United States, and shall, with the advice and consent of the senate, appoint all general officers, whose terms of office shall be for four years. The governor, the generals, and regimental and battalion commanders shall appoint their own staffs, as may be provided by law.

§7. The general assembly shall provide for the safe-keeping of the arms, ammunition, and accoutrements, military records, banners, and relics of the State.

§8. The officers and men of the militia and volunteer forces shall not be entitled to, or receive any pay, rations, or emoluments, when not in active service.

ARTICLE XIII.

EDUCATION.

§1. The general assembly shall establish, organize, and maintain a system of public schools throughout the State, for the equal benefit of the children thereof between the ages of seven and twenty-one years; but separate schools shall be provided for the children of citizens of African descent.

Mandatory.—Elsberry v. Seay, 83 Ala. 614. **System must extend throughout the State,** operating upon and in favor of all alike, without special local rights, privileges or burdens.—Schultes v. Eberly, 82 Ala. 242; Elsberry v. Seay, 83 Ala. 614. **Separate school districts may be established,** but no implied privileges arise in their favor. Schultes v. Eberly, 82 Ala. 242. **Institutions of learning, distinct from the public schools, may be established,** but the public school fund may not be reduced below the minimum for their maintenance.—Elsberry v. Seay, 83 Ala. 614.

§2. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or intrusted to this State, or given by the United States, for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

§3. All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools.

§4. The general assembly shall also provide for the levying and collection of an annual poll-tax, not to exceed one dollar and fifty cents on each poll,

which shall be applied to the support of the public schools in the counties in which it is levied and collected.

Poll-tax must bear the expense of its own assessment and collection.—Shaver v. Robinson, 59 Ala. 195.

§5. The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections three and four of this article, with such other moneys, to be not less than one hundred thousand dollars per annum, as the general assembly shall provide by taxation or otherwise, shall be applied to the support and maintenance of the public schools; and it shall be the duty of the general assembly to increase, from time to time, the public school fund, as the condition of the treasury and the resources of the State will admit.

Other than the poll-tax no provision is made for special taxation for educational purposes.—Schultes v. Eberly, 82 Ala. 242. Law "setting apart and appropriating from the school fund for the colored people" a fund for the maintenance of an University for colored people is an unauthorized perversion.—Elsberry v. Seay, 83 Ala. 614.

§6. Not more than four per cent. of all moneys raised, or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; *Provided*, that the general assembly may, by a vote of two-thirds of each house, suspend the operation of this section.

§7. The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties, term of office, and compensation shall be fixed by law. The superintendent of education shall be elected by the qualified voters of the State in such manner, and at such time, as shall be provided by law.

An "University for Colored People," not under the control of the superintendent of education, is not a public school.—Elsberry v. Seay, 83 Ala. 614.

§8. No money raised for the support of the public schools of the State shall be appropriated to, or used for, the support of any sectarian or denominational school.

§9. The State University and the Agricultural and Mechanical College shall each be under the management and control of a board of trustees. The board for the university shall consist of two members from the congressional district in which the university is located, and one from each of the other congressional districts in the State. The board for the Agricultural and Mechanical College shall consist of two members from the congressional district in which the college is located, and one from each of the other congressional districts in the State. Said trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of six years, and until their successors shall be appointed and qualified. After the first appointment each board shall be divided into three classes, as nearly equal as may be. The seats of the first class shall be vacated at the expiration of two years, and those of the second class in four years, and those of the third class at the end of six years, from the date of appointment, so that one-third may be chosen biennially. No trustee shall receive any pay or emolument, other than his actual expenses incurred in the discharge of his duties as such. The governor shall be ex officio president, and the superintendent of education ex officio a member of each of said boards of trustees.

§10. The general assembly shall have no power to change the location of the State University, or the Agricultural and Mechanical College, as now established by law, except upon a vote of two-thirds of the members of the general assembly, taken by yeas and nays, and entered upon the journals.

§11. The provisions of this article, and of any act of the general assembly, passed in pursuance thereof, to establish, organize, and maintain a system of public schools throughout the State, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portion of the funds to which said county will be entitled for school purposes, and to make reports to the superintendent of education, as may be prescribed by law. And all special incomes and powers of taxation, as now authorized by law for the benefit of public schools in said county, shall remain undisturbed until otherwise provided by the general assembly: *Provided*, that separate schools for each race shall always be maintained by said school authorities.

ARTICLE XIV.

CORPORATIONS.—PRIVATE CORPORATIONS.

§1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal, manufacturing, mining, immigration, industrial, and educational purposes, or for constructing canals, or improving navigable rivers and harbors of this State, and in cases where, in the judgment of the general assembly, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered, amended, or repealed.

To prevent irrepealable exemptions and discriminations.—Mayor v. Stonewall Ins. Co., 53 Ala. 570. **The formation of corporations under the general law, rather than by special act, is a favored public policy.**—Cahall v. Cit. Mut. Bldng. Assn., 61 Ala. 232. **The test of the power to confer franchises is whether the privilege conduces to the public good.**—Horst v. Moses, 48 Ala. 129. **Defects in the organization of a corporation organized under the general law may be cured by special statute.**—Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120; State v. Webb, 110 Ala. 214.

§2. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith, at the time of the ratification of this Constitution, shall thereafter have no validity.

§3. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

Acceptance of amendment by acquiescence is sufficient to show consent to hold charter subject to conditions imposed by the Constitution.—State v. Montgomery Light Co., 102 Ala. 594.

§4. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein; and such corporation may be sued in any county where it does business by service of process upon an agent anywhere in this State.

Self-executing, needing no statute to give it operation.—A. U. Tel. Co. v. W. U. Tel. Co., 67 Ala. 26; Beard v. U. & A. Pub. Co., 71 Ala. 60; Sherwood v. Alvis, 83

Ala. 115; Dudley v. Collier, 87 Ala. 431; Farrior v. N. E. Mort. Sec. Co., 88 Ala. 275; Mullens v. Am. F. L. M. Co., 88 Ala. 280; Craddock v. Am. F. L. M. Co., 88 Ala. 281; Christian v. Am. F. L. M. Co., 89 Ala. 198; N. E. Mtg. Sec. Co. v. Ingram, 91 Ala. 337. **Inflexible and unalterable by legislature.**—Farrior v. N. E. Mort. Sec. Co., 88 Ala. 275; N. E. Mtg. Sec. Co. v. Ingram, 91 Ala. 337; Nelms v. E. A. L. M. Co., 92 Ala. 157; Sullivan v. Sullivan T. Co., 103 Ala. 371. **A legitimate exercise of police power and not in conflict with the Federal Constitution or any act of Congress.**—Am. U. Tel. Co. v. W. U. Tel. Co., 67 Ala. 26; Dudley v. Collier, 87 Ala. 431. **Not intended to interfere with interstate commerce,** and not applicable to corporations engaged therein as to such business.—Ware v. Hamilton-B. Shoe Co., 92 Ala. 145. **Foreign corporations are not citizens within meaning of Federal Constitution,** and are wholly dependent on state laws for privilege; yet their contracts with citizens are subject to interstate commerce regulations and state cannot interfere with them.—Ware v. H-B. Shoe Co., 92 Ala. 145; Nelms v. E. A. L. M. Co., 92 Ala. 157; Noble v. Mitchell, 100 Ala. 519. **A contract to purchase shoes made between a citizen and a Missouri corporation, whether made here or there, is interstate commerce.**—Ware v. H-B. Shoe Co., 92 Ala. 145; Nelms v. E. A. L. M. Co., 92 Ala. 157. **And so the sale of brick in another state** to be delivered here.—Cook v. Rome Brick Co., 98 Ala. 409. **And so the sale here of books in another state to be delivered here.**—Culberson v. Am. T. & B. Co., 107 Ala. 457. **Loaning money is not interstate commerce; a single act constitutes "doing business" within the meaning of this section.**—Nelms v. E. A. L. M. Co., 92 Ala. 157; Farrior v. N. E. Mtg. Sec. Co., 88 Ala. 275; Mullens v. Mtge. Co., 88 Ala. 280; Dundee Mtge. Co., v. Nixon, 95 Ala. 318; Guin v. N. E. Mtg. Sec. Co., 92 Ala. 135; State v. Bristol Bank, 108 Ala. 3. **Soliciting and receiving subscriptions for a newspaper published in another state is not "doing business" within meaning.**—Beard v. U. & A. Pub. Co., 71 Ala. 60. **Nor the institution and prosecution of suits.**—Christian v. Mtge. Co., 89 Ala. 198; Cook v. Rome Brick Co., 98 Ala. 409. **Before the statute imposing a penalty for non-compliance, an executed contract made by a corporation not complying was not void;** and the other party could not question the contracting capacity of the corporation.—Sherwood v. Alvis, 83 Ala. 115; Craddock v. Am. F. L. M. Co., 88 Ala. 281. **Since the statute the contract is void and, if executory, will not be enforced.**—Dudley v. Collier, 87 Ala. 431; Farrior v. N. E. Mtg. Sec. Co., 88 Ala. 275; Collier v. Davis, 94 Ala. 456. **Sufficiency of appointment of agent and designation of place of business.**—N. E. Mtg. Sec. Co. v. Ingram, 91 Ala. 337; Nelms v. Mtge. Co., 92 Ala. 157; Mtge. Co. v. Sewall, 92 Ala. 163; McCall v. Mtge. Co., 99 Ala. 427; McLeod v. Mtge. Co., 100 Ala. 496. **Foreign corporation may be sued in any county where it is doing business;** if not doing any business, in the county designated in its certificate.—Sullivan v. Sullivan T. Co., 103 Ala. 371.

§5. No corporation shall engage in any business other than that expressly authorized in its charter.

Cannot engage in any business not expressly or impliedly authorized by original or amended charter.—State v. Montgomery Light Co., 102 Ala. 594. **Contract made by or with a corporation in excess of its corporate authority confers no rights, and party promising may invoke ultra vires.**—Smith v. Ala. Life Ins. Co., 4 Ala. 558; City Council v. M. & W. Plank Road Co., 31 Ala. 76; Waddell v. A. & F. R. Co., 31 Ala. 323; Grand Lodge v. Waddell, 36 Ala. 313; Marion Savings Bank v. Dunklin, 54 Ala. 471; Chambers v. Falkner, 65 Ala. 448; Eufaula v. McNab, 67 Ala. 588; Wilks v. G. P. R. Co., 79 Ala. 180; Westinghouse Mach. Co. v. Wilkinson, 79 Ala. 312; Sherwood v. Alvis, 83 Ala. 115; Chewalla Lime Co. v. Dismukes, 87 Ala. 344; Tenn. R. Trans. Co. v. Kavanaugh, 93 Ala. 324; s. c., 101 Ala. 1.

§6. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days notice given in pursuance of law.

Does not prohibit a corporation from pledging its bonds for loan of less than their face value.—Nelson v. Hubbard, 96 Ala. 238. **Requirements before increasing stock or bonded debt are for the benefit of stockholders, and may be waived.**—Nelson v. Hubbard, 96 Ala. 238. **And cannot be invoked by creditors.**—Barrett v. Pollak, 108 Ala. 390; Ala. I. & S. Co. v. McKeever, 112 Ala. 134. **Has no reference to the product of the business.**—Ib. **To protect stockholders and the public and to prevent "stock watering."**—Williams v. Evans, 87 Ala. 725; State v. Webb, 97 Ala. 111. **A subscription for stock with the understanding that the corporation shall issue stock of a greater face value than the amount of money paid,** or the reasonable value of the property or labor furnished, **is violative.**—Williams v. Evans, 87 Ala. 725; Tutwiler v. Tuskaloosa C. I. & L. Co., 89 Ala. 391; Parsons v. Joseph, 92 Ala. 403; Elyton Land Co. v.

Birmingham W. & E. Co., 92 Ala. 407; Gay v. Brierfield C. & I. Co., 94 Ala. 303; Davis v. Montgomery F. & C. Co., 101 Ala. 127; Ala. Nat. Bank v. Halsey, 109 Ala. 196.

§7. Municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid before such taking, injury, or destruction. The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers, or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury according to law.

Liberally construed in favor of the citizen.—City Council v. Townsend, 80 Ala. 489; City Council v. Maddox, 89 Ala. 181. **Has no application, where a municipal corporation tears down obstructions or fills up excavations in sidewalks.**—Winter v. City Council, 83 Ala. 589. **Prepayment of just compensation before the taking is complete, is guaranteed,** without regard to the agency employed, in the taking, unless it be the State.—Montgomery S. Ry. Co. v. Sayre, 72 Ala. 443; Smith v. Inge, 80 Ala. 283; City Council v. Townsend, 80 Ala. 489; s. c., 84 Ala. 478; Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal T. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571; Highland Ave. & B. R. Co. v. Matthews, 99 Ala. 24. **Extent to which the municipal corporation is liable for consequential damages if injury or destruction is produced by the construction or enlargement of some work,** highway or improvement, as by changing the grade of a street.—C. & W. Ry. Co. v. Witherow, 82 Ala. 190; City Council v. Maddox, 89 Ala. 181; Evans v. S. & W. Ry. Co., 90 Ala. 54; Town of Avondale v. McFarland, 101 Ala. 381 (overruling City Council v. Townsend, 80 Ala. 489; s. c., 84 Ala. 478). **The crossing of one railroad by another is a taking of private property.**— M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 501; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **Does not authorize a law giving a municipal corporation the right to open streets at the cost of adjacent property in proportion to benefit received.**—Miller v. Mobile, 47 Ala. 163. "Determined by a jury according to law" means a jury of twelve men, according to the course of common law; right of appeal to a jury is preserved.—Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal T. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; M. & C. R. Co. v. Hopkins, 108 Ala. 159; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571.

§8. Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.

If property is taken in payment of subscription for stock at grossly excessive valuation, creditors may proceed against such subscribers as for a partially paid subscription.—Parsons v. Joseph, 92 Ala. 403; Elyton Land Co. v. Birmingham W. & E. Co., 92 Ala. 407. See citations to art. I., sec. 24.

§9. No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation.

§10. The general assembly shall have the power to alter, revoke, or amend any charter of incorporation now existing, and revocable at the ratification of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of the State; in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.

Power of repeal.—Bibb v. Hall, 101 Ala. 79.

§11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and connect the same with other lines; and the general assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall con-

solidate with, or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

§12. All corporations shall have the right to sue, and shall be subject to be sued in all courts, in like cases as natural persons.

No burden can be imposed on one class of persons, natural or artificial, which is not, under like conditions, imposed on all other classes.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; S. & N. A. R. Co. v. Morris, 65 Ala. 193; Green v. State, 73 Ala. 26; Home Protection v. Richards, 74 Ala. 466; Smith v. L. & N. R. Co., 75 Ala. 449; Carter v. Coleman, 84 Ala. 256; Youngblood v. Birmingham T. & S. Co., 95 Ala. 521.

§13. The term "corporation," as used in this article, shall be construed to include all joint-stock companies, or any associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.

BANKS AND BANKING.

§14. The general assembly shall not have the power to establish or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

§15. No banks shall be established otherwise than under a general banking law, nor otherwise than upon a specie basis.

§16. All bills or notes issued as money shall be at all times redeemable in gold or silver, and no law shall be passed sanctioning, directly or indirectly, the suspension by any bank or banking company of specie payment.

§17. Holders of bank-notes, and depositors who have not stipulated for interest, shall, for such notes and deposits, be entitled, in case of insolvency, to the preference of payment over all other creditors.

§18. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization (unless the general assembly shall extend the time), and promptly thereafter close its business; but shall have corporate capacity to sue and shall be liable to suit, until its affairs and liabilities are fully closed.

§19. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals for lending money.

§20. The State shall not be a stockholder in any bank, nor shall the credit of the State ever be given or loaned to any banking company, association, or corporation.

RAILROADS AND CANALS.

§21. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points in this State, and to connect, at the State line, with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport, each, the other's freight, passengers, and cars, loaded or empty, without delay or discrimination.

Railroad crossing another.—M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571; M. & C. R. Co. v. Hopkins, 108 Ala. 159.

§22. The general assembly shall pass laws to correct abuses and prevent

unjust discrimination and extortion in the rates of freights and passenger tariffs on railroads, canals, and rivers in this State.

§23. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount other than as sold to the public generally, to any member of the general assembly, or to any person holding office under this State or the United States.

§24. No street passenger railway shall be constructed within the limits of any city or town, without the consent of its local authorities.

§25. No railroad, canal, or other transportation company, in existence at the time of the ratification of this Constitution, shall have the benefit of any future legislation by general or special laws, other than in execution of a trust created by law, or by contract, except on the condition of complete acceptance of all the provisions of this article.

ARTICLE XV.

OATH OF OFFICE.

§1. All members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation, to wit:

"I,———, solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

Which oath may be administered by the presiding officer of either house of the general assembly, or by any officer authorized by law to administer an oath.

ARTICLE XVI.

MISCELLANEOUS PROVISIONS.

§1. No person holding an office of profit under the United States, except postmasters whose annual salary does not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this State; nor shall any person hold two offices of profit at one and the same time under this State, except justices of the peace, constables, notaries public, and commissioners of deeds.

§2. It is made the duty of the general assembly to enact all laws necessary to give effect to the provisions of this Constitution.

ARTICLE XVII.

MODE OF AMENDING THE CONSTITUTION.

§1. The general assembly may, whenever two-thirds of each house shall deem it necessary, propose amendments to this Constitution, which, having been read on three several days in each house, shall be duly published in such manner as the general assembly may direct, at least three months before the next general election for representatives, for the consideration of the people; and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll

for the vote of the qualified electors on the proposed amendments, and to make a return of said vote to the secretary of state; and, if it shall thereupon appear that a majority of all the qualified electors of the State, who voted at said election, voted in favor of the proposed amendments, said amendments shall be valid, to all intents and purposes, as parts of this Constitution; and the result of such election shall be made known by proclamation of the governor.

§2. No convention shall hereafter be held for the purpose of altering or amending the Constitution of this State, unless the question of convention or no convention shall be first submitted to a vote of all the electors of the State, and approved by a majority of those voting at said election.

SCHEDULE.

In order that no injury or inconvenience may arise from the alterations and amendments made by this Constitution to the existing Constitution of this State, and to carry this Constitution into effect, it is hereby ordained and declared—

1. That all laws in force at the ratification of this Constitution, and not inconsistent therewith, shall remain in full force, until altered or repealed by the general assembly; and all rights, actions, prosecutions, claims, and contracts of this State, counties, individuals, or bodies corporate, not inconsistent with this Constitution, shall continue to be as valid as if this Constitution had not been ratified.

2. That all bonds executed by or to any officer of this State, all recognizances, obligations, and all other instruments executed to this State, or any subdivision or municipality thereof, before the ratification of this Constitution, and all fines, taxes, penalties, and forfeitures due and owing to this State, or any subdivision; or to any municipality thereof; and all writs, suits, prosecutions, claims, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the ratification of this Constitution. All indictments which may have been found, or which may hereafter be found, for any crime or offense committed before the ratification of this Constitution, shall be proceeded upon in the same manner as if this Constitution had not been ratified.

3. That all the executive and judicial officers, and all other officers in this State, who shall have been elected at the election held in this State, on third day of November, eighteen hundred and seventy-four, or who may have been appointed since that time, and all members of the present general assembly, and all that may hereafter be elected members of the present general assembly, and all other officers holding office at the time of the ratification of this Constitution, except such as hold office under any act of the general assembly, shall continue in office, and exercise the duties thereof until their respective terms shall expire, as provided by the present Constitution and laws of this State.

4. This Constitution shall be submitted to the qualified electors of this State for ratification or rejection, as authorized and required by an act of the general assembly of this State, entitled "An act to provide for the calling of a convention to revise and amend the Constitution of this State,"

approved nineteenth day of March, Anno Domini, eighteen hundred and seventy-five.

5. If at said election the said Constitution shall be found to have been ratified by a majority of all of the qualified electors voting at said election, the said new Constitution, so ratified, shall go into effect as the new Constitution of the State of Alabama within the time stated in the proclamation of the governor, and shall thereafter be binding and obligatory as such upon all the people of this State, according to the provisions of said act, approved nineteenth day of March, Anno Domini, eighteen hundred and seventy-five.

6. That instead of the publication as required by section twelve of said act, the governor of the State is hereby authorized to take such steps as will give general publicity and circulation to this Constitution in as economical manner as practicable.

7. That all laws requiring an enumeration of the inhabitants of this State during the year eighteen hundred and seventy-five are hereby avoided.

8. That the board of education of this State is hereby abolished.

9. The salaries of the executive and judicial, and all other officers of this State who may be holding office at the time of the ratification of this Constitution, and the pay of the present members of the general assembly, shall not be affected by the provisions of this Constitution.

LEROY POPE WALKER, *President.*

JOHN F. BURNS,	F. W. SYKES,
J. H. WHITE,	E. H. MOREN,
SUMPTER LEA,	WM. C. OATES,
WM. A. SMITH,	STEPHEN C. ALLGOOD,
R. A. MCCLELLAN,	SAMUEL J. BOLLING,
E. D. WILLETT,	LEROY BREWER,
RUFUS W. COBB,	JOHN T. HEFLIN,
JOHN W. INZER,	JULIUS G. ROBINSON,
WM. G. LITTLE, JR.,	SAMUEL FORWOOD,
W. GARRETT,	JOHN GREEN,
JOHN MANASCO,	ROBERT A. LONG,
LEWIS M. STONE,	CHARLES C. LANGDON,
WILEY COLEMAN,	F. S. LYON,
ANDREW C. HARGROVE,	HENRY A. WOOLF,
EVAN G. RICHARDS,	WM. M. HAMES,
HENRY W. LAIRD,	THOS. J. BURTON,
WM. J. O'BANNON,	B. F. JOHNSON,
GEO. S. GULLETT,	ALBURTO MARTIN,
GEO. W. DELBRIDGE,	R. C. TORREY,
ANDREW J. INGLE,	M. T. AKERS,
FRANK A. NISBET,	ALBERT W. PLOWMAN,
JOHN GAMBLE,	WM. A. MUSGROVE,
ISAAC H. PARKS,	JAMES D. MEADOWS,
HENRY C. LEA,	W. J. SAMFORD,
JOEL D. MURPHREE,	GEO. P. HARRISON, JR.,
J. B. KELLY,	JOHN D. RATHER,
J. N. SWAN,	CEPHAS B. TAYLOR,

Benj. F. Weathers,	James Aiken,
Micajah L. Davis,	E. A. Powell,
J. W. Jones,	A. C. Gordon,
John S. Dickinson,	Cullen A. Battle,
Wm. Burgess,	Jonathan Bliss,
P. M. Calloway,	D. B. Booth,
John P. Ralls, M. D.,	S. T. Prince,
Wm. S. Mudd,	A. A. Sterritt,
John A. Foster,	H. J. Livingston,
James L. Pugh,	Wm. M. Lowe,
Jos. E. P. Flournoy,	S. S. Scott,
John D. Hudson,	Charles Gibson,
R. O. Pickett,	Thomas H. Herndon,
Richard H. Powell,	Jesse E. Brown,
E. A. O'Neal,	David S. Nowlin,
Thomas B. NeSmith,	John H. Norwood,
Wm. Green,	Montgomery Gilbreath.

Attest—Benj. H. Screws, *Secretary*.

SECTIONS 905 AND 906 OF THE REVISED STATUTES OF THE UNITED STATES.

RELATING TO THE AUTHENTICATION OF PUBLIC ACTS, JUDICIAL PROCEEDINGS, AND OFFICE RECORDS.

SEC. 905. *Authentication of legislative acts and proof of judicial proceedings of states, etc.* The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.

An exemplification of a statute under the great seal of state may be given in evidence without further proof.—United States v. Amedy, 11 Wh. 392; Pacific Guano Co. v. Mullen, 66 Ala. 582; McClerkin v. State, 105 Ala. 107. **Records and judical proceedings** must be authenticated according to the laws of the state wherein they exist. Crawford v. Simonton, 7 Port. 110; McRae v. Stokes, 3 Ala. 401; White v. Strother, 11 Ala. 720; Andrews v. Flack, 88 Ala. 294. **Not admissible** when certificate of judge fails to state that the clerk's attestation is in due form.—Trigg v. Conway, Hempst. 538, 24 Fed. Cas. 194; Holly v. Flournoy, 54 Ala. 99. **The seal should be annexed** to the record, not to the judge's certificate.—Turner v. Waddington, 3 Wash. C. C., 126, 24 Fed. Cas. 377. **The record of a court which has no seal** may be admitted on such fact being stated in the judge's certificate.—Morgan v. Cortenius, 4 McLean, 366, 17 Fed. Cas. 747. **Judge's certificate** that the attestation is in due form cannot be contradicted.—Ferguson v. Harwood, 7 Cr. 408. When by the organization of the court **there is no chief justice, one of the justices has authority** to make the requisite certificate.—Woodley v. Findlay, 9 Ala. 716; Andrews v. Flack, 88 Ala. 294. **When properly authenticated, the same faith and credit must be given as in the state where rendered; but no greater.**—Mills v. Duryee, 7 Cr. 481; Hampton v. McConnell, 3 Wh. 324; McElmoyle v. Cohen, 13 Pet. 312; Board of Public Wks. v. Columbia College, 17 Wall. 521; Pennoyer v. Neff, 95 U. S. 714; Peete v. Hatcher, Ala. (21 So. 711). **Precludes all inquiry into the merits** of the subject-matter of the judgment.—Mills v. Duryee, 7. Cr. 481; McElmoyle v. Cohen, 13 Pet. 312.—**The statute of limitations** of the new forum may be pleaded against the the judgment sued on.—McElmoyle v. Cohen, 13 Pet. 312; Bank of Ala. v. Dalton, 9 How. 522. **Does not prevent inquiry into the jurisdiction of the court** which pronounced the judgment, either as to parties or subject-matter.—Christmas v. Russell, 5 Wall. 290; Board of Public Works v. Columbia College, 17 Wall. 521; Thompson v. Whitman, 18 Wall. 457; Cole v. Cunningham, 133 U. S. 107; Kingsbury v. Yniestra, 59 Ala. 320; Kohn v. Haas, 95 Ala. 478. Nor **whether the judgment is founded in, or impeachable for, a manifest fraud.** Cole v. Cunningham, supra. **A judgment againt a non-resident, rendered without personal service within the state and without appearance, is not entitled to any faith or credit.**—D'Arcy v. Ketchum, 11 How. 165; Cooper v. Reynolds, 10 Wall. 308; Pennoyer v. Neff, 95 U. S. 714; St. Clair v. Cox, 106 U. S. 350; Coleman v. Cunningham, 133 U. S. 107; Exchange Nat. Bank of Spokane v. Clement, 109 Ala. 270. **When judgment void for want of jurisdiction,** a special plea in bar going to matters anterior to its rendition, may be interposed.—Andrews v. Flack, 88 Ala. 294. **Federal courts give same effect as state courts.**—Insurance Co. v. Harris, 97 U. S. 331; Chicago, etc., R. Co. v. Wiggins Ferry Co. 108 U. S. 18; Chase v. Curtis, 113 U. S. 452. **Record properly certified as required by act of congress is necessarily admissible; but may be admissible without such authentication if properly certified under laws of the state where offered.**—Hawes v. State, 88 Ala. 37.

SEC. 906. *Proof of records, etc., kept in offices not pertaining to courts.* All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal of the State, or Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken.

See citations to preceding section.

CODE OF ALABAMA,
1896.

THE CIVIL CODE.

CHAPTER 1.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE. 1-11.

1 (1) (1) (1) (1). **Signification of words.**—Words used in this Code, in the past or present tense, include the future, as well as the past and present. Words used in the masculine gender include the feminine and neuter; the singular includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; "writing" includes printing on paper; "oath" includes affirmation; "signature" or "subscription" includes mark when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The terms "lunatic," "insane," or "non compos mentis," include all persons of unsound mind.

These definitions apply only to words used in this Code, or in statutes construed as part of it; not to contracts or instruments governed by the common law.—Bickley v. Keenan, 60 Ala. 296; Ala. Warehouse Co. v. Lewis, 56 Ala. 514. **"Singular includes the plural and the plural the singular."**—Brunson v. Brooks, 68 Ala. 248; Thompson v. Boswell, 97 Ala. 570; Kent v. Mansel, 101 Ala. 334; Garner v. Toney, 107 Ala. 352. **Person includes an artificial as well as a natural person,** unless thereby a statute is rendered inharmonious. P. & M. Bank v. Andrews, 8 P. 404; Selma v. Mullen, 46 Ala. 411; Mayor v. Rowland, 26 Ala. 498. **Writing includes printing,** or part writing and part printing.—Johnson v. State, 69 Ala. 593. **Signature includes mark:** Execution of will by mark.—Bailey v. Bailey, 35 Ala. 687. Attestation of will by mark.—Garrett v. Heflin, 98 Ala. 615. Execution of note by mark.—Wimberely v. Dallas, 52 Ala. 196. Execution of mortgage of personalty by mark (before the statute requiring such mortgages to be in writing).—Breene v. McCrary, 52 Ala. 154; Ala. Warehouse Co. v. Lewis, 56 Ala. 514; Bickley v. Keenan, 60 Ala. 296. Since the statute—attestation by mark.—Houston v. State, MS. Execution, by mark, of replevy bond approved by sheriff.—Hester v. Ballard, 96 Ala. 410. Generally, **words used in a statute are construed in their ordinary and familiar signification.**—Mayor v. Winter, 29 Ala. 651; Lehman v. Robinson, 59 Ala. 219. **Punctuation marks have no controlling influence** in construing statutes.—Danzy v. State, 68 Ala. 296; Cook v. State, 110 Ala. 40.

2 (2) (2) (2) (2). **Meaning of the terms "property," "circuit," "negro," etc.**—The following words have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes property, real and personal.

2. The words "real property" are co-extensive with lands, tenements and hereditaments.

3. The words "personal property" include money, goods, chattels, things in action and evidences of debt, deeds and conveyances.

4. The word "circuit" means judicial circuit.

5. The term "negro," within the meaning of this Code, includes mulatto. The term "mulatto," or "person of color," within the meaning of this Code, is a person of mixed blood, descended on the part of the father or mother, from negro ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person.

Personal property as used in the exemption statutes includes everything subject to ownership, except realty.—Enzor v. Hurt, 76 Ala. 595; Kennedy v. Smith, 99 Ala. 83. **Negro includes mulatto.**—Linton v. State, 88 Ala. 216.

3 (3) (3) (3) (3). **Joint authority exercised by a majority.**—All words giving a joint authority to three or more persons or officers, give such authority to a majority of such persons or officers, unless it is otherwise declared.

Jennings v. Jenkings, 9 Ala. 285.

4 (4) (4) (4) (4). **Meaning of the word "justice."**—The word "justice," when applied to a magistrate, means "justice of the peace." "Justice of the peace," if not otherwise expressed, includes a notary public having and exercising the jurisdiction of a justice of the peace, within the precinct or ward for which he is appointed.

5 (5) (5) (5) (5). **Meaning of "preceding" and "following."** "Preceding" and "following" mean next before and next after.

6 (6) (6) (6) (6). **Meaning of "state."**—The word "state," when applied to the different parts of the United States, includes the District of Columbia, and the several territories of the United States.

7 (7) (7) (7) (7). **Meaning of "United States."**—The words "United States" include the territories thereof, and the District of Columbia.

8 (8) (8) (8) (8). **Meaning of the words "month" and "year."** The word "month" means a calendar month, and "year" a calendar year, unless otherwise expressed.

9 (9) (9) (9) (9). **When undertaking without seal sufficient.** When by law a bond is required, an undertaking without seal is sufficient, and must be taken in all respects as if the same was a sealed instrument.

Feb. 28, 1889, p. 104.

10 (10) (10) (10) (10). **Laws continued in force and laws repealed.**—This Code shall not affect any existing right, remedy, or defense, nor shall it affect any prosecution now commenced, or which shall be hereafter commenced, for any offense already committed. As to all such cases the laws in force at the adoption of this Code shall continue in force. But this section does not apply to changes in forms of remedy or defense, to rules of evidence, nor to provisions authorizing amendments of process, proceedings or pleadings in civil causes. Local, private, or special statutes, and those public laws not of a general and permanent nature, and those relating to the swamp and overflowed lands, and those relating to the public debt, and those relating to institutions of learning, and those relating to the jurisdiction and practice of courts in any division, circuit, county, or other territory less than the entire state, are not

repealed by this Code. But subject to the foregoing provisions, all statutes of a public, general, and permanent nature, not included in this Code, are repealed.

General and public statutes omitted from the Code are repealed.—Ulmer v. State, 61 Ala. 208; Hatchett v. Billingslea, 65 Ala. 16; Carmichael v. Hays, 66 Ala. 543; Sawyers v. Baker, 72 Ala. 49; Werborn v. Austin, 77 Ala. 381. But such **omission does not affect any existing right,** remedy or defense, etc. Hart v. Ross, 64 Ala. 96; State v. McBride, 76 Ala. 51; Ernst v. Hollis, 89 Ala. 638; Barker v. Anniston, etc., Co., 92 Ala. 314; Jordan v. Smith, 83 Ala. 299; Robinson v. Holt, 85 Ala. 596; Ex parte Oehmig & Weihl, 91 Ala. 558. **Code provisions which are inconsistent with statutes passed at session at which the Code was adopted are superseded.**—Breden v. State, 88 Ala. 22; South v. State, 86 Ala. 617; Harrison v. Jones, 80 Ala. 412. Instruction to commissioner to incorporate acts passed at the session at which the Code was adopted is directory merely.—South v. State, 86 Ala. 617.

11 (11) (11) (14) (13). **Time, how computed.**—The time within which any act is provided by law to be done must be computed by excluding the first day and including the last; if the last day is Sunday, it must also be excluded.

Excluding first and including last day.—Garner v. Johnson, 22 Ala. 494; Owen v. Slatter, 26 Ala. 547; Lang v. Phillips, 27 Ala. 311; Field v. Gamble, 47 Ala. 443; City Council v. Adams, 51 Ala. 449; Dickson v. Frisbee, 52 Ala. 165; Madden v. Floyd, 69 Ala. 221; Chapman v. Ewing, 78 Ala. 403; Loosse v. Bogel, 80 Ala. 308; Thrower v. Brandon, 89 Ala. 406; L. & N. R. Co. v. Watson, 90 Ala. 68. **If last day of limitation is Sunday,** action brought on following Monday barred.—Allen v. Elliot, 67 Ala. 433. **When fractions of a day considered** to determine priority of liens.—German Security Bank v. Campbell, 99 Ala. 249; Lang v. Phillips, 27 Ala. 311.

CHAPTER 2.

ACTIONS AND PARTIES. 12-44.

12 (2573) (2902) (2533) (2137). **Suit by state.**—The state may sue in its own name, and is entitled to all remedies provided for the enforcement of rights between individuals, without giving bond or security, or causing affidavit to be made, though the same may be required, if the action were between private citizens; the written direction of the governor of the state to the attorney of record is a sufficient authority for bringing the suit.

Not unconstitutional; state not required to make bond or affidavit; general words do not apply to state.—Ex parte Macdonald, 76 Ala. 603; Holmes v. State, 100 Ala. 291. **Not necessary for attorney of record to exhibit written authority;** how objection made.—Wolffe v. State, 79 Ala. 201. **State may maintain ejectment.**—Gaston v. State, 88 Ala. 459.

13 (2574) (2903) (2537) (2141). **Suit against county.**—Suit must not be brought against a county until the claim has been presented to the court of county commissioners, and disallowed or reduced by the court, and the reduction refused by the claimant.

Claim must be disallowed, or reduced and amount refused, to authorize suit; if allowed, remedy by mandamus.—Autauga Co. v. Davis, 32 Ala. 703; Marshall Co. v. Jackson Co., 36 Ala. 613; Barbour Co. v. Horn, 41 Ala. 114; Lowndes Co. v. Hunter, 49 Ala. 507; Covington Co. v. Dunklin, 52 Ala. 28; Elmore Co. v. Long, 52 Ala. 277; Commissioners v. Moore, 53 Ala. 25; Chambers Co. v. Lee Co., 55 Ala. 534; Shinbone v. Randolph Co., 56 Ala. 183; Speed v. Cocke, 57 Ala. 209; Caldwell v. Dunklin, 65 Ala. 461; Schroeder v. Colbert Co., 66 Ala. 137; Jack v. Moore, 66 Ala. 184; Marengo Co. v. Lyles, 101 Ala.

423; Looney v. Jackson Co., 105 Ala. 597; Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. **What sufficient presentation of claim.**—Crenshaw Co. v. Fleming, 109 Ala. 554. **Complaint must aver statutory requirements.**—Shinbone v. Randolph Co., 56 Ala. 183; Schroeder v. Colbert Co., 66 Ala. 137. **Suit conducted as between individuals.**—Randolph Co. v. Hutchins, 46 Ala. 397. **Allowance of claim bars further prosecution of suit.**—Looney v. Jackson Co., 105 Ala. 597. **All claims, where no particular mode of payment is prescribed, must be presented.**—Dale Co. v. Gunter, 46 Ala. 118; Shinbone v. Randolph Co., 56 Ala. 183. **Claim for damages must be presented.**—Barbour Co. v. Horn, 41 Ala. 114. **But when the law under which the claim arises, fixes its validity and amount, or specifies the particular method of enforcement, presentment is not necessary.**—Dale Co. v. Gunter, 46 Ala. 118; Commissioners v. Rather, 48 Ala. 433; Shinbone v. Randolph Co., 56 Ala. 183; Caldwell v. Dunklin, 65 Ala. 461. **Suit lies against county treasurer and sureties when he has proper funds and refuses to pay claim.**—Arrington v. Van Houton, 44 Ala. 284; Randolph Co. v. Hutchins, 46 Ala. 397; Briggs v. Coleman, 51 Ala. 561; Caldwell v. Guinn, 54 Ala. 64; Speed v. Cocke, 57 Ala. 209; Caldwell v. Dunklin, 65 Ala. 461; Grayson v. Latham, 84 Ala. 546. **Action defeated by showing invalidity of claim, notwithstanding allowance; burden on defendant.**—Caldwell v. Guinn, 54 Ala. 64; Caldwell v. Dunklin, 65 Ala. 461; Grayson v. Latham, 84 Ala. 546. **On judgment against county no execution or garnishment can issue.**—Edmonson v. Dekalb Co., 51 Ala. 103. **Limitation against allowed and registered claim is six years** from the time it is reached in order of registration.—Grayson v. Latham, 84 Ala. 546. **Presentment of claim cannot be proved by oral testimony.**—Crenshaw Co. v. Sikes, Ala. (21 So. 135).

14 (2575) (2917) (2552) (2154). **Suit on official bonds.**—For any breach of an official bond or undertaking of any officer of this state, executor, administrator, or guardian, or of any bond or undertaking given in an official capacity to the state, or any officer thereof, the person aggrieved may sue in his own name, assigning the appropriate breach.

Statute remedial, and literally construed; bonds of county officers within. Morrow v. Wood, 56 Ala. 1. **Bonds not strictly statutory, if acted under, within.**—Sprowl v. Lawrence, 33 Ala. 674; Lewis v. Lee Co., 66 Ala. 480. **Injunction bond not within.**—Smith v. Mutual L. & T. Co., 102 Ala. 282. **Nor attachment bond.**—Masterson v. Phinizy, 56 Ala. 336. **Nor bond for costs of election contest.**—Hilliard v. Brown, 103 Ala. 318. **The probate judge is not a "person aggrieved"** by the breach of an administration bond.—Williams v. Stoutz, 92 Ala. 516. **County superintendent is a "person aggrieved"** by the failure of county treasurer to pay over school money.—Morrow v. Wood, 56 Ala. 1. **Legatee or distributee, after final settlement, may sue administrator** in his own name.—Amason v. Nash, 24 Ala. 279. **County may sue on bonds of its officials,** although the state is the obligee.—Dudley v. Chilton Co., 66 Ala. 593; Lewis v. Lee Co., 66 Ala. 480.

15 (2576) (2918) (2533) (2155). **Suit for penalty imposed by law.**—When a penalty is imposed by a statute which does not provide a mode for the recovery, any citizen may sue for the same on behalf of himself and the county in which the penalty is incurred.

16 (2578) (2901) (2532) (2136). **When wife may sue or defend for husband.**—When a husband or father has deserted his family, or is confined in an insane asylum, not having been declared of unsound mind, or when he is imprisoned for a term of two years or more under a conviction for crime, the wife or mother may prosecute and defend in his name any action which he might have prosecuted or defended, and has the same powers and rights in reference to such action which he might have had.

Ex parte Cole, 28 Ala. 50; Winslow v. State, 92 Ala. 78.

17 (2579) (2893) (2526) (2132). **Suit by and against infants.** Infants must sue by next friend, and must be defended by a guardian of the appointment of the court.

Infant may sue by next friend whether he has a guardian or not.—Hooks v. Smith, 18 Ala. 338. **Purpose and necessity of next friend or guardian ad litem.**—Thomason v. Gray, 84 Ala. 559; Hibber v. Sprowl, 71 Ala. 50; Griffith v. Ventress, 91 Ala. 366. **Infancy of plaintiff suing without next friend;** pleadable in abatement, not in bar.—Howland v. Wallace, 81 Ala. 238. **Appeals by and against infants.**—Cooper v. Maclin, 25 Ala. 298; Riddle v. Hanna, 25 Ala. 484; Cook v. Adams, 27 Ala. 294.

18 (2580) (2894) (2527). **Suit by and against persons of unsound mind.**—Persons of unsound mind suing for a personal injury, not having a guardian appointed in this state, may sue by next friend, and if sued, must be defended by a guardian of the appointment of the court.

Objection to interposition of next friend must be made before trial entered upon.—Worthington v. Mencer, 96 Ala. 310. **Form of judgment; appeal.** Walker v. Clay, 21 Ala. 797; Modawell v. Holmes, 40 Ala. 391.

19 (2581) (2895) (2528). **Guardian appointed pending suit.**—If the suit be not for a personal injury to the ward, whether the ward be a minor, or a person of unsound mind, on the appointment of a guardian pending suit, such guardian may, on application, be substituted for the next friend, and the suit must proceed in the name of the guardian for the use of the ward.

20 (2582) (2893) (2526) (2132). **Guardian may sue for the use of the ward.**—In all suits in which the ward has an interest, and the recovery enures to his or her benefit, a guardian may sue in his own name for the use of the ward; and if, pending such suit, the ward should arrive at full age, or, if a female, should marry, or, if a person of unsound mind, should be restored to sanity, the suit must proceed in his or her name; or, if the ward should die, his or her personal representative may be made the sole party plaintiff, or, if the nature of the case require it, his or her heirs may be made parties plaintiff.

Applies to suit against purchaser of ward's lands for damages for failing to comply with terms of sale.—Hutton v. Williams, 35 Ala. 503. **And for damages for the conversion of the ward's property.**—Longmire v. Pilkington, 37 Ala. 296. **But not to suits in equity.**—Blackman v. Davis, 42 Ala. 184; West v. West, 90 Ala. 458. **Nor to application for removal of an administrator.** Blackman v. Davis, supra.

21 (2583) (2795) (2432). **Guardians of persons of unsound mind subject to suit.**—The guardian of a person of unsound mind may be sued on any contract made by the ward, or for any tort committed by him while of sound mind, or for necessaries furnished him or his family before the appointment of a guardian.

22 (2584) (2900) (4423). **Action for felonious injury.**—For any injury, either to person or property, amounting to a felony, a civil action may be maintained by the party injured, without a prosecution of the offender.

23 (2585) (2896) (2529) (2133). **Unmarried woman may sue for her seduction.**—An unmarried female may prosecute as plaintiff an action for her own seduction, and may recover such damages as may be assessed in her favor.

24 (2586) (2897) (2530) (2134). **Suit for seduction of daughter by father or mother.**—The father, or in case of his death, or desertion of his family, or of his imprisonment for a term of two years or

more, under a conviction for crime or of his confinement in an insane asylum, or of his having been declared of unsound mind, the mother may maintain an action for the seduction of a daughter, though she be not living with, or in the service of the plaintiff at the time of the seduction, or afterwards, and there be no loss of service; but a suit by the daughter is a bar to an action by the father or mother.

25 (2587) (2898) (2531) (2135). **Father may sue for injury to minor child.**—A father, or in case of his death or desertion of his family, or of his imprisonment for a term of two years or more under a conviction for crime, or of his confinement in an insane asylum, or if he has been declared of unsound mind, the mother may sue for an injury to a minor child, a member of the family.

Parent and child may maintain separate and concurrent actions for injury to child.—Pratt City Iron Co. v. Brawley, 83 Ala. 371; Ga. P. R. Co. v. Propst, 83 Ala. 518; S. & N. R. Co. v. Donovan, 84 Ala. 141; McNamara v. Logan, 100 Ala. 187.

26 (2588). **Suits for injuries causing death of minor child.** When the death of a minor child is caused by the wrongful act, or omission, or negligence of any person or persons, or corporation, his or their servants or agents, the father, or the mother, in the cases mentioned in the preceding section, or the personal representative of such minor, may sue and recover such damages as the jury may assess; but a suit by the father or mother, in such case, is a bar to a suit by the personal representative.

Policy of statute.—Williams v. S. & N. R. Co., 91 Ala. 635; Winslow v. State, 92 Ala. 78. **Recovery solely for benefit of parents.**—Tenn. C. I. & R. Co. v. Herndon, 100 Ala. 451. **Parent can only recover where minor could have recovered at common law,** had he survived.—Lovell v. DeBardelaben C. & I. Co., 90 Ala. 13; Williams v. S. & N. R. Co., 91 Ala. 635; Harris v. McNamara, 97 Ala. 181. **Contributory negligence;** effort to avoid injury; when questions for jury.—A. G. S. R. Co. v. Dobbs, 101 Ala. 219; Williams v. S. & N. R. Co., 91 Ala. 635. (See also citations to next section.) **Damages under this section compensatory and not punitive.**—Williams v. S. & N. R. Co., 91 Ala. 635.

27 (2589) (2641, 2642, 2643) (2299, 2300) (1940, 1941). **Action for wrongful act, omission, or negligence causing death.**—A personal representative may maintain an action, and recover such damages as the jury may assess, for the wrongful act, omission, or negligence of any person or persons, or corporation, his or their servants or agents, whereby the death of his testator or intestate was caused, if the testator or intestate could have maintained an action for such wrongful act, omission, or negligence, if it had not caused death; such action shall not abate by the death of the defendant, but may be revived against his personal representaive; and may be maintained, though there has not been prosecution, or conviction, or acquittal of the defendant for such wrongful act, or omission, or negligence; and the damages recovered are not subject to the payment of the debts or liabilities of the testator or intestate, but must be distributed according to the statute of distributions. Such action must be brought within two years from and after the death of the testator or intestate.

Statute is constitutional.—R. & D. R. Co. v. Freeman, 97 Ala. 289. **Only applies when deceased could have maintained action had he survived;** but

the nature of the wrongful act or omission is the basis of the action.—S. & N. R. Co. v. Sullivan, 59 Ala. 272. **Selling liquor to intemperate person,** not within.—King v. Henkie, 80 Ala. 505. **No one can sue but personal representative.**—L. & N. R. Co. v. Sullivan, 59 Ala. 272; Lovell v. DeBardelaben C. & I. Co., 90 Ala. 13. **Limitation two years.**—Buckalew v. T. C. I. & R. Co., 112 Ala. 146.—**Damages under this section are punitive "to prevent homicides"; the measure is such as the jury "deem just".**—S. & M. R. Co. v. Shearer, 58 Ala. 672; S. & N. R. Co. v. Sullivan, 59 Ala. 272; E. T. V. & G. R. Co. v. King, 81 Ala. 177; R. & D. R. Co. v. Freeman, 97 Ala. 289; K. C. M. & B. R. Co. v. Phillips, 98 Ala. 159; K. C. M. & B. R. Co. v. Sanders, Ib. 293; Buckalew v. T. C. I. & R. Co., 112 Ala. 146. **Damages distributed as personal property of deceased,** had he died intestate.—S. & N. R. Co. v. Sullivan, 59 Ala. 272. **And are not subject to the payment of debts.**—Griswold v. Griswold, 111 Ala. 572. **"Wrongful act, omission or negligence": Duty of railroad company towards persons on the track.**—S. & M. R. Co. v. Shearer, 58 Ala. 672; S. & N. R. Co. v. Sullivan, 59 Ala. 272; M. & M. R. Co. v. Blakely, 59 Ala. 471; Tanner v. L. & N. R. Co., 60 Ala. 621; Gothard v. A. G. S. R. Co., 67 Ala. 114; Cook v. C. R. & B. Co., 67 Ala. 533; M. & C. R. Co. v. Womack, 84 Ala. 149; C. R. & B. v. Vaughn, 93 Ala. 209; Glass v. M. & C. R. Co., 94 Ala. 581; S. & W. R. Co. v. Meadors, 95 Ala. 137; A. G. S. R. Co. v. Anderson, 109 Ala. 299; L. & N. R. Co. v. Webb, 97 Ala. 308. **Care and prudence required of railroad company in the selection of servants, machinery and appliances.**—M. & M. R. Co. v. Blakely, 59 Ala. 471; Tanner v. L. & N. R. Co., 60 Ala. 621; Gothard v. A. G. S. R. Co., 67 Ala. 114; Cook v. C. R. & B. Co., 67 Ala. 533; A. G. S. R. Co. v. Jones, 71 Ala. 487 (distinguishing M. & C. R. Co. v. Lyon, 62 Ala. 71); Holland v. T. C. I. & R. Co., 91 Ala. 444. **Skill and diligence exacted of persons in charge of railroad trains.**—M. & M. R. Co. v. Blakely, 59 Ala. 471; S. & N. R. Co. v. Sullivan, 59 Ala. 272; Tanner v. L. & N. R. Co., 60 Ala. 621; Gothard v. A. G. S. R. Co., 67 Ala. 114; Cook v. C. R. & B. Co., 67 Ala. 533. **Negligence in backing railroad train within corporate limits of town with insufficient lookout.**—S. & M. R. Co. v. Shearer, 58 Ala. 672; S. & N. R. Co. v. Sullivan, 59 Ala. 272; E. T. V. & G. R. Co. v. King, 81 Ala. 177. **And elsewhere** to prevent collision.—K. C. M. & B. R. v. Lackey, (MS.) **In running trains through town at a rate prohibited by municipal ordinance.**—Gothard v. A. G. S. R. Co., 67 Ala. 114 (overruling N. & D. R. Co. v. Comans, 45 Ala. 437); S. & N. R. Co. v. Donovan, 84 Ala. 141; G. P. R. Co. v. Lee, 92 Ala. 262; Nave v. A. G. S. R. Co., 96 Ala. 264. **Negligence of fellow-servant gives no right of action under this section.**—Dantzler v. DeBardelaben C. & I. Co., 101 Ala. 309. **Contributory negligence as a defense; burden of proof.**—S. & M. R. Co. v. Shearer, 58 Ala. 672; S. & N. R. Co. v. Sullivan, 59 Ala. 272; Tanner v. L. & N. R. Co., 60 Ala. 621; M. & C. R. Co. v. Copeland, 61 Ala. 376; Gothard v. A. G. S. R. Co., 67 Ala. 114; Cook v. C. R. & B. Co., 67 Ala. 533; E. T. V. & G. R. Co. v. Clark, 74 Ala. 443; King v. Henkie, 80 Ala. 505; E. T. V. & G. R. Co. v. King, 81 Ala. 177; M. & C. R. Co. v. Womack, 84 Ala. 149; Holland v. T. C. I & R. Co., 91 Ala. 444; G. P. R. Co. v. Lee, 92 Ala. 262; C. R. & B. Co. v. Vaughn, 93 Ala. 209; S. & W. R. Co. v. Meadors, 95 Ala. 137; Pannell v. N. F. & S. R. Co., 97 Ala. 298; Stringer v. Ala. M. R. Co., 99 Ala. 397; L. & N. R. Co. v. Richards, 100 Ala. 365; Birmingham Elec. Ry. Co. v. Clay, 108 Ala. 232; McAdory v. L. & N. R. Co., 109 Ala. 636. **In case of child; contributory negligence of parent.**—M. & M. R. Co. v. Crenshaw, 65 Ala. 566; Pratt C. & I. Co. v. Brawley, 83 Ala. 37; Williams v. S. & N. R. Co., 91 Ala. 635; A. G. S. R. Co. v. Dobbs, 101 Ala. 219. **In case of deaf mute on track.**—Birmingham R. & E. Co. v. Bowers, 110 Ala. 328. Riding on a box car instead of in a caboose.—Beyer v. L. & N. R. Co. Ala. (21 So. 952.) **Doctrine of comparative negligence** does not prevail.—S. & N. R. Co. v. Sullivan, 59 Ala. 272; Tanner v. L. & N. R. Co., 60 Ala. 621; M. & C. R. Co. v. Copeland, 61 Ala. 376; Cook v. C. R. & B. Co., 67 Ala. 533. **When complaint charges wanton or intentional injury, the plea of contributory negligence is no answer.**—S. & N. R. Co. v. Sullivan, 59 Ala. 272; 282; Tanner v. L. & N. R. Co., 60 Ala. 621 (correcting Gov. St. R. Co. v. Hanlon, 53 Ala. 70); Cook v. C. R. & B. Co., 67 Ala. 533; C. R. & B. Co. v. Letcher, 69 Ala. 106; G. P. R. Co. v. Lee, 92 Ala. 262; Pannell v. N. F. & S. R. Co., 97 Ala. 298; Stringer v. Ala. Min. R. Co., 99 Ala. 397; G. P. R. Co. v. Ross, 100 Ala. 490; L. & N. R. Co. v. Richards, 100 Ala. 365; Highland Ave. & Belt R. Co. v. Maddox, 100 Ala. 618; L. & N. R. Co. v. Hurt, 101 Ala. 34; A. G. S. R. Co. v. Dobbs, 101 Ala. 219. **The words "gross" and "reckless," as applied to negligence, defined.**—Stringer v. Ala. Min. R. Co., 99 Ala. 397; L. & N. R. Co. v. Barker, 96 Ala. 435; K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412. **Pleadings and evidence.**—L. & N. R. Co. v. Markee, 103 Ala. 160 (overruling a number of cases); Verner v. A. G. S. R. Co., 103 Ala. 574; A. G. S. R. Co. v. Hall, 105 Ala. 599; L. & N. R. Co. v. Stutts, 105 Ala. 368; Williams v. Woodward I. Co., 106 Ala. 254; Jones v. Ala. M. R. Co., 107 Ala. 400; Levin v. M. & C. R. Co., 109 Ala. 332. McDonald v. Montgomery St. Ry. Co., 110 Ala. 161; Buckalew v. T. C. I. & R. Co., 112 Ala. 146; L. & N. R. Co. v. Anchors

(MS.). **Liability of hirer for negligent killing of convict.**—Buckalew v. T. C. I. & R. Co., 112 Ala.146. Statute does not apply when wrongful act committed in another state.—L. & N. R. Co. v. Williams, Ala. (21 So. 938).

28 (2594) (2890) (2523) (2129). **When beneficial owner must sue.**—Actions on promissory notes, bonds, or other contracts, express or implied, for the payment of money, must be prosecuted in the name of the party really interested, whether he has the legal title or not, subject to any defense the payor, obligor, or debtor may have had against the payee, obligee, or creditor, previous to notice of assignment or transfer, except that, in actions upon bills of exchange and promissory notes payable at a bank or banking house, or at a designated place, and other commercial instruments, the suit must be instituted in the name of the person having the legal title.

Judgments not contracts within the statute.—Smith v. Harrison, 33 Ala. 706; Johnson v. Martin, 54 Ala. 271; Masterson v. Gibson, 56 Ala. 56; Wolffe v. Eberlein, 74 Ala. 99. **Nor official bond of county treasurer.**—Morrow v. Wood, 56 Ala. 1. **Nor bond for title to lands.**—Skinner v. Bedell, 32 Ala. 44. **Nor a promise to pay cotton.**—Auerbach v. Pritchett, 58 Ala. 451. **Nor warranty of soundness of slave.**—Newsom v. Huey, 36 Ala. 37. **Nor replevin bond in attachment,** when erroneously made payable to officer making the levy. Agnew v. Leath, 63 Ala. 345. **Nor receipt by maker of promissory note,** containing promise to return or account for it to the person from whom he received it.—Henley v. Bush, 33 Ala. 636. **Ejectment not within the statute.** Dane v. Glennor, 72 Ala. 160. **Policy of insurance is a contract for payment of money.**—Perry v. Merchants Ins. Co., 25 Ala. 355; Insurance Co. v. Forcheimer, 86 Ala. 541. **When bill of exchange within the statute.**—Ala. Mining Co. v. Brainard, 35 Ala. 476. **Receiver in chancery is the "party really interested,"** under facts of this case.—Leonard v. Storrs, 31 Ala. 488. **Also a distributee of an estate, as to note allotted to him.**—Carter v. Owens, 41 Ala. 217; Clark v. Moses, 50 Ala. 326. **Also a county superintendent of education,** as to notes made payable to township trustees.—Yerby v. Sexton, 48 Ala. 311. **Also transferee of lost note or bond.**—Glassell v. Mason, 32 Ala. 719. **Also a substituted contractor,** under facts of this case.—Pensacola R. R. Co. v. Scaffer, 76 Ala. 233. **Also a married woman,** as to note for corpus of her property taken in the name of her husband.—Grantham v. Payne, 77 Ala. 584. **When assignee of a policy of insurance cannot maintain suit.**—Fire Ins. Co. v. Felrath, 77 Ala. 194. **When debtor places notes in hands of another,** the proceeds to be paid over to his creditors, the debtor may sue in his own name for breach of contract.—Shotwell v. Gilkey, 31 Ala. 724. **Promise to one person for the benefit of another; when either may sue.**—Mason v. Hall, 30 Ala. 599; Shotwell v. Gilkey, 31 Ala. 724; Rice v. Rice, 106 Ala. 636. **A promise to one person to pay a debt due from him to another may be enforced by that other, in his own name.**—Young v. Hawkins, 74 Ala. 370; Coleman v. Hatcher, 77 Ala. 217; North Ala. Development Co. v. Short, 101 Ala. 333. **When note transferred to one agreeing to pay another part of the proceeds, that other cannot sue for such fractional part.**—Pleasants v. Erskine, 82 Ala. 386. **The payee of a non-negotiable rent note, the proceeds of which belong to a purchaser of the rented premises, cannot maintain suit against the maker.**—Moses v. Ingram, 99 Ala. 483. **Contract for transmission of telegraph message;** who may sue for breach.—Daughtery v. Am. U. Tel. Co., 75 Ala. 168; Kennon v. W. U. Tel. Co., 92 Ala. 399; W. U. Tel. Co. v. Wilson, 93 Ala. 32. **Suit to recover back money paid on an option not within the statute.**—Buck v. Carlisle, 98 Ala. 580. **Transferee of non-negotiable note, though by separate instrument, may sue in his own name.**—P. & M. Ins. Co. v. Tunstall, 72 Ala. 142; Stephens v. Adams, 93 Ala. 117. **Also transferee of non-negotiable note transferred in violation of agreement** unsupported by a consideration.—Johnson v. Washburn, 98 Ala. 258. **Also holder of note made by executor for debt of testator, transferred by delivery.**—Taylor v. Perry, 48 Ala. 240. **Also the holder, by delivery merely, of a coupon payable to bearer.**—K. C. M. & B. R. v. Cobb, 100 Ala. 228. **The person to whom payment may be legally made and who may discharge the debtor, may sue in his own name,** although the money, when collected, is not for his use. Yerby v. Sexton, 48 Ala. 311; Hirschfelder v. Mitchell, 54 Ala. 419; Tilley v. Harrison, 91 Ala. 295; Bibb v. Hall, 101 Ala. 79; Rice v. Rice, 106 Ala. 636. **When sole legatee not within statute.**—Wood v. Cosby, 76 Ala. 557. **Agent may sue to recover money of principal lent by him without authority.** Bryan v. Wilson, 27 Ala. 208. **Vendor of leased premises, retaining rent notes to collect for benefit of vendee, is without beneficial interest.**—Moses

v. Ingram, 99 Ala. 483. **Statute does not apply to suits in equity.**—Dawson v. Burruss, 73 Ala. 111; McGhee v. Imp. & T. Nat. Bank, 93 Ala. 192; Moore v. Pope, 97 Ala. 462. **Averments of ownership.**—Bryan v. Wilson, 27 Ala. 208; Dwyer v. Kennemore, 31 Ala. 404; Lakeside Land Co. v. Dromgoole, 89 Ala. 505. **Plea averring that plaintiff is not the beneficial owner,** good.—Bryan v. Wilson, supra; Hirschfeld v. Mitchell, 54 Ala. 419; Lakeside Land Co. v. Dromgoole, supra; Hanna v. Ingram, 93 Ala. 482. **Possession of non-negotiable note payable to another or bearer, insufficient proof of ownership when denied.**—Cobb v. Bryant, 86 Ala. 316. **Commercial instruments not within the statute.**—Carmelich v. Mims, 88 Ala. 335; Lakeside Land Co. v. Dromgoole, 89 Ala. 505; Hanna v. Ingram, 93 Ala. 482; K. C. M. & B. R. v. Cobb, 100 Ala. 228; Ala. Coal Mining Co. v. Brainard, 35 Ala. 476; Cobb v. Bryant, supra. **Nor "labor tickets," "not transferable."**—Tabler v. S. L. I. & C. Co., 79 Ala. 377. **Effect of transfer of claim, pending suit.**—Dolberry v. Trice, 49 Ala. 207; Neilson v. Slade, Ib. 253; Wilkerson v. McDougal, 48 Ala. 517; Davis v. Davis, 93 Ala. 173.

29 (2595) (2891) (2524) (2130). **Beneficiary sole party on record.**—In all cases where suits are brought in the name of the person having the legal right for the use of another, the beneficiary must be considered as the sole party on the record.

Lehman v. Clark, 85 Ala. 109; Gardner v. M. & N. R. Co., 102 Ala. 635.

30 (2596) (2909) (2543) (2147). **Action not abated by death of nominal plaintiff.**—When suit is brought for the use of another, the death of the nominal plaintiff does not abate the suit, but it proceeds in the name of the beneficiary; when the beneficiary dies, it must be revived in the name of his personal representative, whether the nominal plaintiff be living or not.

31 (2597) (2915) (2549) (2151). **Suits on lost notes, etc.; exception.**—Suit may be brought on a bond, note, bill of exchange, or other mercantile instrument, which has been lost or destroyed by accident; and if affidavit is made by the plaintiff of such loss and destruction, and the contents thereof, and that the same has not been paid or otherwise discharged, and accompanies the complaint, it must be received as presumptive evidence, both of the contents and loss or destruction of such instrument, unless the defendant by plea, verified by affidavit, denies the execution of such bond, note, or bill, or the indorsement, acceptance, or the contents thereof, in which case proof of such execution, indorsement, acceptance, or contents must be made by the plaintiff; but this section must not be so construed as to authorize a suit for the recovery of bank-notes, or bills issued to circulate as money, and alleged to be lost or destroyed. When the suit is against an executor or administrator, he may controvert the oath of the plaintiff of the loss, destruction, or contents of the instrument sued on, by swearing to the best of his knowledge and belief.

Statute is cumulative and does not take away existing remedies.—Br. Bank v. Tillman, 12 Ala. 214. **Suits may be brought on lost notes or bonds without affidavit of loss;** affidavit merely shifts burden of proof.—Bell v. Moore, 9 Ala. 824; Br. Bank v. Tillman, 12 Ala. 214; Bank of Mobile v. Williams, 13 Ala. 544; Glassell v. Mason, 32 Ala. 719; Bank of Mobile v. Meagher, 33 Ala. 622; Chaudron v. Hunt, 3 Stew. 31. **Contract offered in evidence must correspond with that described in the affidavit.**—Boylston v. Sherran, 31 Ala. 538. **If instrument found before trial it may be introduced in evidence.**—Carlisle v. Davis, 7 Ala. 42. **If instrument lost, pending suit, its contents and loss may be proved without amending the complaint.**—Lester v. Governor, 12 Ala. 624. **If affidavit is made, or, if made and denied by verified plea, loss and contents of instrument must be proved.**—Glassell v. Mason, 32 Ala. 719; Parker v. Edwards, 85 Ala. 246; s. c., 88 Ala. 356. **Affidavit necessary when suit on lost**

instrument upon which plaintiff could not sue at common law because of the loss.—Posey v. Decatur Bank, 12 Ala. 802.

32 (2598) (2916) (2550) (2152). **Execution not to issue in such case till bond given.**—When suit is brought under the provisions of the preceding section, to recover upon a bill of exchange or other instrument, which, by the provisions of this Code, is declared subject to the law merchant, and alleged to have been lost or destroyed before the maturity thereof, no execution must issue on the judgment until the plaintiff execute bond payable to the defendant, with surety, in twice the amount of the recovery, with condition to pay all such damages as he may sustain by reason of the judgment and the payment thereof.

33 (2599) (2922) (2557) (2159). **When ratable recovery on contract allowed.**—When a person contracts for the performance of services by himself for a stipulated period of time, and is prevented from full performance of the contract by death, his personal representative may recover a ratable compensation for the service actually rendered, notwithstanding the entirety of the contract.

Dryer v. Lewis, 57 Ala. 551; Patrick v. Petty, 83 Ala. 420.

34 (2669) (2983) (2634) (2232). **New actions on same contract.** Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

Discharged servant, whose wages are payable in installments, may sue and recover on each installment as it falls due.—Davis v. Preston, 6 Ala. 83; Strauss v. Meertief, 64 Ala. 299; Howard College v. Turner, 71 Ala. 729; Wilkinson v. Black, 80 Ala. 329; Ryall v. Prince, 82 Ala. 264; Liddell v. Chidester, 84 Ala. 508; M. & M. R. Co. v. Gilmer, 85 Ala. 422; Hood v. League, 102 Ala. 228.

35 (2600) (2920) (2555) (2157). **Actions survive to and against representative.**—All actions on contracts, express or implied, all personal actions, except for injuries to the person or reputation, survive in favor of and against the personal representatives.

Actions for seduction of wife, or assault and battery, abate on death of defendant.—Garrison v. Burden, 40 Ala. 513; Hadley v. Bryars, 58 Ala. 185. **Judgment in favor of deceased plaintiff void,** and may be set aside at subsequent term.—Moore v. Easley, 18 Ala. 619. See also citations to section 38 (2603).

36 (2601) (2921) (2556) (2158). **Real actions survive to or against heir or representative.**—Real actions to try the title, or for the recovery of the possession of lands, and actions for injuries to lands, survive in favor of heirs, devisees, or personal representatives, and against heirs, devisees, tenants, or personal representatives, according to their respective rights; and the court must direct the record and judgment to be so framed as to secure their rights and declare their respective interests.

In actions respecting lands, if the title only is in controversy, suit must be revived by or against the heirs; if profits or damages only, by or against the representative; if both, by or against both heirs and representatives.—Ex parte Nabors, 7 Ala. 459; Rowland v. Ladiga, 21 Ala. 9; Mason v. Storrs, 34 Ala. 179; Ex parte Swan, 23 Ala. 192; Crutchfield v. Hudson, 23 Ala. 393; Ridgeway v. Waugh, 51 Ala. 423; Evans v. Welch, 63 Ala. 250; Ex parte Sayre, 69 Ala. 184; Marcy v. Howard, 91 Ala. 133.

37 (2602) (2914) (2548) (2150). **Action by or against woman**

not abated by marriage.—A suit brought by or against an unmarried woman does not abate on her marriage, but, the marriage being suggested upon the record, the suit proceeds in her name acquired by the marriage, and judgment is rendered accordingly. If judgment be rendered against her, it may be satisfied out of her separate estate.

On marriage of plaintiff suing as administratrix, husband should be joined as co-plaintiff.—M. & C. R. Co. v. Womack, 84 Ala. 149.

38 (2603) (2908) (2542) (2146). **When actions do not abate by death; revivor in twelve months.**—No action abates by the death or other disability of the plaintiff or defendant, if the cause of action survive or continue; but the same must, on motion, within twelve months thereafter, be revived in the name of or against the legal representative of the deceased, his successor, or party in interest; or the death of such party may be suggested upon the record, and the action proceed in the name of or against the survivor.*

"Other disability" is any intervening disability save death.—Dumas v. Robbins, 48 Ala. 545. **Suit cannot be revived against foreign representative.** Bank v. McDonald, 22 Ala. 474. **Action against one partner on partnership obligation may be revived.**—Ex parte Ware, 48 Ala. 223. **But where action is against partnership in firm name,** and one partner dies, revivor not necessary.—Comer v. Reid, 93 Ala. 391. **Filing claim against estate in chancery** is an action, and may be revived.—Reynolds v. Crook, 95 Ala. 570. **Action by trustee who resigns must be revived** in the name of his successor.—Dumas v. Robbins, 48 Ala. 545. **Suit must be revived, or motion made, within statutory period.**—Waller v. Nelson, 48 Ala. 531; Pope v. Irby, 57 Ala. 105; Brown v. Tutwiller, 61 Ala. 372; Evans v. Welch, 63 Ala. 250; Ex parte Sayre, 69 Ala. 184; Phœnix Ins. Co. v. Moog, 81 Ala. 335 (in conflict, Ex parte Jones, 54 Ala. 108). **Voluntary appearance is a waiver of motion to revive.**—Parker v. Abrams, 50 Ala. 35. **Suggestion on the record is sufficient motion to remove bar of statute, but it cannot rest in parol.**—Rupert v. Elston, 35 Ala. 79; Waller v. Nelson, 48 Ala. 531; Pope v. Irby, 57 Ala. 105. **Suggestion of "death on the record and action proceeds in the name of survivor without revival."**—Gregg v. Bethea, 6 P. 9; Evans v. Welch, 63 Ala. 250; Phœnix Ins. Co. v. Moog, 81 Ala. 335; Davis v. Davis, 93 Ala. 173. **Does not apply to suits in equity.**—Ex parte Kirtland, 49 Ala. 403; Fearn v. Ward, 80 Ala. 555. **Nor to settlement of administration in probate court.**—Glenn v. Billingslea, 64 Ala. 345. **On death of one of two co-plaintiffs, right of action vests in survivor,** and, on death of latter, vests in his representative.—Bebee v. Miller, Minor, 364.

39 (2604) (2905) (2539) (2143). **Joint promises in writing; how construed.**—When two or more persons are jointly bound by judgment, bond, covenant, or promise in writing of any description whatsoever, the obligation or promise is in law several as well as joint, and suit may be instituted thereon against the legal representatives of such as are dead.

Partnership obligations are within the statute.—Duramus v. Harrison, 26 Ala. 326; Cox v. Harris, 48 Ala. 538; Haralson v. Campbell, 63 Ala. 278; Goldsmith v. Eichold, 94 Ala. 116; Baldridge v. Eason, 99 Ala. 516. **Suit may be brought against one, several, or all joint obligors.**—McKee v. Griffin, 60 Ala. 427; Steed v. Barnhill, 71 Ala. 157; First Nat. Bank v. Dawson, 78 Ala. 67; Lott v. Mobile Co., 79 Ala. 69; McNeil v. Davis, 105 Ala. 657. **Judgment may be in favor of one and against another, where several sued on joint obligation.**—Burns v. Moore, 76 Ala. 339. **Or against surviving defendant and representative of deceased co-defendant severally.**—Parker v. Abrams, 50 Ala. 35.

40 (2605) (2904) (2538) (2142). **Suits against partnership by firm name, or against one partner.**—Two or more persons associated

*"Eighteen" changed to "twelve," by joint committee, here and elsewhere in the chapter.

together as partners in any business or pursuit, who transact business under a common name, whether it comprise the names of such persons or not, may be sued by their common name, and the summons in such case being served on one or more of the associates, the judgment in the action binds the joint property of all the associates in the same manner as if all had been named defendants, had been sued upon their joint liability, and served with process; any one of the associates, or his legal representative, may also be sued for the obligation of all.

Does not authorize suit by partners in firm name.—Reid v. McLeod, 20 Ala. 576; Lanford v. Patton, 44 Ala. 584; Moore v. Burns, 60 Ala. 269; Moore v. Watts, 81 Ala. 261; Tompkins v. Levy, 87 Ala. 263; Foreman v. Weil, 98 Ala. 495; Simmons v. Titche, 102 Ala. 317. Actions commenced by attachment within.—McCaskey v. Pollock, 82 Ala. 174. **Actions for libel,** committed by all partners, or by one, in the prosecution of the business, within.—Atlantic Glass Co. v. Paulk, 83 Ala. 404. **Married women doing business under partnership name,** or as a partner, within, and cannot plead coverture.—Yarbrough v. Bush, 69 Ala. 170; LeGrand v. Eufaula Bank, 81 Ala. 123; McCaskey v. Pollock, 82 Ala. 174; Rabitte v. Orr, 83 Ala. 185; Schlapback v. Long, 90 Ala. 525; Belser v. Tuscumbia Banking Co., 105 Ala. 514. **Suit against partners by common name,** judgment binds only partnership property; against individuals composing it, binds property of those served.—Savage v. Walshe, 26 Ala. 619; Wyman v. Stewart, 42 Ala. 163; Cox v. Harris, 48 Ala. 538; McCoy v. Watson, 51 Ala. 466; Shepard v. Lightfoot, 56 Ala. 506; Haralson v. Campbell, 63 Ala. 278; Yarbrough v. Bush, 69 Ala. 170; Ladiga v. Smith, 78 Ala. 108; Watts v. Rice, 75 Ala. 289; LeGrand v. Eufaula Bank, 81 Ala. 123; McCaskey v. Pollock, 82 Ala. 174; Rabitte v. Orr, 83 Ala. 185; Dollins v. Pollock, 89 Ala. 351; Powers v. Robinson, 90 Ala. 225; Comer v. Reid, 93 Ala. 391; Baldridge v. Eason, 99 Ala. 516. **When suit against individual members of firm.**—Leinkauff v. Munter, 76 Ala. 194; Dollins v. Pollock, 89 Ala. 351; Blackman v. Moore-Handley Co., 106 Ala. 458. (See also supra.) **One sued for obligation of all.**—McCullough v. Judd, 20 Ala. 703; Duramus v. Harrison, 26 Ala. 326; Waldron v. Simmons, 28 Ala. 629; Ex parte Ware, 48 Ala. 223; Pearce v. Shorter, 50 Ala. 318; Hall v. Cook, 69 Ala. 87; Hall v. Green, 69 Ala. 368; Clark v. Jones, 87 Ala. 474; Alexander v. King, 87 Ala. 642; Alexander v. Jones, 90 Ala. 474; Goldsmith v. Eichold, 94 Ala. 116; Bradley Fert. Co. v. Pollock, 104 Ala. 402. **Creditor partnership may sue members of debtor partnership,** where they have a common partner, provided he is not made a defendant.—Lacy v. LeBruce, 6 Ala. 904; Alexander v. King, 87 Ala. 642; Alexander v. Jones, 90 Ala. 474. **Revivor not necessary where one partner dies pending suit against partnership** by common name.—Comer v. Reid, 93 Ala. 391. **Effect of acceptance of service by one partner.**—Bowin v. Sutherlin, 44 Ala. 278. **Statute does not relate to suits in equity.**—Opelika v. Daniel, 59 Ala. 211.

41 (2606) (2910) (2544) (2148). **Revivor on death of defendant pending suit.**—If the cause of action survive, on the death of a defendant, suggestion thereof must be made and entered of record, and the proper representative may come in and voluntarily make himself a party defendant; but if such representative do not come in and make himself a party, citation must issue to him, on his being made known, to appear at the next term and defend, and after service of such citation, the suit may be revived against him; but final judgment must not be rendered against a personal representative, if he objects, until after the expiration of twelve months from the grant of letters testamentary or of administration.

Waddill v. John, 48 Ala. 232; s. c., 57 Ala. 93; Parker v. Abrams, 50 Ala. 35; Pope v. Irby, 57 Ala. 105; Brown v. Tutwiler, 61 Ala. 372; Evans v. Welch, 63 Ala. 250; Ex parte Sayre, 69 Ala. 184; Phœnix Ins. Co. v. Moog, 81 Ala. 335; Donnor v. Quartermas, 90 Ala. 164; Bobo v. Gunnels, 92 Ala. 601; Reynolds v. Crook, 95 Ala. 570.

42 (2607) (2911) (2545) (2149). **Discontinuance entered as to**

parties not served, or alias issued.—When any suit is instituted against two or more persons upon any joint or joint and several contract, or upon any joint or joint and several cause of action, the plaintiff may, at his election, sue out an alias summons, or discontinue as to those on whom the summons is not served, and proceed to judgment against those on whom it has been executed.

Statute works no change in common law in respect to actions ex delicto. Slade v. Street, 77 Ala. 576; Montgomery Gas L. Co. v. M. & E. R. Co., 86 Ala. 372. **Actions ex delicto may be discontinued as to one or more, whether served or not,** without discontinuing the entire action.—Slade v. Street, 77 Ala. 576; Montgomery Gas L. Co. v. M. & E. R. Co., 86 Ala. 372. **If action ex contractu is continued as to one not served, or discontinued as to one, all having been served,** the whole action is discontinued.—Mock v. Walker, 42 Ala. 668; Curtis v. Gaines, 46 Ala. 455; Reynolds v. Simpkins, 67 Ala. 378; Kendall v. Lassiter, 68 Ala. 181; Slade v. Street, 77 Ala. 576; Jones v. Englehardt, 78 Ala. 505. **Definition and effect of discontinuance.**—Whitaker v. VanHorn, 43 Ala. 255; Garrett v. Lynch, 44 Ala. 324; Curtis v. Gaines, 46 Ala. 455.

43 (2608) (2912, 2913) (2546, 2547). **Death of one of several joint defendants.**—The death of one or more defendants jointly sued does not, as to the defendant dying, abate the suit, if the cause of action survive, but may be revived against the proper representative of such defendant, and may proceed against such representative and the surviving defendant or defendants, jointly or severally, at the election of the plaintiff; the judgments therein rendered must be several, but against a personal representative, if he objects, judgment must not be rendered until after the expiration of twelve months from the grant of letters testamentary or of administration; the satisfaction of one judgment is, as to the plaintiff, a satisfaction of all, except as to costs; but if requested, the plaintiff must assign, without recourse on him, the judgment against a principal debtor to the party from whom satisfaction is received, if such principal debtor was bound to the indemnity of such party.

Statute permissive only; judgment may be rendered against survivors without revivor.—Garrett v. Lynch, 44 Ala. 324. **Representative may consent to final judgment before expiration of statutory period.**—Pope v. Irby, 57 Ala. 105. Form of judgment.—Parker v. Abrams, 50 Ala. 35.

44 (2609) (2919) (2554) (2156). **Plaintiff suing several may recover against one or more; liability for costs.**—When a suit is instituted against several defendants, whether sued as partners or otherwise, the plaintiff may recover against one or more, but is liable to costs to those against whom he does not obtain judgment.

Defendant against whom plaintiff fails, is entitled to judgment for his "aliquot proportion of the whole costs."—Walker v. Mobile Dock Co., 31 Ala. 529; Burns v. Moore, 76 Ala. 339; Neff v. Edwards, 81 Ala. 246; Handley v. Lawley, 90 Ala. 527.

CHAPTER 3.

ADMINISTRATION OF ESTATES.

ARTICLE 1.—GRANT OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. 45–79.

2.—APPOINTMENT OF NON-RESIDENTS AS EXECUTORS AND ADMINISTRATORS, AND SPECIAL PROVISIONS IN RELATION TO THEM. 80–89.

3.—REMOVAL, RESIGNATION AND REQUIRING ADDITIONAL BONDS OF EXECUTORS, AND ADMINISTRATORS; APPOINTMENT OF ADMINISTRATORS DE BONIS NON; PROCEEDINGS ON DISCOVERY OF WILL AFTER GRANT OF LETTERS. 90–114.

4.—COLLECTION OF DECEDENT'S PERSONAL PROPERTY; INVENTORY AND APPRAISEMENT THEREOF; NOTICE OF APPOINTMENT. 115–124.

5.—PAYMENT AND SETTLEMENT OF DEBTS; PRESENTATION OF CLAIMS. 125–141.

6.—SALES OF PERSONAL PROPERTY FOR PAYMENT OF DEBTS, AND FOR DISTRIBUTION. 142–153.

7.—RENTING AND SALE OF REAL ESTATE FOR PAYMENT OF DEBTS, AND FOR DIVISION. 154–187.

8.—SALE AND PARTITION OF PARTNERSHIP LANDS IN WHICH A DECEDENT HAD AN INTEREST AS PARTNER. 188–200.

9.—SETTLEMENTS AND DISTRIBUTIONS. 201–258.

10.—PAYMENT OF LEGACIES, AND PARTIAL DISTRIBUTION BEFORE FINAL SETTLEMENT. 259–277.

11.—KEEPING ESTATES TOGETHER. 278–289.

12.—INSOLVENT ESTATES. 290–329.

13.—SUITS BY AND AGAINST EXECUTORS AND ADMINISTRATORS, AND ENFORCEMENT OF JUDGMENTS AND DECREES; ADMINISTRATORS AD LITEM; AUTHORITY OF FOREIGN EXECUTORS AND ADMINISTRATORS TO SUE FOR, AND RECOVER OR RECEIVE PROPERTY. 330–363.

ARTICLE 1.

GRANT OF LETTERS TESTAMENTARY AND OF ADMINISTRATION.

45 (2003) (2339) (1975) (1657). **Grant of letters testamentary.** Whenever a will has been admitted to probate in this state, the judge of the court in which the will was probated may issue letters testamentary, according to the provisions of this chapter, to the persons named as the executors in such will, if they are fit persons to serve as such.

Grant of letters on estate of living man, supposed to be dead, void. Duncan v. Stewart, 25 Ala. 408; Bean v. Chapman, 73 Ala. 140. **Jurisdiction of probate court, in grant of letters, is original, general and unlimited.** Ikelheimer v. Chapman, 32 Ala. 676; Gray v. Cruise, 36 Ala. 559; Barclift v. Treece, 77 Ala. 528; Sowell v. Sowell, 41 Ala. 359. **Letters testamentary must be granted before executor is invested with any legal authority.**—Cleveland v. Chandler, 3 Stewart 489; Gardner v. Gantt, 19 Ala. 666; Wood v. Cosby, 76 Ala. 557; Brock v. Frank, 51 Ala. 85. **Grant of administration prima facie evidence of facts giving court jurisdiction.** Eslava v. Elliott, 5 Ala. 264; Sims v. Boynton, 32 Ala. 353; Ikelheimer v. Chapman, 32 Ala. 676; Gray v. Cruise, 36 Ala. 559; Watkins v. Collins, 37 Ala. 587; Coltart v. Allen, 40 Ala. 155; Davis v. Swearingen, 56 Ala. 31; Burke v. Mutch, 66 Ala. 568; Barclift v. Treece, 77 Ala. 528; Wolfe v. Underwood, 97 Ala. 375. **Grant of administration not void, by subsequent probate of will.** Grant revocable, but rightful acts, while in force, valid.—Floyd v. Clayton, 67 Ala. 265; Watson v. Glover, 77 Ala. 323; Jordan v. Thompson, 67 Ala. 469. **After grant of administration, issue of letters is ministerial.**—Glover v. Lyon, 57 Ala. 365. **Grant of administration by proper tribunal invests representative with exclusive title to assets within jurisdiction.**—Hooper v. Scarborough, 57 Ala. 510. **The judg-**

ments and decrees of probate court are protected, on collateral attack, by presumption that they were rightful.—Savage v. Benham, 17 Ala. 119; Miller v. Jones, 26 Ala. 247; Wright v. Ware, 50 Ala. 549; Wharton v. Moragne, 62 Ala. 201; Burnett v. Nesmith, 62 Ala. 261; Burke v. Mutch, 66 Ala. 568; Landford v. Dunklin, 71 Ala. 594; Kling v. Connell, 105 Ala. 590. **No necessity for administration, where there are no debts and no personal property for distribution.**—Owens v. Childs, 58 Ala. 113; Fretwell v. McLemore, 52 Ala. 124; Sullivan v. Lawler, 72 Ala. 68.

46 (2004) (2340) (1976) (1658). **Persons disqualified as executors.**—No person must be deemed a fit person to serve as executor who is under the age of twenty-one years, or who has been convicted of an infamous crime, or who, from intemperance, improvidence, or want of understanding, is incompetent to discharge the duties of the trust.

An intermeddler with the assets, before administration, not per se disqualified from serving as administrator.—Bingham v. Crenshaw, 34 Ala. 683. **Letters of administration issued to minor not void.**—Davis v. Miller, 106 Ala. 154.

47 (2005) (2369) (2007) (1687). **Form of letters testamentary.** Letters testamentary may be substantially in the following form:

"The State of Alabama, ——— county. } Court of Probate.

The will of —— —— having been duly admitted to record in said county, letters testamentary are hereby granted to —— ——, the executor named in said will, who has complied with the requisitions of the law, and is authorized to take upon himself the execution of such will. Witness my hand, and dated this —— day of ——, 18—.

——, Judge of Probate."

48 (2006) (2341) (1977) (1659). **If executors disqualified, administration granted.**—If the person named in the will as sole executor is, or if all the persons named therein as executors are, from any of the causes enumerated in the second preceding section, unfit to serve as executor or executors, letters of administration, with the will annexed, may be granted on the testator's estate, under the provisions of section 53 (2011).

49 (2007) (2342) (1978) (1660). **When married woman entitled to letters testamentary.**—No married woman is entitled to letters testamentary unless her husband consents thereto, by a writing signed by him and filed with the judge of probate; and, by giving such consent, he becomes responsible for her acts jointly with her.

During coverture, administratrix incapable of valid act, cannot control husband in disposition of assets—Pistole v. Street, 5 Port. 64; Hopper v. Steele, 18 Ala. 828; Rambo v. Wyatt, 32 Ala. 363. **Upon marriage of administratrix, husband acquires right of administration for joint lives.**—Pistole v. Street, 5 Port. 64; Williamson v. Hill, 6 Port. 184; Kavanaugh v. Thompson, 16 Ala. 817; Carlisle v. Tuttle, 30 Ala. 613; Dowty v. Hall, 83 Ala. 165. **Married woman resigning, authority of husband terminates.**—Rambo v. Wyatt, 32 Ala. 363. **Husband's consent presumed when validity of wife's administration collaterally assailed.**—English v. McNair, 34 Ala. 40.

50 (2008) (2343) (1979) (1661). **On removal of disability, minor or married woman entitled to letters.**—If the disability of a person under age, or of a married woman, named as executor in any will, is removed before the administration of such will is completed, such person is entitled to supplementary letters testamentary, to be

issued in the same manner as original letters, and shall thereupon be authorized to join in the execution of such will with the persons previously appointed.

Minor, ratifying appointment after attaining majority, letters cannot be revoked.—Davis v. Miller, 106 Ala. 154.

51 (2009) (2344) (1980) (1662). **Renunciation of right to act as executor; how made.**—Any person named as executor in a will may renounce such appointment by appearing before the judge of probate and declaring such renunciation, which must be entered of record; or such person may renounce his appointment by an instrument in writing executed by him and acknowledged before an officer authorized to take and certify acknowledgments to conveyances, whether within or beyond the state; and such instrument must be filed and recorded in the office of the judge of probate of the county in which the will is probated.

Widow's primary right renounced only by appearance before probate judge, or by statutory instrument.—Dunham v. Roberts, 27 Ala. 701; Curtis v. Williams, 33 Ala. 570; Sowell v. Sowell, 41 Ala. 359.

52 (2010) (2345) (1981) (1663). **On renunciation, etc., by one, letters granted to others named.**—If any person named as executor in the will renounces his appointment, or fails to apply for letters testamentary within thirty days after probate, and any other persons named therein as executors make application for such letters, and are fit persons to discharge the trust, letters testamentary must issue to them, if they comply with the other requisitions of the law.

If person named in will as executor fails to apply for letters within time prescribed by law, prior right waived.—Curtis v. Burt, 34 Ala. 729; Wheat v. Fuller, 82 Ala. 572; Keith v. Proctor, Ala. (21 So. 502).

53 (2011) (2346, 2347) (1982, 1983) (1664, 1665). **Administration granted in stated order on failure of executor to apply, etc.** If no person is named in the will as executor, or if they all renounce, or fail to apply within thirty days after probate, or are unfit persons to serve, the residuary legatee, or, if he fails to apply within such time, refuses to accept, or is unfit to serve, then the principal legatee is entitled to letters of administration with the will annexed; and if both residuary and principal legatees fail to apply within such time, refuse to accept, or are unfit to serve, then such letters may be granted to the same persons, and in the same order, as letters of administration are granted in cases of intestacy.

See citations to preceding section.

54 (2012) (2348) (1984) (1666). **On death of sole or surviving executor, who entitled to administration.**—No executor of an executor can, as such, administer on the estate of the first testator; but on the death of a sole or surviving executor, letters of administration with the will annexed may be granted to the persons entitled thereto, as in any case in which a sole executor has renounced his appointment.

55 (2013) (2349) (1985) (1667). **Letters of administration; by**

what court and in what county granted.—Courts of probate, within their respective counties, have authority to grant letters of administration on the estates of persons dying intestate, as follows:

1. Where the intestate, at the time of his death, was an inhabitant of the county.

2. Where the intestate, not being an inhabitant of the state, died in the county, leaving assets therein.

3. Where the intestate, not being an inhabitant of the state, dies out of the county, leaving assets therein.

4. Where the intestate, not being an inhabitant of the state, dies, leaving no assets therein, and assets are afterwards brought into the county.

5. Where the intestate, being an inhabitant of the state, dies, leaving no assets subject to administration in the county of his residence, and no administration has been granted in such county within three months after the death of the intestate, then administration may be granted in any county where the intestate leaves assets.

Jurisdiction of court to grant letters; nature of.—Savage v. Benham, 17 Ala. 119; Ikelheimer v. Chapman, 32 Ala. 676; Sims v. Boynton, 32 Ala. 353; Bradley v. Broughton, 34 Ala. 694; Gray v. Cruise, 36 Ala. 559; Landford v. Dunklin, 71 Ala. 594; Barclift v. Treece, 77 Ala. 528. **When grant of letters voidable merely.**—Bradley v. Broughton, 34 Ala. 694; Watson v. Collins, 37 Ala. 587; Ex parte Maxwell, 37 Ala. 362; Jennings v. Moses, 38 Ala. 402; Coltart v. Allen, 40 Ala. 155; Jordan v. Thompson, 67 Ala. 469; Wolffe v. Eberlein, 74 Ala. 99; Barclift v. Treece, 77 Ala. 528; Davis v. Miller, 106 Ala. 154; Koger v. Franklin, 79 Ala. 505. **When grant of letters void.**—Gayle v. Blackburn, 1 Stew. 429; Treadwell v. Rainey, 9 Ala. 590; Duncan v. Stewart, 25 Ala. 408; Mathews v. Douthitt, 27 Ala. 273; Coltart v. Allen, 40 Ala. 155; Gray v. Cruise, 36 Ala. 559; Moseley v. Mastin, 37 Ala. 216; Bean v. Chapman, 73 Ala. 140. **Letters of administration presumptive evidence of death and intestacy.**—Sims v. Boynton, 32 Ala. 353. **Acts under void letters, without validity; acts under voidable letters, valid.**—Hine v. Hussey, 45 Ala. 496; Hays v. Collier, 47 Ala. 726; Cunningham v. Thomas, 59 Ala. 158; Plowman v. Henderson, 59 Ala. 559; Floyd v. Clayton, 67 Ala. 265; Davis v. Miller, 106 Ala. 154. **Letters of administration but evidence of authority,** and administrator may act without them, if appointment has really been made.—Hosey v. Brasher, 8 Port. 559; Eslava v. Elliott, 5 Ala. 264. **Petition for letters incorrectly stating death of intestate, immaterial.**—Davis v. Miller, 106 Ala. 154. **Appointment of administrator cannot be collaterally assailed.**—Burke v. Mutch, 66 Ala. 568; Landford v. Dunklin, 71 Ala. 594; Bean v. Chapman, 73 Ala. 140; May v. Marks, 74 Ala. 249; Kling v. Connell, 105 Ala. 590. **"Assets" includes lands situated in the county.**—Anderson v. McGowan, 42 Ala. 280; Bishop v. Lalouette, 67 Ala. 197; Nicrosi v. Guily, 85 Ala. 365. **Want of assets above exemptions no reason for refusing to grant letters.**—Wheat v. Fuller, 82 Ala. 572. **Note in suit at death of plaintiff, assets** which will support grant of administration.—Barclift v. Treece, 77 Ala. 528. **Certificate of stock in Alabama corporation, "assets" authorizing grant of letters on estate of deceased non-resident.**—Winter v. London, 99 Ala. 263. **Grants under second subdivision.**—Gayle v. Blackburn, 1 Stew. 429; Childress v. Bennett, 10 Ala. 751; Miller v. Jones, 26 Ala. 247; Bradley v. Broughton, 34 Ala. 694; Bishop v. Lalouette, 67 Ala. 197.

56 (2014) (2350) (1986) (1668). **Order of grant of administration.**—Administration of an intestate's estate must be granted to some one of the persons herein named, if willing to accept, and fit to serve, in the following order:

1. The husband or widow.

2. The next of kin entitled to share in the distribution of the estate.

3. The largest creditor of the intestate residing within this state.

4. Such other person as the judge of probate may appoint.

Right of widow to letters.—Dunham v. Roberts, 27 Ala. 701; Williams v. McConico, 27 Ala. 572; Curtis v. Williams, 33 Ala. 570. **Right cannot be delegated.**—Curtis v. Williams, 33 Ala. 570. **Discussion of husband's right under former statute.**—Randall v. Shrader, 17 Ala. 333. **Father entitled in preference to brothers and sisters.**—Brown v. Hay, 1 Stew. & Port. 102. **Grandfather in preference to uncle.**—Phillips v. Peteet, 35 Ala. 696. **When creditor should apply.**—Curtis v. Williams, 33 Ala. 570; Wheat v. Fuller, 82 Ala. 572. **When creditor has not abandoned his right.**—Curtis v. Burt, 34 Ala. 729. **What an implied waiver of right; no preference after expiration of statutory period.**—Curtis v. Williams, 33 Ala. 570; Curtis v. Burt, 34 Ala. 729; Sowell v. Sowell, 41 Ala. 359; Forrester v. Forrester, 37 Ala. 398; Davis v. Swearingen, 56 Ala. 31; Ib., 539; Cunningham v. Thomas, 59 Ala. 158; Markland v. Albes, 81 Ala. 433; Wheat v. Fuller, 82 Ala. 572.

57 (2015) (2370) (2008) (1688). **Form of letters of administration.**—Letters of administration may be substantially in the following form:

"The State of Alabama, ——— county } Court of Probate.

Letters of administration on the estate of —— ——— (or letters of administration on the annexed will of —— ———, as the case may be), are hereby granted to —— ———, who has duly qualified and given bond as such administrator, and is authorized to administer such estate (or to execute such will, as the case may be). Witness my hand, and dated this —— day of ———, 18—.

—— ——, Judge of Probate."

58 (2016) (2351) (1987) (1669). **When right to letters waived.** If no person entitled to the administration of the estate, according to the first three subdivisions of the second preceding section, applies for letters within forty days after the death of the intestate is known, the persons so entitled must be held to have relinquished their right to the administration.

See citations to section 56 (2014).

59 (2017) (2352, 2353, 2354, 2355) (1988, 1989, 1990, 1991) (1670, 1671, 1672, 1673). **Rules as to grant of letters in certain cases.**—If several persons of the same degree of kindred to the intestate, computed by the rules of the civil law, are entitled to the administration, men are to be preferred to women, and the whole-blood to the half-blood; and when several persons are equally entitled thereto, the court may, in its discretion, grant letters to one or more of them; and when a married woman is entitled thereto, it may be granted to her husband in her right.

Davis v. Swearingen, 56 Ala. 539.

60 (2018) (2356) (1992) (1674). **Renunciation; how made.** Any person entitled to administration may relinquish his right thereto in the same manner as executors are authorized to renounce their appointment.

See citations to section 52 (2010).

61 (2019) (2357) (1993) (1675). **When letters must not be granted; examination of applicant, etc.**—No letters of administration must be granted until the expiration of fifteen days after the death of the intestate is known; and the court may, in all cases, examine the persons applying therefor, on oath, touching the time and place of the death of the intestate, and as to whether or not he left

any will, and other matters necessary to give the court jurisdiction; and may also examine any other witnesses as to the same facts, and may compel their attendance for that purpose by subpœna and attachment.

Letters conferring general authority not granted until fifteen days expire.—Espalla v. Gottschalk, 95 Ala. 254.

62 (2020) (2358) (1994) (1676). **Appointment of special administrator.**—The judge of probate may, in any contest respecting the validity of a will, or for the purpose of collecting the goods of the deceased, or in any other case in which it is necessary, appoint a special administrator, authorizing the collection and preservation by him of the goods of the deceased until letters testamentary or of administration have been duly issued.

Special administration granted at any time after intestate's death.—Espalla v. Gottschalk, 95 Ala. 254. **An averment in petition of "letters of special administration," construed to mean letters of "administration de bonis non,"** when such letters only authorized.—Clemens v. Walker, 40 Ala. 189; Clemens v. Wilson, 40 Ala. 219. **Administrator ad colligendum may be removed at any time.**—Flora v. Mennice, 12 Ala. 836. **At common law, no action maintained against administrator ad colligendum.**—Erwin v. Br. Bank, 14 Ala. 307.

63 (2021) (2359) (1995) (1677). **His authority.**—Every such special administrator has authority to collect the goods and chattels of the estate, and debts of the deceased, and to secure and preserve such goods and chattels, at such expense as may be deemed reasonable by the probate court; and for such purposes he may maintain suits as administrator.

The capacity of special administration relative to personal assets, same as administrator in chief.—Underhill v. Mobile, 67 Ala. 45. **Authority of special administrator ceases upon appointment of administrator in chief.** Farrow v. Bragg, 30 Ala. 261; Briarfield v. Foster, 54 Ala. 622. **The appointment of a "legal administrator for the special purpose of conducting a suit at law," is not void.**—Wolffe v. Eberlein, 74 Ala. 99. **A special administrator may file bill in equity for a receiver.**—Briarfield v. Foster, 54 Ala. 622. **Powers of special administrator defined by statute,** limited to personal assets.—Espalla v. Gottschalk, 95 Ala. 254. **Special administrator not authorized to pay debts.**—Erwin v. Br. Bank, 14 Ala. 307.

64 (2022) (2360) (1996) (1678). **May sell perishable goods.** Such special administrator may also, under the direction of the probate court, sell such goods as are perishable or wasting, after the same have been appraised, upon such notice as the judge of probate may prescribe.*

65 (2023) (2361) (1997) (1679). **When his authority ceases; his duties in such case.**—Upon the grant of letters testamentary or of administration, the authority of such special administrator ceases, and on demand he must deliver to the rightful executor or administrator all the assets of the deceased which may be in his hands, and render an account on oath of all his proceedings to the probate court.

See citations to section 63 (2021).

66 (2024) (2365, 2366) (2003, 2004) (1683, 1684). **Executors and administrators must give bond.**—Every person appointed executor, administrator, or special administrator, except in cases

*As amended by joint committee.

otherwise provided for in this chapter, must give bond, with at least two sufficient sureties, payable to, and to be approved by the judge of probate of the county having jurisdiction of the estate, in a penalty prescribed by him, which must be a sum not less than double the estimated value of the personal property, and double the estimated value of the rent of the real estate of the decedent for a term of three years, or, at the discretion of the judge of probate, in a sum not less than double the estimated value of the real and personal property of the estate, and conditioned to perform all the duties which are or may be required of him as such executor or administrator. But an executor or administrator, other than the general administrator, or the sheriff, or an executor relieved from giving bond, who has not given bond in double the estimated value of the estate, real and personal, of the decedent, must not obtain an order for the sale of lands of the decedent and must not, under any authority or power, make sale of any lands of the decedent, until he has given bond in double the estimated value of such lands.

Bond binding on sureties, although names do not appear in the body of instrument.—Martin v. Dortch, 1 Stew. 479; Grimmet v. Henderson, 66 Ala. 521. **Irregular to take one surety, but bond is binding on him.**—Steele v. Tutwiler, 68 Ala. 107. **Approval of bond, presumption of delivery.**—Wright v. Lang, 66 Ala. 389. **Estate of surety liable for default after his death.** Hightower v. Moore, 46 Ala. 387. **Sureties estopped from denying principal's appointment.**—Plowman v. Henderson, 59 Ala. 559. **Judicial ascertainment of default of principal essential before maintainance of suit against surety.**—Ward v. Yonge, 45 Ala. 474; Fretwell v. McLemore, 52 Ala. 124; Wright v. Lang, 66 Ala. 389; Martin v. Talley, 72 Ala. 23. **Character of liability is fixed by terms of bond.**—McDowell v. Jones, 58 Ala. 25. **Judgment against principal conclusive on sureties.**—Lamkin v. Heyer, 19 Ala. 228; Grace v. Martin, 47 Ala. 135; Gravett v. Malone, 54 Ala. 19; Seawell v. Buckley, 54 Ala. 592; Jones v. Ritter, 56 Ala. 270; Hailey v. Boyd, 64 Ala. 399; Grimmett v. Henderson, 66 Ala. 521; Steele v. Graves, 68 Ala. 17; Martin v. Talley, 72 Ala. 23; Modawell v. Hudson, 80 Ala. 265. **Limitation of actions against sureties from date of final settlement.**—Rives v. Flinn, 47 Ala. 481; Fretwell v. McLemore, 52 Ala. 124; Wright v. Lang, 66 Ala. 389; Martin v. Talley, 72 Ala. 23. **Sureties not liable for proceeds of void sale of lands.** Hopper v. Steele, 18 Ala. 828; Pettit v. Pettit, 32 Ala. 288; Woods v. Legg, 91 Ala. 511. **Legatee may maintain action at law on bond, after decree ascertaining amount due.**—Moore v. Chapamn, 2 Stew. 466; Judge v. Coalter, 3 Stew. & Port. 348; Perkins v. Moore, 16 Ala. 9; Kyle v. Mays, 22 Ala. 692; Halley v. Acre, 23 Ala. 603. **Sureties liable for breach of bond, under voidable appointment.**—Plowman v. Henderson, 59 Ala. 559; Burnett v. Nesmith, 62 Ala. 261; Kling v. Connell, 105 Ala. 590. **Delivery of bond—whether conditional.**—Bibb v. Reid, 3 Ala. 88; Wright v. Lang, 66 Ala. 389; Evans v. Doughtry, 84 Ala. 68. **Co-administrators—liability for acts of each other.** Elliott v. Mayfield, 4 Ala. 417; Little v. Knox, 15 Ala. 576; Little v. Heard, 16 Ala. 358; Kavanaugh v. Thompson, 16 Ala. 817; Williams v. Harrison, 19 Ala. 277; Pearson v. Darington, 32 Ala. 227; Jones v. Jones, 42 Ala. 218; Stephens v. Taylor, 62 Ala. 269; Weeks v. Yeend, 104 Ala. 546. **Sureties' rights as between each other.**—Weeks v. Yeend, 104 Ala. 546. **Summary execution against sureties.**—Thompson v. Bondurant, 15 Ala. 346; Hanna v. Price, 23 Ala. 826; Steele v. Tutwiler, 68 Ala. 107.

67 (2025) (2367) (2005) (1685). **Testator may exempt executor from giving bond; when no bond required; exceptions.**—Any testator may, by an express provision in his will to that effect, exempt an executor from giving bond; and, when such provision is made, such bond must not be required except in the following cases:

1. When any executor, heir, legatee, or other person interested in the estate, makes affidavit, showing his interest, and alleging that such interest is, or will be endangered for want of security.

2. When, in the opinion of the judge of probate, the estate is likely to be wasted, to the prejudice of any person interested therein.

Petition by legatee showing his interest, and that estate will be endangered, sufficient.—Allen v. Draper, 98 Ala. 590; Johnson v. Clements, 14 South. 14. **Creditor interested person within meaning of statute.**—Smith v. Phillips, 54 Ala. 8; Phillips v. Smith, 62 Ala. 575; Byrd v. Jones, 84 Ala. 336. **No inquiry into validity of debt,** prima facie liability sufficient. Phillips v. Smith, 62 Ala. 575. **Limitation of appeal by executor on removal.**—Holtzclaw v. Ware, 34 Ala. 307.

68 (2026) (2368) (2006) (1686). **Proceedings when bond required of executor.**—In the cases provided for by the preceding section, upon application for the executor to give bond, he may show cause against such application, and must have such notice as the judge may deem reasonable; but if he is not in the state, the application may be heard and determined without notice.

See citations to preceding section.

69 (2027) (2362) (2000) (1680). **General administrator; his duties.**—Each judge of probate must also appoint a suitable person as general administrator within his county, who must take charge of the estates of deceased persons, or act as special administrator, in those cases in which no other persons entitled thereto will administer, and no other person is appointed by the court; and his office shall expire with the expiration of the term of the judge who appointed him.*

As to release of surety on bond of general administrator.—Mitchell v. Nelson, 49 Ala. 88; Jones v. Ritter, 56 Ala. 270. **General administrator, bond of, covers all estates thereafter committed to him.**—Kling v. Connell, 105 Ala. 590. **On collateral assault, appointment of sheriff not void, because record does not disclose that there was no general administrator.**—Burnett v. Nesmith, 62 Ala. 261; Burke v. Mutch, 66 Ala. 568; Langford v. Dunklin, 71 Ala. 594. **Suit by general administrator,** revived in name of successor.—Russell v. Erwin, 41 Ala. 292. **Term expires, with expiration of judge's term.** Eubank v. Clark, 78 Ala. 73. **His duties.**—Willis v. Willis, 9 Ala. 330; Feagan v. Kendall, 43 Ala. 628; Moseley v. Lane, 27 Ala. 62.

70 (2028) (2371) (2009) (1689). **General administrator to give bond.**—The general administrator of a county must give bond, with at least two sufficient sureties, in an amount to be prescribed by the judge of probate, sufficient to secure all persons interested, payable to the judge of probate, and conditioned faithfully to administer all estates which may come to his charge as such general administrator; which bond must be approved by such judge. Feb. 6, 1891, p. 421.

Discharge of sureties on official bond.—Mitchell v. Nelson, 49 Ala. 88.

71. General administrator must keep record showing his official acts.—The general administrator must, from time to time, enter, in a well-bound book to be supplied by the court of county commissioners, a full and complete record of his official acts concerning each estate in his charge. Such book shall be kept in the office of the judge of probate and free to the examination of all persons when not in use. Feb. 6, 1891, p. 421.

72 (2029) (2363, 2372) (2001, 2010) (1681, 1690). **Administration to sheriff or coroner; attaches to office.**—In case there is no

*Remainder of section, as it stood in the Code of 1886, was stricken out by the joint committee.

general administrator, and no other fit person will administer, the court may commit administration to the sheriff or coroner of the county; and when so committed, the administration attaches to the office, and the official oath and bond of such officer are the security for his faithful administration.

Letters should not be granted to sheriff, when there is a general administrator.—Burnett v. Nesmith, 62 Ala. 261; Burke v. Mutch, 66 Ala. 568; Landford v. Dunklin, 71 Ala. 594. **Letters expire with term of office.**—Landford v. Dunklin, 71 Ala. 594; Ragland v. Calhoun, 36 Ala. 606. **Additional bond may be required, and suit maintained on either.**—Governor v. Gantt, 1 Stew. 388; Ragland v. Calhoun, 36 Ala. 606; Payne v. Thompson, 48 Ala. 535; Burnett v. Nesmith, 62 Ala. 261; Modawell v. Hudson, 80 Ala. 265. **Sheriff receiving assets under appointment, is estopped from denying grant of letters.**—Thompson v. Bondurant, 15 Ala. 346. **Not necessary that unsettled estate be committed to succeeding** sheriff.—King v. Griffin, 6 Ala 387. **On same footing with other administrations.**—Governor v. Gantt, 1 Stew. 388; Governor v. Davis, 9 Ala. 917; McLaughlin v. Nelms, 9 Ala. 925.

73 (2030) (2364) (2002) (1682). **When estate not to be committed to general administrator, sheriff, or coroner.**—The administration of an estate must not be committed to the general administrator, or to the sheriff, or to the coroner, except as special administrator, until the death of the decedent has been known sixty days; nor until one month after the death, resignation, or removal of an executor or administrator previously appointed.

74 (2031) (2373) (2011) (1691). **Bond required of applicant.** When administration is committed to the general administrator, sheriff, or coroner, on the application of a third person, such letters must not be granted, unless such person enter into bond, with surety, to be approved by the judge, to pay the fees and allowances made by the court on such administration, if the property of the estate is insufficient therefor.

75 (2032) (2374) (2012). **Summary decree against obligors on such bond.**—If, upon the settlement of an administrator appointed under the preceding section, it appears that sufficient assets of his intestate have not come to his hands to pay the costs and expenses legally incurred in his administration, the probate court having jurisdiction of such administration may render a decree, and thereon issue execution against the obligors in the bond mentioned in the preceding section, for any excess due above the assets in the hands of such administrator.

76 (2033) (2375) (2013) (1692). **Liability of judge in taking bond.**—The judge of probate is liable for any neglect or omission in not taking bond, or for taking an insufficient bond from any executor or administrator; and any person injured thereby may maintain an action against such judge and his sureties, and recover according to the injury proved.

No suit can be maintained for failure to require new bond on account of insolvency of original sureties.—Hamilton v. Williams, 26 Ala. 527.

77 (2034) (2376) (2014) (1693). **Conclusiveness of letters.**—Letters testamentary or of administration, and letters to a special administrator, or to any general administrator, sheriff, or coroner, granted by any probate court having jurisdiction, are conclusive

evidence of the authority of the person to whom the same are granted, from the date thereof until the same are revoked; and, when granted, such letters exclude the probate court of every other county from the jurisdiction thereof, and extend to all the property of the deceased in the state.

Letters conclusive of grant.—Eslava v. Elliott, 5 Ala. 264; Duncan v. Stewart, 25 Ala. 408; Bradley v. Broughton, 34 Ala. 694; Gray v. Cruise, 36 Ala. 559; Coltart v. Allen, 40 Ala. 155; Russell v. Erwin, 41 Ala. 292; Plowman v. Henderson, 59 Ala. 559; Burnett v. Nesmith, 62 Ala. 261; Landford v. Dunklin, 71 Ala. 594; Barclift v. Treece, 77 Ala. 528; Leatherwood v. Sullivan, 81 Ala. 458; Nicrosi v. Giuly, 85 Ala. 365; Sullivan v. Rabb, 86 Ala. 433; Clancy v. Stephens, 92 Ala. 577. See citations to section 45 (2003).

78 (2035) (2377) (2015) (1694). **When letters not to issue until time for appeal has passed.**—When there are contesting applicants for letters testamentary or of administration, no letters must issue until the time for taking an appeal from the decree thereon has passed; and if such appeal is taken, no letters in chief must be granted until the appeal is finally disposed of; but a special administrator may be appointed if necessary.

79 (2036) (2378) (2016) (1695). **Letters and bonds recorded; transcript evidence.**—All letters testamentary and of administration, general or special, and the bonds given by executors and administrators, must be recorded by the judge of probate; and transcripts thereof, duly certified, are evidence in all the courts of this state to the same extent as if the originals were produced.

ARTICLE 2.

APPOINTMENT OF NON-RESIDENTS AS EXECUTORS AND ADMINISTRATORS, AND SPECIAL PROVISIONS IN RELATION TO THEM.

80 (2037) (2379). **Non-residents may be appointed executors.** Judges of probate are authorized to issue letters testamentary to persons named as executors in wills regularly probated, who are non-residents of this state, upon like bond and surety, and upon the same terms, conditions and requirements as are required by law of citizens of this state.

81 (2038) (2380). **Steps necessary to grant of such letters, when will probated in another state.**—When the will has been probated in another state or territory, before issuing letters testamentary thereon to a non-resident executor, the judge of probate must require him to file in court a copy of the will under which he is appointed, together with a certificate of the judge of the court in which the will was probated, that such will was regularly proved and established, and that letters testamentary were issued to him thereon, in accordance with the laws of the state or territory in which such original letters were granted, and also to give bond and surety upon the same terms, conditions and requirements as are required by law of citizens of this state. But if it shall appear from the will that the testator, by an express provision therein, has exempted the applicant

from giving bond as executor, such bond must not be required, except in the cases specified in section 67 (2025). The certified copy of the foreign letters must be filed and recorded.

Leatherwood v. Sullivan, 81 Ala. 458; Keith v. Proctor, Ala. (21 So. 502).

82 (2039). **Non-residents may be appointed administrators.** When any non-resident dies, leaving assets in this state, if no application for letters of administration is made by a relative or creditor entitled thereto, an administrator of his estate, appointed by the competent authority of the state or territory of his domicil, shall be entitled to letters of administration on such estate in this state, upon the production of the letters granted to him by the state or territory of his intestate's domicil, duly certified as required by law, in preference to any other person, upon his giving like bond and surety, and upon the same terms, conditions and requirements, as are required by law of citizens of this state. The certified copy of his foreign letters shall be filed and recorded in the office of the judge of probate issuing letters in this state.

83. Application by non-resident must show his post-office address; changes.—The application filed by such non-resident for letters testamentary or of administration must set forth his name and post-office address; but the address so given may, at any time, be changed by such non-resident executor or administrator, such change to be shown by a written statement, setting forth his present post-office address, signed by such executor or administrator, or his attorney, and filed and recorded in the court granting the letters.

84 (2040) (2381). **How estate administered and settled.**—When letters are granted to a non-resident executor or administrator the assets of the estate upon which such letters are granted, which may be within this state at the date of such letters, shall, in all respects, be administered and settled as if such letters had been issued to a resident executor or administrator.

85. Non-resident executors and administrators may sue.—Non-resident executors and administrators appointed under the provisions of this article may, by giving security for costs as required by law of non-residents, bring and maintain suits in the courts of this state, in all respects as may be done by resident executors and administrators.*

86. Non-resident executors and administrators liable to suit; service.—Such non-resident executors and administrators are liable to be sued in their representative character, in all cases, in the county in which letters were granted; and service of summons or other process may be made upon them personally if found within the state; and such service may be made in any case by sending a copy of the summons or other process through the mail to such executor or administrator, and serving a copy thereof upon a resident surety, if there be one, as provided in the next section.

87 (2041) (2382). **How notice and process served.**—Citations to

*As amended by joint committee.

make settlements, and other citations or notices to such non-resident executors and administrators, and all writs or legal process, including executions on decrees and judgments, may be served by depositing a copy in a sealed envelope, postage prepaid, in a post-office at or near the court or office issuing such process, such envelope to be plainly addressed and directed to such non-resident executor or administrator at the place and by the name furnished by him upon the filing of his application for letters, or thereafter as provided in the fourth preceding section, and, when the sureties, or either of them, reside in the state and their place of residence is known, by the service of a copy of such writ or process upon one of such sureties. When service is had by depositing a copy of the writ or process in the post-office only, and not accompanied by service upon a surety, such service should not take effect until the expiration of ten days from the date of mailing such copy. If the post-office address of such non-resident executor or administrator is not furnished as required by the fourth preceding section, service on one of his sureties is sufficient. If such post-office address is not so furnished, and if there be no resident surety, notice of such writ or process may be given by publication in a newspaper published in the county wherein the proceedings are had, for two consecutive weeks, and a copy thereof must be sent by mail to such non-resident executor or administrator if his post-office address can be ascertained; and if in such case there be no newspaper published in the county, the notice may be given by posting a copy thereof at the door of the court-house for fifteen days. The sheriff or other officer executing the writ or process must make return thereof according to the facts.

88 (2042) (2383). **Liability of sureties to execution.**—Upon the return of an execution as provided in the preceding section, and, further, that no property of such executor or administrator, or property not sufficient to satisfy the same, is found in the county in which the execution is issued, the sureties on his bond shall be liable in all respects as in cases of a return of no property found on executions issued against resident executors or administrators.

89 (2043) (2384). **Removal to other state no ground for removal of executor; how settlement made.**—The removal of any resident executor from this state to any other state or territory of the United States, shall not be cause for his removal from the office of executor; but on and after his removal, he shall in all respects be regarded and treated as a non-resident executor, and the provisions of this chapter shall be applicable to him. But, upon such removal, his sureties may require him to resign and make final settlement of his accounts, or give a new bond as such executor.

ARTICLE 3.

REMOVAL, RESIGNATION, AND REQUIRING ADDITIONAL BONDS OF EXECUTORS AND ADMINISTRATORS; APPOINTMENT OF ADMINISTRATORS DE BONIS NON; PROCEEDINGS ON DISCOVERY OF WILL AFTER GRANT OF LETTERS.

90 (2044) (2385). **Discharge of surety; new bond.**—Upon the application in writing of any surety or sureties upon the bond of an executor or administrator requesting to be discharged from future liability as such surety or sureties, or upon the application in writing of the personal representative, or of an heir or devisee of a deceased surety upon such bond, requesting that the estate of such deceased surety be discharged from future liability by reason of such suretyship, it shall be the duty of the court to give to such executor or administrator notice of such application and to require him, within fifteen days after the service of the notice, to make a new bond; and upon the failure to make such bond, such executor or administrator shall be removed and his letters revoked; and upon such removal he shall make settlement of his administration. Any number of persons having the right to make application under this section may join in the application.

91. Effect of new bond.—When a new bond is given under the preceding section, the surety on whose application, or the estate of the deceased surety on whose behalf the application was made, as the case may be, is discharged as to all breaches subsequent to the execution and approval of the new bond.

92 (2045) (2386) (2017) (1696). **Causes of removal.**—An administrator may be removed, and his letters revoked for his removal from the state; and an administrator or executor may be removed and his letters revoked for any of the following causes:

1. Imbecility of mind; intemperance; continued sickness, rendering him incapable of the discharge of his duties.

2. Failure to make and return inventories or accounts of sales; failure to make settlements as required by law; or the failure to do any act as such executor or administrator, when lawfully required by the judge of probate.

3. The wasting, embezzlement, or any other maladministration of the estate.

4. The using of any of the funds of the estate for his own benefit.

Application for removal.—Blackman v. Davis, 42 Ala. 184; Hubbard v. Smith, 45 Ala. 516; Godwin v. Hooper, 45 Ala. 613; Crawford v. Tyson, 46 Ala. 299. **Non-residence as a ground for removal.**—Harris v. Dillard, 31 Ala. 191; Crawford v. Tyson, 46 Ala. 299. **When failure to return inventory sufficient to remove.**—Oglesby v. Howard, 43 Ala. 144. **When failure to return inventory insufficient to remove.**—Hubbard v. Smith, 45 Ala. 516; Hightower v. Moore, 46 Ala. 466. **An intentional misstatement of names of heirs in petition for sale of land, not maladministration.**—Forrester v. Forrester, 37 Ala. 398. **As to failure to make bond,** see ex parte Maxwell, 37 Ala. 362; Leatherwood v. Sullivan, 81 Ala. 458; Keith v. Proctor, Ala. (21 So. 502). **Payment of his private debt from funds of estate, a breach of trust.**—Killam v. Costley, 52 Ala. 85. **Order removing executor, at special term, void.**—Boynton v. Nelson, 46 Ala. 501. **Order removing executor—when will be presumed to have been made.**—Cogburn v. McQueen, 46 Ala. 551.

93 (2046) (2387) (2018) (1697). **When required to give additional bond; effect of failure.**—An executor or administrator may also be required to give additional bond, and, in default thereof, may be removed, and his letters revoked, in the following cases:

1. When it is shown to the court by his sureties, or either of them, that he has become, or is likely to become insolvent, and that they have sustained, or probably will sustain loss thereby.

2. When his letters have been granted on insufficient security, or the security has become insufficient since the grant, or any of his sureties have removed from the state.

3. When the penalty of the bond is not sufficient to secure the due performance of the trusts committed to him.

94 (2047) (2388, 2389) (2019, 2020) (1698, 1699). **Application for additional bond, or for removal.**—Application for the removal of any executor or administrator, or for an additional bond, must be in writing, verified by oath, must specify the grounds of complaint and must be made to the court from which letters issued, or in which the administration is pending; and may be made by any creditor, legatee, devisee, heir, or distributee, or by any co-executor, co-administrator, or the sureties, or any of them.*

95 (2048) (2390) (2021) (1700). **Citation to issue; service of.** A citation to such executor or administrator to appear and answer the application on a day specified therein, must be served on him five days before the hearing of the complaint.

96 (2049) (2391, 2392) (2022, 2023) (1701, 1702). **When notice given by publication; expense, how paid.**—If such executor or administrator is not an inhabitant of the state, or is absent therefrom, upon such fact being shown by proof satisfactory to the judge, he must direct notice of such application to be given by publication for three successive weeks in some newspaper published in the county, or if none is published therein, in the newspaper published nearest to the court-house thereof; and the applicant must pay the expense of such publication, which may be taxed as costs.

Non-resident executor may be notified by publication, and removed on such notice.—Crawford v. Tyson, 46 Ala. 299.

97 (2050) (2393, 2394) (2024, 2025) (1703, 1704). **Trial; when jury allowed.**—On the day specified in the citation, or after publication as required, or on any day thereafter to which the hearing may be continued, the court must proceed to hear the evidence, and may, in its discretion, examine the parties; and when the application charges embezzlement, waste, or any other maladministration of the estate, either party is entitled to a trial by jury.

98 (2051) (2395) (2026) (1705). **Costs; against whom taxed.**—If the application is determined against the applicant, he, otherwise the executor or administrator, must be taxed with the costs, for which execution may be issued.

99 (2052) (2396, 2397) (2027, 2028) (1706, 1707). **Order to give additional bond; effect of failure.**—If an additional bond is required

*As amended by joint committee.

by the court, an order must be made to that effect, allowing such time to give the same as the court may think reasonable; and if such order is not complied with within the time prescribed, the executor or administrator must be removed, and his letters revoked.

100 (2053) (2398, 2399) (2029, 2030) (1708, 1709). **Removal or additional bond on motion of court.**—Whenever the judge of probate has reason to believe that any just ground or cause of removal exists, or that an additional bond should be required of an executor or administrator, he may cause a citation to be served on such executor or administrator, requiring him to appear on a day therein named, five days after service thereof, and show cause why he should not be removed,or give an additional bond, as the case may be; and if no sufficient cause is shown, the court may remove such executor or administrator, or require him to give an additional bond; and, if an additional bond is required, on failure to give the same within the time prescribed, the court may remove him.

Statutes upon removal of executor construed together.—Crawford v. Tyson, 46 Ala. 299. **Removal of executor from this state, without application in writing.**—Ib.

101 (2054) (2400) (2031) (1710). **General administrator; when and how removed.**—The general administrator may be removed for the same causes as other administrators; and such removal may be made by the judge of probate without notice; but the grounds thereof must be entered on the minutes of the court.

102 (2055) (2401) (2032) (1711). **Additional bond of general administrator; effect of failure to give.**—An additional bond may also be required of a general administrator, whenever the judge of probate deems it necessary to secure the interests of the estate confided to his charge, or the sureties may be unwilling to remain longer bound; and, if he fail to give such bond within the time prescribed by the court, he must be removed and his letters revoked; and when any person interested in an estate committed to the general administrator shall give notice in writing to the judge of probate, that the interest of the estate requires that the general administrator should give an additional bond, such judge must require him to give such bond; and if, in such case, the judge of probate fails or omits to require such bond, and loss thereby results to any one interested, he and the sureties on his official bond shall be responsible therefor.

103 (2056) (2402) (2033) (1712). **Additional bond of sheriff or coroner.**—When the administration of any estate is committed to the sheriff or coroner, the judge of probate, at such time, or at any time thereafter, while the administration is in the hands of such officer, may require of him an additional bond, if, in his opinion, the official bond of such officer is not sufficient security for the protection of the estate; and if he fail to give such additional bond for ten days after notice that the same is required, he vacates his office, and the judge of probate must certify the vacancy to the appointing power.

104 (2057) (2405) (2036) (1715). **When sureties discharged by**

additional bond.—When an additional bond is given on the application of the surety of an executor or administrator, such surety is discharged as to all breaches subsequent to the execution and approval of the additional bond.

105 (2058) (2406) (2037) (1716). **When former bond of force.** When the additional bond is not given on the application of a surety, the former bonds are not discharged, but each remains of the same force and obligation as if such additional bond had not been given; and any person aggrieved, for a breach of the last bond, may proceed on either or all of such bonds, in the same, or in separate proceedings.

Application by surety necessary to effect discharge of former bonds. Hamner v. Mason, 24 Ala. 480; Jones v. Ritter, 56 Ala. 270.

106 (2059) (2407) (2038) (1717). **Rights of sureties on such bonds among themselves.**—The sureties in either bond, who have been compelled to make any payments thereon for the principal obligor, on a breach subsequent to the execution of the last bond, have the same remedies against the sureties in the remaining bonds as co-sureties have against each other; and may recover against such sureties such an amount as shall be in the same proportion to the sum paid by the plaintiff, as the aggregate penalty of the two bonds bears to the penalty of the bond of the defendant, apportioning the same among the solvent sureties.

Rights of co-sureties.—Bragg v. Patterson, 85 Ala. 233; Yeend v. Weeks, 104 Ala. 331.

107 (2060) (2408) (2039) (1718). **Resignation of representative.**—An executor or administrator may, by a writing subscribed by him, resign; and his resignation must be entered of record.

Executor cannot by resignation avoid judgment against him in regular process for unadministered assets.—Thomason v. Blackwell, 5 Stew. & Port. 181; Gayle v. Elliott, 10 Ala. 264; Skinner v. Frierson, 8 Ala. 915. **A married woman may resign as administratrix without husband's consent.**—Rambo v. Wyatt, 32 Ala. 363.

108 (2061) (2409) (2040) (1719). **Liability on resignation.**—In case of resignation, the executor or administrator and his sureties are bound for all the assets not administered, which shall not be delivered over to his successor.

See citations to preceding section.

109 (2062) (2410) (2041). **Resignation by general administrator; effect of.**—The resignation of the office of general administrator shall not operate to discharge the incumbent from the administration of any estate previously committed to his charge as such general administrator; but he may proceed, notwithstanding such resignation, to administer and finally settle the same, as if he had not resigned such office; and the sureties on his bond as general administrator shall be liable for every act of maladministration on such estate, committed after his resignation, to the same extent as if he had not resigned; but he may be removed from the administration of such estate for any of the causes prescribed by law, or he may re-

sign his administration thereon by leave of the probate court of his county.

110 (2063) (2411) (2042). **Upon resignation or removal of general administrator, successor appointed.**—Upon the resignation or removal of a general administrator from office, the judge of the probate court of the proper county must proceed to appoint some other suitable person general administrator for such county, who shall give bond as required by law, and administer on such estates as may be committed to his charge by the probate court of his county.

111 (2064) (2412) (2043) (1720). **Administrator de bonis non or cum testamento annexo; when appointed.**—If the sole executor, or all the executors or administrators die, resign, or are removed, the probate court having jurisdiction of the estate must grant letters of administration, with the will annexed, or of the goods and chattels, rights, etc., unadministered, to the person entitled thereto, as in cases of intestacy.

What essential to validity of grant.—Matthews v. Douthitt, 27 Ala. 273; Rambo v. Wyatt, 32 Ala. 363; Gray v. Cruise, 36 Ala. 559; Sims v. Waters, 65 Ala. 442; Allen v. Kellam, 69 Ala. 442; Bean v. Chapman, 73 Ala. 140. **When upheld on collateral attack.**—Ikelheimer v. Chapman, 32 Ala. 676; Gray v. Cruise, 36 Ala. 559; Cogburn v. McQueen, 46 Ala. 551; Green v. Scarborough, 49 Ala. 137; Chappell v. Williamson, 49 Ala. 153; Sims v. Waters, 65 Ala. 442; Morgan v. Casey, 73 Ala. 222. **When grant void.**—Coltart v. Allen, 40 Ala. 155; Hooper v. Scarborough, 57 Ala. 510; Nelson v. Boynton, 54 Ala. 368; McDowell v. Jones, 58 Ala. 25; Bean v. Chapman, 62 Ala. 58; Bean v. Chapman, 73 Ala. 140. **Acts null if appointment void.**—Hooper v. Scarborough, 57 Ala. 510. **When grant of letters in chief valid,** as letters de bonis non.—Moseley v. Mastin, 37 Ala. 216. **Two grants of administration at same time in same jurisdiction, are void.**—Nelson v. Boynton, 54 Ala. 368; McDowell v. Jones, 58 Ala. 25.

112 (2065) (2413) (2044) (1721). **When survivor continues to act.**—When an executor or administrator dies, resigns, or is removed, and there is any other executor or administrator, no other must be appointed; but such administrator or executor must complete the administration, unless the testator has provided by his will for the nomination or appointment of a substitute or successor, when the person nominated, in accordance with the provisions of the will, shall be permitted to qualify as executor.

113 (2066) (2414) (2045) (1722). **On proof of will, etc., letters must be revoked.**—If, after letters of administration have been granted as in case of intestacy, any will is proved, and the executor therein named appears, claims letters testamentary, and complies with the requisitions of the law, the probate court having jurisdiction must revoke the letters of administration, and grant letters testamentary to such executor.

Revocation of letters of administration, on application of testator's executor.—Bradley v. Broughton, 34 Ala. 694; Jennings v. Moses, 38 Ala. 402; Watson v. Glover, 77 Ala. 323; Keith v. Proctor, Ala. (21 So. 502). **Such grant of letters of administration voidable, only.**—Floyd v. Clayton, 67 Ala. 265; Jennings v. Moses, 38 Ala. 402.

114 (2067) (2415) (2046) (1723). **When, in such case, will to be annexed.**—If, in the case provided for by the preceding section, the sole executor, or some of the executors, within five days after the

proof of such will, do not appear and take out letters testamentary thereon, a copy of the will must be annexed to the letters of administration, and must be executed by the administrator.

ARTICLE 4.

COLLECTION OF DECEDENT'S PERSONAL PROPERTY; INVENTORY AND APPRAISEMENT THEREOF; NOTICE OF APPOINTMENT.

115 (2068) (2416) (2047) (1724). **Collection of personalty and inventory.**—It is the duty of every executor or administrator, immediately after taking out letters, to collect and take into his possession the goods and chattels, money, books, papers, and evidences of debt of the decedent, except the personal property specifically exempted from administration under section 2072 (2545), and to make a full inventory of the same.

Grant of letters of administration vests representative with legal title to personal assets.—Kelly v. Kelly, 9 Ala. 908; Snodgrass v. Cabiness, 15 Ala. 160; Beattie v. Abercrombie, 18 Ala. 9; Woolfolk v. Sullivan, 23 Ala. 548; Waring v. Lewis, 53 Ala. 615; Van Hoose v. Bush, 54 Ala. 342; Baldwin v. Hatchett, 56 Ala. 461; Hutchinson v. Owen, 59 Ala. 326; Nelson v. Stollenwerck, 60 Ala. 140; Shelton v. Carpenter, 60 Ala. 201; Steele v. Steele, 64 Ala. 438; Wood v. Cosby, 76 Ala. 557; Butler v. Gazzam, 81 Ala. 491; Chandler v. Chandler, 87 Ala. 300. **Executor has no authority over assets until letters are granted.**—Cleveland v. Chandler, 3 Stew. 489; Gardner v. Gantt, 19 Ala. 666; Wood v. Cosby, 76 Ala. 557.

116 (2069) (2417) (2048) (1725). **What inventory must show.** The inventory must set forth the goods and chattels, enumerating each article separately, all debts or demands due or accruing to the decedent, the time such debts or demands are due, the amount of the same, and how evidenced, with the credits, if any, and the name of the debtor, and the amount of money.

Remedy when assets are withheld.—Dobbs v. Cockerham, 2 Port. 328; Leavens v. Butler, 8 Port. 380; Blakely v. Blakely, 9 Ala. 391; Swink v. Snodgrass, 17 Ala. 653; Weems v. Bryan, 21 Ala. 302; Judge v. Tyson, 42 Ala. 401.

117 (2070) (2418) (2049) (1726). **Inventory returned under oath.**—On the return of the inventory, the executor or administrator must take and subscribe an oath, to be administered by the judge of probate, or any justice of the peace, or notary public of the county, that such inventory is full and complete, as to the goods and chattels, debts and money of the decedent, which have come to his knowledge or possession.

Inventory evidence against administrator.—Craig v. McGehee, 16 Ala. 41; Brazeal v. Brazeal, 9 Ala. 491; Steele v. Knox, 10 Ala. 608; Reynolds v. Reynolds, 11 Ala. 1023; Judge v. Tyson, 42 Ala. 401; McDonald v. Jacobs, 77 Ala. 524.

118 (2071) (2419, 2420, 2421) (2050, 2051, 2052) (1727, 1728, 1729). **Appraisement of personal property.**—At the time of the grant of letters, the court must appoint three appraisers in each county in which it is necessary to make an appraisement of the estate of the decedent, who must appraise each article specified in the inventory made by the executor or administrator, at its true value, and set down opposite to such articles, respectively, the

As amended, Nov. 30, 1896, p. 21.

values thereof in dollars and cents, in figures; and the appraisement must be subscribed and sworn to by them, and the executor or administrator is authorized to administer the oath. Such appraisers, for such service, shall each be entitled to receive two dollars per day while actually engaged in making the appraisement.

Appraisement not evidence against administrator.—Steele v. Knox, 10 Ala. 609; Brown v. Steele, 14 Ala. 63; Miller v. Jones, 29 Ala. 174; Harrison v. Harrison, 39 Ala. 489.

119 (2072) (2422) (2053) (1730). **Return of inventory and appraisement.**—The inventory and appraisement must be returned within two months after the grant of letters.

120 (2073) (2423, 2424) (2054, 2055) (1731, 1732). **Supplemental inventories and appraisements.**—The executor or administrator must make supplemental inventories of the decedent's estate coming to his knowledge or possession after making the first inventory; and an appraisement must be made of such estate by the appraisers, on oath, and in the same manner as the first appraisement was made.

121 (2074) (2425) (2056) (1733). **Appointment of new appraisers.**—New appraisers may be appointed by the court, from time to time, as may be necessary.

122 (2075) (2426) (2057) (1734). **Notice of appointment of personal representative; its contents.**—Executors and administrators must also, within one month from the grant of letters, give notice of their appointment, stating the name of the deceased, the day on which letters were granted, by what court, stating the county, and notifying all persons having claims against the estate to present the same within the time allowed by law, or that the same will be barred.

Failure to give notice does not suspend the statute of non-claim.—Thrash v. Sumwalt, 5 Ala. 13; Cawthorne v. Weisinger, 6 Ala. 714; Bank v. Plannett, 37 Ala. 222; see also McHenry v. Wells, 28 Ala. 451.

123 (2076) (2427) (2058) (1735). **How notice to be given.**—Such notice must be given in a newspaper published in the county in which the letters were granted, or, if none is published in such county, in the one published nearest to the court-house thereof, or in an adjoining county; and it must be published once a week for three successive weeks.

124 (2077) (2428) (2059) (1736). **Penalty for failure to give notice.**—It is the duty of the judge of probate to see that such publication is duly made; and any executor or administrator failing to make the same must not be allowed any compensation as such; but he and his sureties are liable, on proof that such notice has not been given, to any creditor for the amount which he would have been entitled to out of the assets of the estate, had his claim been duly presented.

ARTICLE 5.

PAYMENT AND SETTLEMENT OF DEBTS; PRESENTATION OF CLAIMS.

125 (2078) (2429) (2060) (1737). **Property charged with payment of debts.**—All the property of the decedent, except as otherwise provided, is charged with the payment of his debts, and, if necessary, may be sold for that purpose.

The whole property of an estate is charged, under the statute, with the payment of debts.—Anderson v. McGowan, 42 Ala. 280; Pettit v. Pettit, 32 Ala. 288; Steele v. Steele, 64 Ala. 438; Lewis v. Ford, 67 Ala. 143; Sharp v. Sharp, 76 Ala. 312; Starke v. Wilson, 65 Ala. 576; Trimble v. Fariss, 78 Ala. 260; Beadle v. Steele, 86 Ala. 413; Scott v. Ware, 64 Ala. 174; Warren v. Hearne, 82 Ala. 554; Chandler v. Wynne, 85 Ala. 301; Williams v. Williams, 49 Ala. 439; Spence v. Parker, 57 Ala. 196; May v. Parham, 68 Ala. 253; Banks v. Speers, 103 Ala. 436; Thompson v. Boswell, 97 Ala. 570; Cotton v. Holloway, 96 Ala. 544; Alford v. Alford, 96 Ala. 385; Banks v. Speers, 97 Ala. 560. **Rents are assets.**—Smith v. King, 22 Ala. 558; Smith v. Wiley, 22 Ala. 396; Boynton v. McEwen, 36 Ala. 348; Ashurst v. Ashurst, 13 Ala. 781; Smith v. Smith, 13 Ala. 329. **Representative selling property in payment of a debt against the estate** cannot, upon insolvency, repudiate sale and recover price.—Parker v. Daughtry, 111 Ala. 529.

126 (2079) (2430) (2064) 1741). **Order of payment of debts.**—The debts against the estates of decedents are to be paid in the following order:

1. The funeral expenses.
2. The fees and charges of administration.
3. Expenses of the last sickness.
4. Taxes assessed on the estate of the decedent previous to his death.
5. Debts due to employees, as such, for services rendered the year of the death of the decedent.
6. The other debts of the decedent.

Tombstone a proper charge as funeral expense.—Hatchett v. Curbow, 59 Ala. 516; Bendall v. Bendall, 24 Ala. 295. **Burial expenses of wife husband's debt.**—Smyley v. Reese, 53 Ala. 89; Lott v. Graves, 67 Ala. 40. **Law implies promise of personal representative to pay burial expenses.**—Gayle v. Johnston, 72 Ala. 254. **Taxes assessed after death of decedent; when not preferred claim.**—Pryor v. Davis, 109 Ala. 117. **Costs paid by representative** of insolvent estate without order of court, not preferred claims.—Patapsco v. Ballard, 107 Ala. 710. **Credit for burial expenses** should not be allowed on contest, on ex parte statement of creditor.—Jackson v. Wood, 108 Ala. 209.

127 (2080) (2431) (2065) (1742). **No preference among debts of same class.**—No executor or administrator must, before the expiration of twelve months from the grant of letters, give a preference in the payment of any debt over others of the same class; nor is a debt due and payable entitled to any preference over debts of the same class which are not due.*

Effect of statute on right of retainer.—Shortridge v. Early, 10 Ala. 520; Kimball v. Moody, 27 Ala. 130; Bates v. Vary, 40 Ala. 421; Kirksey v. Kirksey, 41 Ala. 626; Miller v. Irby, 63 Ala. 477; Cook v. Cook, 69 Ala. 294; Trimble v. Fariss, 78 Ala. 260; Dickie v. Dickie, 80 Ala. 57; Beadle v. Steele, 86 Ala. 413.

128. Payment of claims barred by the statute of limitations prohibited.—No claim against the estate of a decedent, whether in favor of the personal representative or any other person, which was barred by the statute of limitations at the time of the death of such dece- Feb. 16, 1891, p. 755.

*"Eighteen" changed to "twelve" by joint committee.

dent, shall be paid by or allowed to the personal representative, unless the payment of such claim be expressly directed by a testator in his will.

Dec. 13, 1892, p. 133.

129. Representative having claim against estate must file same in probate court, verified by affidavit.—All claims against the estate of a decedent, held by the personal representative of such decedent, or by an assignee or transferee of such representative, or in which he has an interest, and which accrued prior to the grant of letters, must be presented within twelve months after the grant of letters; and all such claims accruing after the grant of letters must be presented within six months after the same have accrued; the presentation, in either case, to be made by filing the claim, or a statement thereof, verified by affidavit, in the office of the judge of probate, in all respects as provided by section 133 (2083) of this Code. All such claims not so presented and filed are forever barred, and the payment or allowance thereof is prohibited. But this section does not apply to claims of executors and administrators to compensation for their services as such, nor to sums properly disbursed by them in the course of administration.*

As amended, Dec. 9, 1896, p. 156.

130 (2081) (2597) (2239) (1883). **All other claims to be presented, or they are barred.**—All claims against the estate of a decedent, other than the claims referred to in the preceding section, must be presented within twelve months after the same have accrued, or within twelve months after the grant of letters testamentary or of administration; and if not presented within that time, they are forever barred, and the payment or allowance thereof is prohibited.

What claims within the statute. Generally, all claims of every nature. Jones v. Lightfoot, 10 Ala. 17; Neil v. Cunningham, 2 Port. 171; King v. Moseley, 5 Ala. 610; Ready v. Thompson, 4 Stew. & Port. 52; McBroom v. Governor, 6 Port. 32; Winston v. Branch Bank, 23 Ala. 762; Harrison v. Harrison, 39 Ala. 489; Fretwell v. McLemore, 52 Ala. 124; Halfman v. Ellison, 51 Ala. 543; Ray v. Thompson, 43 Ala. 434; Foster v. Holland, 56 Ala. 474; McDowell v. Jones, 58 Ala. 25; Owens v. Corbitt, 57 Ala. 92; Rhodes v. Hannah, 66 Ala. 215; Taylor v. Robinson, 69 Ala. 269; Jones v. Drewry, 72 Ala. 311; Farris v. Stoutz, 78 Ala. 130; Herstein v. Walker, 85 Ala. 37; Page v. Bartlett, 101 Ala. 193. **What claims not within statute.** Enforcement of specific liens.—Duval v. McLoskey, 1 Ala. 708; Inge v. Boardman, 2 Ala. 331; Mahone v. Haddock, 44 Ala. 92; George v. George, 67 Ala. 192; Smith v. Gillam, 80 Ala. 296. Equities of redemption.—Locke v. Palmer, 26 Ala. 312. Claim for family expenses incurred under a will.—Prince v. Prince, 47 Ala. 283. **When will does not create trust in favor of creditor, relieving him from necessity of presenting claim.**—Carrington v. Manning, 13 Ala. 611. **Time from which statute begins to run. Generally, from grant of letters.**—Cawthorne v. Weisinger, 6 Ala. 714; Bank v. Plannett, 37 Ala. 222; McHenry v. Wells, 28 Ala. 451; Bank v. McGee, 108 Ala. 304. **Contingent claims, from time contingency happens.**—Neil v. Cunningham, 2 Port. 171; Hooks v. Branch Bank, 8 Ala. 580; Jones v. Lightfoot, 10 Ala. 17; Pinkston v. Huie, 9 Ala. 252; McDowell v. Jones, 58 Ala. 25; Cockrill v. Hobson, 16 Ala. 391; Farris v. Stoutz, 78 Ala. 130. **Contingent claims defined.**—Neil v. Cunningham, 2 Port. 171; Cockrill v. Hobson, 16 Ala. 391; McDowell v. Jones, 58 Ala. 25; Farris v. Stoutz, 78 Ala. 130; Jones v. Lightfoot, 10 Ala. 17. **Removal of administrator from state and continued absence does not arrest statute.**—Lowe v. Jones, 15 Ala. 545. **Nor his death.**—Lowe v. Jones, 15 Ala. 545; Pipkin v. Hewlett, 17 Ala. 291. **Nor failure of representative to give notice of appointment.**—Bank v. Plannett, 37 Ala. 222; Cawthorne v. Weisinger, 6 Ala. 714; McHenry v. Wells, 28 Ala. 451. **Nor absence from state.**—Bank v. Donalson, 12 Ala. 741. **Nor facts of this case.**—Gordon v. Ballentine, 50 Ala. 99. **When not waived.**—Pipkin v. Hewlett, 17 Ala. 291. **Statute suspended during war.**—Grace v. Martin, 47

*"Eighteen" changed to "twelve" by joint committee.

Ala. 135. **Statute runs against estate of deceased creditor,** though administration was not granted thereon until after the lapse of eighteen months from grant of administration upon estate of deceased debtor.—Beasley v. Waugh, 51 Ala. 156. **Fraud does not prevent the bar.**—Yniestra v. Tarleton, 67 Ala. 126; Morgan v. Morgan, 68 Ala. 80; Taylor v. Robinson, 69 Ala. 269. **By whom presented; presentation can only be made by party having an interest** in the claim and a right, legal or equitable, to enforce it.—McDowell v. Jones, 58 Ala. 25; Allen v. Elliot, 67 Ala. 432; Bank v. Hawkins, 12 Ala. 755; Hallett v. Bank, 12 Ala. 193; Jones v. Lightfoot, 10 Ala. 970. Hence, presentation by a personal representative whose appointment is void, not sufficient.—McDowell v. Jones, 58 Ala. 25. **Knowledge on part of administrator will not dispense with necessity of presentation.**—Jones v. Lightfoot, 10 Ala. 17; Boggs v. Bank, 10 Ala. 970; Hallett v. Bank, 12 Ala. 193; Pipkin v. Hewlett, 17 Ala. 291; Clark v. Washington, 44 Ala. 291; Owens v. Corbitt, 57 Ala. 92; McDowell v. Jones, 58 Ala. 25; Allen v. Elliott, 67 Ala. 432. **Statute available to creditors.**—McBroom v. Governor, 6 Port. 32; Byrd v. Jones, 84 Ala. 336.—**Also heirs or devisees.**—May v. Parham, 68 Ala. 253; Farris v. Stoutz, 78 Ala. 130. **Need not be presented to all personal representatives.**—Mardis v. Shackleford, 4 Ala. 493. **Presentation to administrator whose letters voidable, sufficient.**—Floyd v. Clayton, 67 Ala. 265. **Repeated presentation not required.** Floyd v. Clayton, 67 Ala. 265. **What a sufficient presentation.**—Jones v. Pharr, 3 Ala. 283; Pollard v. Scears, 28 Ala. 484; Harrison v. Jones, 33 Ala. 258; Frazier v. Prayton, 36 Ala. 691; Hallett v. Bank, 12 Ala. 193; Posey v. Bank, 12 Ala. 802; Walker v. Wiggington, 50 Ala. 579; Agnew v. Walden, 84 Ala. 502; Ib., 95 Ala. 108. **By suit.**—Hunley v. Shuford, 11 Ala. 203; Floyd v. Clayton, 67 Ala. 265. **What not a sufficient presentation.**—Jones v. Lightfoot, 10 Ala. 17; Badge v. Kelly, 10 Ala. 944; Waddill v. John, 57 Ala. 93; Bibb v. Mitchell, 58 Ala. 657; Halfman v. Ellison, 51 Ala. 543; Bigger v. Hutchings, 2 Stew. 445; Smith v. Fellows, 58 Ala. 467; Clark v. Washington, 44 Ala. 291; Floyd v. Clayton, 67 Ala. 265. **By suit.**—Boggs v. Bank, 10 Ala. 970; Travis v. Tartt, 8 Ala. 574; Dilbone v. Moore, 14 Ala. 426; Pipkin v. Hewlett, 17 Ala. 291; Bigger v. Hutchings, 2 Stew. 445. **What necessary on presentation.**—Smith v. Fellows, 58 Ala. 467; Bibb v. Mitchell, 58 Ala. 657; Bigger v. Hutchings, 2 Stew. 445; Floyd v. Clayton, 67 Ala. 265. **Description of claim on presentation.** Agnew v. Walden, 84 Ala. 502; Ib., 95 Ala. 108. **Effect of misnomer in filing claim.**—Halfman v. Ellison, 51 Ala. 543. **Effect of failure to docket.**—Floyd v. Clayton, 67 Ala. 265. **Claim must remain on file.**—Floyd v. Clayton, 67 Ala. 265. **The statute a complete bar.**—Thrash v. Sumwalt, 5 Ala. 13; McBroom v. Governor, 6 Port. 32; Bank v. Hawkins, 12 Ala. 755; Jones v. Lightfoot, 10 Ala. 27; Halfman v. Ellison, 51 Ala. 543; but see Duval v. McLoskey, 1 Ala. 708. **Statute can have no operation until the appointment of a personal representative.**—Merchants Nat. Bank v. McGee, 108 Ala. 304. **Claim cannot be revived by promise of administrator.**—Bank v. Hawkins, 12 Ala. 755; Grimball v. Mastin, 77 Ala. 553. **Bar cannot be asserted by any other person liable on same debt.**—Hook v. Bank, 8 Ala. 580. **Right of surety, on payment of debt, not impaired by omission of creditor to present.** Hook v. Bank, 8 Ala. 580. **Failure of creditor to present does not discharge sureties,** or affect his right to proceed against them.—Minter v. Bank, 23 Ala. 762. **Nor release one surety from liability to contribution to another** who subsequently paid the debt.—Evans v. Evans, 16 Ala. 465. **At law the bar of the statute must be specially pleaded.**—Smith v. Huie, 14 Ala. 201; Mardis v. Smith, 2 Ala. 382; Bank v. Hawkins, 12 Ala. 755. **In equity may be asserted by answer, plea, demurrer,** or motion to dismiss.—Fretwell v. McLemore, 52 Ala. 137; Owens v. Corbitt, 57 Ala. 92; Yniestra v. Tarleton, 67 Ala. 126; Grimball v. Mastin, 77 Ala. 553; Farris v. Stoutz, 78 Ala. 130; McDowell v. Brantley, 80 Ala. 173. **Burden of proof on creditor.**—Evans v. Norris, 1 Ala. 511; Mitchell v. Lea, 57 Ala. 46; May v. Parham, 68 Ala. 253. **When admission of administration sufficient proof.**—Pharis v. Leachman, 20 Ala. 662. **Bar of mortgage debt does not affect specific lien of mortgage.** Smith v. Gilliam, 80 Ala. 296; Duval v. McLoskey, 1 Ala. 708; Lock v. Palmer, 26 Ala. 312; Rhodes v. Hannah, 66 Ala. 215; Mahone v. Haddock, 44 Ala. 92. **Defense of non-claim is complete bar to set-off.**—Jones v. Drewry, 72 Ala. 311; Bell v. Andrews, 34 Ala. 538. **Conclusiveness of claim filed against insolvent estate, not objected to within statutory period.**—Chandler v. Wynne, 85 Ala. 301; Thames v. Herbert, 61 Ala. 340; Thornton v. Moore, 61 Ala. 347; Clark v. Knox, 70 Ala. 607; Randle v. Carter, 62 Ala. 95; Eubank v. Clark, 78 Ala. 73; Moore v. Winston, 66 Ala. 296. **Non-claim in favor of estate of surety on guardian's or administrator's bond.**—Fretwell v. McLemore, 52 Ala. 124; Taylor v. Robinson, 69 Ala. 269; Foster v. Holland, 56 Ala. 474; Page v. Bartlett, 101 Ala. 193.

131 (2082) (2598) (2240) (1884). **Exceptions; minors and per-**

sons of unsound mind having no guardian.—The provisions of the preceding section do not apply to minors or persons of unsound mind who have no legal guardian at the time of the grant of letters testamentary or of administration; but such minors and persons of unsound mind are allowed twelve months after the appointment of a guardian, or, if none be appointed, twelve months after the removal of their respective disabilities, in which to present their claims.*

132 (2082) (2598) (2240) (1884). **Other exceptions; heirs or legatees claiming as such.**—The provisions of section 130 (2081) do not apply to heirs or legatees claiming as such.

Heirs or legatees claiming as such.—Fretwell v. McLemore, 52 Ala. 124; Foster v. Holland, 56 Ala. 474; Owens v. Corbitt, 57 Ala. 92; McDowell v. Jones, 58 Ala. 25; Rhodes v. Hannah, 66 Ala. 215; Taylor v. Robinson, 69 Ala. 269; McDowell v. Brantley, 80 Ala. 173; Page v. Bartlett, 101 Ala. 193.

133 (2083) (2599) (2241) (1885). **Presentation of claims; how made; affidavit.**—The presentation may be made either to the executor or administrator, or by filing the claim, or a statement thereof, in the office of the judge of probate in which letters were granted, in which case the same must be docketed, with a note of the time of such presentation; and if required, a statement must be given by such judge, showing the time of presentation. But every such claim so presented must be verified by the oath of the claimant or some other person having knowledge of the correctness of the claim, and that the amount claimed is justly due, or to become due, after allowing all proper credits. When a claim is filed by an executor, administrator, guardian, or other trustee, it may be verified by his affidavit that he has made diligent inquiry and examination, and that he believes the amount claimed is justly due, or to become due, after allowing all proper credits. Any defect or insufficiency in the affidavit may be supplied by amendment at any time.

See citations to section 130 (2081).

134 (2084) (2600) (2242) (1886). **When revival of suit a presentation.**—The revival of any action pending against any person at the time of his death, which by law survives against his personal representative, by notice on the executor or administrator, within twelve months after the grant of letters, shall be considered as a presentation of the claim on which the action is founded.*

See citations to section 130 (2081).

135 (2085) (2601) (2243) (1887). **Costs against plaintiff on failure to prove presentation.**—In any action against an executor or administrator, commenced after the death of the decedent, if the plaintiff fails to prove a presentation of the claim or demand, he must pay the costs of suit, although he may recover.

Statute imposing costs on failure to present, construed.—Mitchell v. Lea, 57 Ala. 46; Wallace v. Nelson, 28 Ala. 282.

136 (2086) (2494) (2117) (1790). **When representative protected in payment of debts.**—The payment of any debt against the estate by the executor or administrator, after twelve months from the

*"Eighteen" changed to "twelve" by joint committee.

grant of letters, protects him, to the extent of the payment, from liability on any other debt against such estate which had not been presented at the time of such payment.*

137 (2087) (2495) (2118) (1791). **Payment of debts not due.** Any debt not due, which has been presented, may be paid by an executor or administrator after twelve months from the grant of letters, and the provisions of the preceding section include such debts; but such payment must not be made, unless the creditor accept, in discharge of such debt, such an amount as, with interest from the day of payment to the day when such debt is due, would make the amount thereof.*

Claim payable at death, is absolute.—Farris v. Stoutz, 78 Ala. 130.

138 (2088) (2505). **Sale or compromise of bad or doubtful claims.**—The probate court having jurisdiction of the estate may authorize any executor or administrator to compromise or sell any bad or doubtful claim due the estate, on the written application of the executor or administrator, verified by his affidavit, and stating the facts, supported by evidence satisfactory to the court, that such claim is bad or doubtful, and that a compromise or sale thereof will promote the interests of the estate.

Authority to compound or discharge choses in action.—Butler v. Gazzam, 81 Ala. 491; Waring v. Lewis, 53 Ala. 615; Woolfolk v. Sullivan, 23 Ala. 548; Miller v. Irby, 63 Ala. 477; Van Hoose v. Bush, 54 Ala. 342.

139 (2089) (2505). **Hearing of application; sale, and notice thereof.**—Such application must not be heard until the next succeeding term after the filing thereof, when, or at such time as the court may continue the hearing, the court, if satisfied that the claim is bad or doubtful, and that a sale or compromise thereof will promote the interests of the estate, must make and enter a decree directing the sale or compromise of the claim, as may be best for the interests of the estate; and if a sale is decreed, it must be made by the executor or administrator at the court-house of the county, at public outcry to the highest bidder for cash, after having first given notice of the time and place thereof by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, by posting notices for three weeks at the court-house door, and three other public places in the county.

140 (2090) (2506). **Report of compromise or sale.**—The executor or administrator shall make report, in writing and under oath, of such sale or compromise within thirty days thereafter; and when such report is made, the sale or compromise may be confirmed unless good cause be shown for setting the same aside.

141 (2091) (2432) (2066). **When administrator may give note in settlement of debt.**—Any executor or administrator, by authority of the probate court given on his written application, may, in his representative capacity, give his note, bond, or bill for the purpose of extending or settling a debt of the decedent, or settling a

*"Eighteen" stricken out and "twelve" inserted by joint committee.

debt contracted by such representative for articles, or for work and labor for the estate; and for such note, bond, or bill the estate is liable, and the executor or administrator is not personally liable. But the heirs, devisees, distributees, or legatees must have ten days notice of such application.*

Giving note by administrator when binding on estate.—Wilburn v. McCalley, 63 Ala. 436; Wilburn v. McCalley, 77 Ala. 549.

ARTICLE 6.

SALE OF PERSONAL PROPERTY FOR PAYMENT OF DEBTS AND FOR DISTRIBUTION.

142 (2092) (2433) (2067) (1743). **Power of sale conferred.**—Any part of the personal property of a decedent, including land-warrants, may be sold by order of the court, on the written application of the executor or administrator, verified by affidavit, in the following cases, unless, in such cases, power to sell is conferred by the will:

1. For the payment of debts.
2. To make distribution among the distributees or legatees.
3. To prevent the waste or destruction of property liable to waste, or of a perishable nature, if it is proved that the sale would be beneficial to the estate.

Jurisdiction, statutory and limited.—Wyatt v. Rambo, 29 Ala. 510; Hall v. Chapman, 35 Ala. 553; Ikelheimer v. Chapman, 32 Ala. 676; Whorton v. Moragne, 62 Ala. 201. **Petition to sell must state purpose and object.**—Ikelheimer v. Chapman, 32 Ala. 676; Hall v. Chapman, 35 Ala. 553; Hatcher v. Clifton, 33 Ala. 301; Wilson v. Armstrong, 42 Ala. 168; Beene v. Collenberger, 38 Ala. 647; Harris v. Parker, 41 Ala. 604; Reynolds v. Kirkland, 44 Ala. 312. **Court without jurisdiction, unless title remains in personal representative.**—Whorton v. Moragne, 62 Ala. 201. **When order of sale a nullity.**—Hall v. Chapman, 35 Ala. 553; Beene v. Collenberger, 38 Ala. 647; Wilson v. Armstrong, 42 Ala. 168; Wyatt v. Rambo, 29 Ala. 510; Ikelheimer v. Chapman, 32 Ala. 676; Hatcher v. Clifton, 33 Ala. 301; Riddle v. Hill, 51 Ala. 224. **When sale void.**—Church v. Price, 42 Ala. 39; Pistole v. Street, 5 Port. 64; Fambro v. Gantt, 12 Ala. 298; Bragg v. Massie, 38 Ala. 89; Lay v. Lawson, 23 Ala. 377; Waring v. Lewis, 53 Ala. 615; Reynolds v. Kirkland, 44 Ala. 312. **When sustained on collateral attack.**—Hatcher v. Clifton, 33 Ala. 301; Ward v. Hudspeth, 44 Ala. 215; Reynolds v. Kirkland, 44 Ala. 312; Harris v. Parker, 41 Ala. 604; King v. Kent, 29 Ala. 542; Wyatt v. Rambo, 29 Ala. 510; Doe v. Riley, 28 Ala. 164; Matheson v. Hearin, 29 Ala. 210; Field v. Goldsby, 28 Ala. 218; Cobb v. Garner, 105 Ala. 467; Kent v. Mansell, 101 Ala. 334. **Sale by personal representative, without order of court, void.**—Swink v. Snodgrass, 17 Ala. 653; Weir v. Davis, 4 Ala. 442; Dearman v. Dearman, 4 Ala. 521; Fambro v. Gantt, 12 Ala. 298; Hopper v. Steele, 18 Ala. 828; Lay v. Lawson, 23 Ala. 390; Woods v. Legg, 91 Ala. 511; Waring v. Lewis, 53 Ala. 615; Reynolds v. Kirkland, 44 Ala. 312. **But he may compromise or settle debts due estate.** Woolfork v. Sullivan, 23 Ala. 548. **No authority to sell under statute for distribution, when power vested by will.**—McCollum v. McCollum, 33 Ala. 711; Church v. Price, 42 Ala. 39; Brock v. Frank, 51 Ala. 85; Wilson v. Holt, 83 Ala. 528. **Sale by administrator with warranty binds himself personally.**—Craddock v. Stewart, 6 Ala. 77; Ricks v. Dillahunty, 8 Port. 134; Stoudenmeier v. Williamson, 29 Ala. 558. **Application should be in writing, verified by affidavit.**—Atkinson v. Wright, 46 Ala. 598.

143 (2093) (2434) (2068). **Notice of application; how given.** Notice of such application must be given in such manner, and for such length of time, not less than three weeks, as the judge of pro-

*Last paragraph added by joint committee.

bate may require; but when the property is perishable, and is so specified in the application, no notice is required, if the judge is satisfied of the truth of the allegations contained in the application.

144 (2094) (2435) (2069) (1745). **Application may be contested.** Any person interested may appear and contest such application, and show that no sale is required, or that it is more for the interest of the estate that other personal property should be sold.

145 (2095) (2436) (2070) (1746). **Notice of sale.**—When the application is granted for the sale of any personal property, the executor or administrator must give notice of the day, place and terms of sale, and a description of the property to be sold, by advertisement for three successive weeks in some newspaper published in the county where the sale is to take place, or, if there be no such paper, by posting notice at the court-house door and at three other public places in the county. But when the property is perishable, or the expense of keeping it is very great, the sale may be made after five days' notice, which may be given by one insertion in a newspaper published in the county where the sale is to take place, or, if there be no such paper, by posting at the court-house door and at three other public places in the county. And in addition to the notice herein prescribed, the court may direct the giving of notice by printed handbills, or posters, to be distributed and posted in the manner best calculated to give extended notice of the sale.

146 (2096) (2437) (2071) (1747). **Hours of sale.**—Such sale must not commence before the hour of eleven in the morning, nor continue longer than four in the afternoon; and, if not completed within those hours, it may be continued from day to day.

147 (2097) (2438, 2444) (2072, 2077) (1748, 1752). **Terms of sale.**—Such sale may be for cash, or on credit not exceeding twelve months, as the court may direct; and if on credit, notes or bonds, with at least two sufficient sureties, must be taken by the executor or administrator.

When credit given, measure of diligence and care required.—Searcy v. Holmes, 45 Ala. 225. When title passes as against claim of exemption.—Hardin v. Pulley, 79 Ala. 381. **No authority to sell without an order of court.**—Lay v. Lawson, 23 Ala. 377.

148. **When bid rejected and sale postponed.**—When the highest amount bid for the property, or any part thereof, is, in the opinion of the executor or administrator, greatly less than its fair value, he may withdraw the property and postpone the sale.

149. **Failure of purchaser to comply; resale; deficiency.**—If the purchaser fails to comply with the terms of the sale, the executor or administrator may again proceed to advertise and sell the property; and if, on another and a completed sale, the property sells for a less sum than the amount bid at the former sale, the purchaser so in default is liable to the executor or administrator for the deficiency, and also the expense of the resale.

150 (2098) (2439, 2440, 2441) (2261, 2262, 2073) (1901, 1750). **Crops commenced by decedent; nature and sale of.**—Any crop commenced by a decedent may be completed and gathered by the ex-

ecutor or administrator, and, the expenses of the plantation being deducted therefrom, is assets in his hands, and may be sold by him at private sale, either in or out of the state.

Payment of expenses.—Loeb v. Richardson, 74 Ala. 311; Tayloe v. Bush, 75 Ala. 432; Eubank v. Clark, 78 Ala. 73; Mitcham v. Moore, 73 Ala. 542; Naftel v. Osborn, 96 Ala. 623. **When not necessary to complete crops.**—Blair v. Murphree, 81 Ala. 454; Wright v. Watson, 96 Ala. 536; Marx v. Nelms, 95 Ala. 304.

151 (2099) (2442) (2074). **Sale of stock of goods.**—When any person engaged in mercantile business dies, leaving a stock of goods, wares, or merchandise, and leaving no surviving partner in such business, the executor or administrator of his estate may sell such stock of goods, wares, or merchandise, either at public or private sale, by wholesale or retail, upon first obtaining an order for such sale, as hereinafter provided, from the probate court having jurisdiction of the estate.

Mode of procedure.—Harris v. Parker, 41 Ala. 604.

152 (2100) (2443) (2075). **Contents of application; when order made.**—To obtain such order, the executor or administrator must file in such court an application in writing, verified by his oath, setting forth with reasonable certainty the kind, quantity and estimated value of such goods, wares, or merchandise, and any facts or circumstances that may render it necessary or expedient to sell the same; and if it should appear to the court that it would benefit those interested in the estate that such order should be made, the court must make the same, and may, in its discretion, prescribe such terms and conditions of sale as may seem to the court most advantageous to those interested in the estate; but such sale must be made within one year from the making of such order.

Harris v. Parker, 41 Ala. 604.

153 (2101) (2445) (2078) (1753). **Returns of accounts of sales.** All accounts of sales of personalty made by the executor or administrator must be returned on oath, within thirty days after such sale, and must be recorded; and such returns may be compelled by attachment.

ARTICLE 7.

RENTING AND SALE OF REAL ESTATE FOR PAYMENT OF DEBTS, AND FOR DIVISION.

154 (2102) (2446) (2076) (1751). **Renting of lands; how made.** The executor or administrator may rent the decedent's lands at public outcry, or, when the interest of the estate requires it, privately; and such rent is assets; but when lands are rented privately, he must report such renting to the probate court of the proper county within thirty days thereafter.

Under act of 1839, **special power executed as by statute provided.**—Martin v. Williams, 18 Ala. 190. **Power for benefit of creditors.**—Clark v. Knox, 70 Ala. 607. **Liability of personal representative for failure to exercise.** Pearson v. Darrington, 32 Ala. 227; James v. Faulk, 54 Ala. 184; Benagh v

Turrentine, 60 Ala. 557; Henderson v. Simmons, 33 Ala. 291; Clark v. Knox, 70 Ala. 607. **Power exists whether estate solvent or insolvent.**—Boynton v. McEwen, 36 Ala. 348; Anderson v. McGowan, 42 Ala. 280; Griffin v. Bland, 43 Ala. 542; Lewis v. Wells, 50 Ala. 198. **Authority to receive rents on lease by decedent.**—Hawkins v. Pope, 10 Ala. 493; Griffin v. Bland, 43 Ala. 542. **Effect of statute on title and rights of heirs.**—Masterson v. Girard, 10 Ala. 60; Bank v. Fry, 23 Ala. 770; Chighizola v. Le Baron, 21 Ala. 406; Smith v. King, 22 Ala. 558; Nelson v. Murfee, 69 Ala. 598; Calhoun v. Fletcher, 63 Ala. 574; Stovall v. Clay, 108 Ala. 105. **As result of statutory system, personal representative may recover in ejectment.**—Golding v. Golding, 24 Ala. 122; Tarver v. Smith, 38 Ala. 135; Russell v. Erwin, 41 Ala. 292; McCollough v. Wise, 57 Ala. 623; McRae v. McDonald, 57 Ala. 423; Wells v. Elliott, 68 Ala. 183; Morgan v. Casey, 73 Ala. 222; Landford v. Dunklin, 71 Ala. 594; Pendley v. Madison, 83 Ala. 484. **Rents of lands left under mortgage by decedent and collected by administratrix may be applied to mortgage debt.**—Patapsco v. Ballard, 107 Ala. 710.

155 (2103) (2447) (2079) (1754). **Sale for payment of debts when there is a will.**—Lands may be sold by the executor, or by the administrator with the will annexed, for the payment of debts, when the will gives no power to sell the same for that purpose, and the personal estate is insufficient therefor.

Jurisdiction to sell lands, for division or payments of debts, in rem. Wyman v. Campbell, 6 Port. 219; King v. Kent, 29 Ala. 542; Satcher v. Satcher, 41 Ala. 26; DeBardelaben v. Stoudenmire, 48 Ala. 643; Doe v. Hardy, 52 Ala. 291; Pettus v. McClannahan, 52 Ala. 55; Garrett v. Bruner, 59 Ala. 513; Davis v. Tarver, 65 Ala. 98; Bland v. Bowie, 53 Ala. 152; Whorton v. Moragne, 62 Ala. 201; Tyson v. Brown, 64 Ala. 244; Robertson v. Bradford, 70 Ala. 385; Landford v. Dunklin, 71 Ala. 594; Gilchrist v. Shackelford, 72 Ala. 7; Foxworth v. White, 72 Ala. 224. **When also, in personam.**—Garrett v. Bruner, 59 Ala. 513; Davis v. Tarver, 65 Ala. 98; Ford v. Ford, 68 Ala. 141. **Jurisdiction statutory and limited; jurisdictional facts must appear of record.**—Wyman v. Campbell, 6 Port. 219; Cloud v. Barton, 14 Ala. 347; Matheson v. Hearin, 29 Ala. 210; Bishop v. Hampton, 15 Ala. 761; Satcher v. Satcher, 41 Ala. 26; Conference v. Price, 42 Ala. 39; Pettus v. McClannahan, 52 Ala. 55; Arnett v. Bailey, 60 Ala. 435; Wilburn v. McCalley, 63 Ala. 436; Tyson v. Brown, 64 Ala. 244; Robertson v. Bradford, 70 Ala. 385; s. c., 73 Ala. 116; Landford v. Dunklin, 71 Ala. 594; Gilchrist v. Shackelford, 72 Ala. 7; Banks v. Speers, 103 Ala. 436; Smith v. Brannon, 99 Ala. 445; Hine v. Hussey, 45 Ala. 496; Spragins v. Taylor, 48 Ala. 520; Bland v. Bowie, 53 Ala. 152; Doe v. Hardy, 52 Ala. 291; Avery v. Avery, 47 Ala. 505; Inman v. Gibbs, 47 Ala. 305; Garner v. Toney, 107 Ala. 352; Cruikshank v. Luttrell, 67 Ala. 318. **Jurisdiction attaches on filing petition, and decree cannot be collaterally impeached for mere irregularities.**—Wyman v. Campbell, 6 Port. 219; Duval v. McLoskey, 1 Ala. 708; Lightfoot v. Lewis, 1 Ala. 475; Perkins v. Winter, 7 Ala. 855; Evans v. Mathews, 8 Ala. 99; Duval v. Bank, 10 Ala. 636; Cox v. Davis, 17 Ala. 714; Bishop v. Hampton, 15 Ala. 761; Field v. Goldsby, 28 Ala. 218; Saltonstall v. Riley, 28 Ala. 164; King v. Kent, 29 Ala. 542; Matheson v. Hearin, 29 Ala. 210; Watson v. Collins, 37 Ala. 387; Satcher v. Satcher, 41 Ala. 26; Carter v. Waugh, 42 Ala. 452; Smitha v. Flournoy, 47 Ala. 345; Spragins v. Taylor, 48 Ala. 520; Clark v. Bernstein, 49 Ala. 596; Wright v. Ware, 50 Ala. 549; Doe v. Hardy, 52 Ala. 291; Bland v. Bowie, 53 Ala. 152; Arnett v. Bailey, 60 Ala. 435; Bibb v. Bishop, 61 Ala. 326; Wilburn v. McCalley, 63 Ala. 436; Landford v. Dunklin, 71 Ala. 594; Massey v. Smith, 73 Ala. 173; Foxworth v. White, 72 Ala. 224; Pollard v. Hanrick, 74 Ala. 334; May v. Marks, 74 Ala. 249; Cobb v. Garner, 105 Ala. 467; Ligon v. Ligon, 84 Ala. 555; Robertson v. Bradford, 70 Ala. 385; Whitlow v. Echols, 78 Ala. 206; Lyons v. Hamner, 84 Ala. 197; Townsend v. Steel, 85 Ala. 580; Jones v. Woodstock, 95 Ala. 551; Clancy v. Stephens, 92 Ala. 577; Goodwin v. Sims, 86 Ala. 102; Bibb v. Bishop, 61 Ala. 326; Watson v. Collins, 37 Ala. 587; Warnock v. Thomas, 48 Ala. 463; McCain v. McCain, 12 Ala. 510; Bolling v. Smith, 79 Ala. 535; Austin v. Willis, 90 Ala. 421; Moore v. Cottingham, 113 Ala. (20 So. 994). **When decree of sale for payment of debts void.**—Conference v. Price, 42 Ala. 39; Tyson v. Brown, 64 Ala. 244; Bishop v. Hampton, 15 Ala. 761; Moseley v. Tuthill, 45 Ala. 621; Robertson v. Bradford, 70 Ala. 385; s. c., 73 Ala. 116; Wilburn v. McCalley, 63 Ala. 436; Cloud v. Barton, 14 Ala. 347; Pettus v. McClanahan, 52 Ala. 55; McCorkle v. Rhea, 75 Ala. 213; Massey v. Smith, 73 Ala. 173; Gilchrist v. Shackelford, 72 Ala. 7; Moore v. Randolph, 70 Ala. 575; Meadows v. Meadows, 73 Ala. 356; Landford v. Dunklin, 71 Ala. 594; Quarles v. Campbell, 72 Ala. 64; Whitman v. Reese, 59 Ala. 532; Ballard v. Jones, 80 Ala. 32; Morgan v. Farned, 83 Ala. 367; Sermon v. Black, 79 Ala. 507; Hall v. Hall, 47 Ala. 290. **When will confer powers of**

sale.—Winston v. Jones, 6 Ala. 550; McCollum v. McCollum, 33 Ala. 711; Conference v. Price, 42 Ala. 39; Wilson v. Holt, 83 Ala. 528; Moseley v. Tuthill, 45 Ala. 621; Brock v. Frank, 51 Ala. 85. **When not.**—Walker v. Murphy, 34 Ala. 591. **Sale made under void order not aided by power in will.**—Conference v. Price, 42 Ala. 39; McCollum v. McCollum, 33 Ala. 711; Wilson v. Holt, 83 Ala. 528. **What title or estate may be sold.**—Brown v. Chambers, 12 Ala. 697; McCain v. McCain, 12 Ala. 510; Burns v. Hamilton, 33 Ala. 210; McKay v. Broad, 70 Ala. 377; Evans v. Mathews, 8 Ala. 99; Jennings v. Jenkins, 9 Ala. 285; Bishop v. Blair, 36 Ala. 80; Fielder v. Childs, 73 Ala. 567; Inman v. Gibbs, 47 Ala. 305; Vaughan v. Holmes, 22 Ala. 593; Jones v. Woodstock, 95 Ala. 551. **The will a limit on jurisdiction.**—Moseley v. Tuthill, 45 Ala. 621; Wilson v. Holt, 83 Ala. 528. **Decree not void because made in vacation.** Matheson v. Hearin, 29 Ala. 210. **Nor because made at special term.**—Roach v. Gunter, 42 Ala. 239. **Of what facts decree conclusive.**—May v. Marks, 74 Ala. 249; Landford v. Dunklin, 71 Ala. 594; Chardavoyne v. Lynch, 82 Ala. 376; Jones v. Woodstock, 95 Ala. 551; Cobb v. Garner, 105 Ala. 467. **Chancery will decree sales, when, in similar cases, probate court would have power to do so.**—Sharp v. Sharp, 76 Ala. 312; Bragg v. Beers, 71 Ala. 151; Hall v. Wilson, 14 Ala. 295; Wilson v. Crook, 17 Ala. 59. **Petition must aver jurisdictional facts.**—Kent v. Mansell, 101 Ala. 334; Smith v. Brannon, 99 Ala. 445; Cobb v. Garner, 105 Ala. 467; Alford v. Alford, 96 Ala. 385; Thompson v. Boswell, 97 Ala. 570; Garner v. Toney, 107 Ala. 352; Goodwin v. Sims, 86 Ala. 102; Cotton v. Holloway, 96 Ala. 544 (overruling Abernathy v. O'Reilley, 90 Ala. 495, and modifying Quarles v. Campbell, 72 Ala. 64); Eatman v. Eatman, 83 Ala. 478; Wilson v. Holt, 83 Ala. 528; Tyson v. Brown, 64 Ala. 244; Robertson v. Bradford, 70 Ala. 385. **Sale of lands under defective petition, laches and prescription against infant.**—Lindsay v. Cooper, 94 Ala. 170; Wilson v. Holt, 83 Ala. 528. **Heir at law can plead statute of limitations in answer to petition.**—Warren v. Hearne, 82 Ala. 554. **Adverse possession by heir as defense against order of sale.**—Bozeman v. Bozeman, 83 Ala. 416. **When sale of land to pay debts will be enjoined.**—Owens v. Childs, 58 Ala. 113; Banks v. Speers, 103 Ala. 436. (But see Speers v. Banks, MS.)

156 (2104) (2448) (2080) (1755). **Sale in case of intestacy.**—In cases of intestacy, lands may be sold by the administrator for the payment of debts, when the personal estate is insufficient therefor.

See citations to preceding section.

157 (2105) (2449) (2221) (1867). **Sale for division.**—Lands of an estate may be sold by order of the probate court having jurisdiction of the estate, when the same cannot be equitably divided among the heirs or devisees.

A child en ventre sa mere not an heir within statute.—Gillespie v. Nabors, 59 Ala. 441. **Petition showing one heir will not support decree.**—Ib. **Nor when it shows widow and one heir only.**—Snedicor v. Mobley, 47 Ala. 517. **Cases in which jurisdiction sustained on collateral attack.**—Carter v. Waugh, 42 Ala. 452; Pollard v. Hanrick, 74 Ala. 334; Satcher v. Satcher, 41 Ala. 26; Warnock v. Thomas, 48 Ala. 463; Watson v. Collins, 37 Ala. 587. **When not.** Brock v. Frank, 51 Ala. 85; McCain v. McCain, 12 Ala. 510. **Jurisdiction when lands are owned by partnership.**—Roulston v. Washington, 79 Ala. 529; Espy v. Comer, 76 Ala. 501; Andrews v. Brown, 21 Ala. 437; Lang v. Waring, 17 Ala. 145. **Title of heirs not divested until purchase-money has been paid in full and conveyance executed.**—Gardner v. Kelso, 80 Ala. 497; Cruikshank v. Luttrell, 67 Ala. 318; Ketchum v. Creagh, 53 Ala. 224; Corbitt v. Clenny, 52 Ala. 480; Wood v. Sullins, 44 Ala. 686. **Sale when land cannot be equitably divided.**—Bishop v. Hampton, 15 Ala. 761; Gillespie v. Nabors, 59 Ala. 441; Pettit v. Pettit, 32 Ala. 288; Eatman v. Eatman, 83 Ala. 478; Jones v. Woodstock, 95 Ala. 551; Pollard v. Hanrick, 74 Ala. 334. **Petition should show that one of the heirs desires division.**—Avery v. Avery, 47 Ala. 505. See also citations to section 155 (2103).

158 (2106) (2450, 2453) (2222, 2085) (1868, 1759). **Application; by whom and to whom made; contest.**—The application for the sale of lands, either for payment of debts or for division, must be made by the executor or administrator in writing, verified by affidavit, to the probate court having jurisdiction of the estate, must describe the lands accurately, must give the names of the heirs or de-

visees, and their places of residence, and must also state whether any, and which of such heirs or devisees are under the age of twenty-one years, or of unsound mind, or are married women; and such application may be contested by any party interested in the estate.

Sufficiency of application.—Ford v. Garner, 49 Ala. 601; Cloud v. Barton, 14 Ala. 347; Noles v. Noles, 40 Ala. 576; Page v. Matthews, 41 Ala. 719; Hoard v. Hoard, Ib. 590; Meadows v. Meadows, 73 Ala. 356; Inman v. Gibbs, 47 Ala. 305; King v. Kent, 29 Ala. 542; Sharp v. Sharp, 76 Ala. 312; Garrett v. Garrett, 64 Ala. 263; Gayle v. Johnston, 72 Ala. 254; DeBardelaben v. Stoudenmire, 48 Ala. 643; Avery v. Avery, 47 Ala. 505; Bozeman v. Bozeman, 82 Ala. 389; Brown v. Brown, 41 Ala. 215; Townsend v. Steel, 85 Ala. 580; Kent v. Mansel, 101 Ala. 334; Cotton v. Holloway, 96 Ala. 544; Smith v. Brannon, 99 Ala. 445; Bingham v. Jones, 84 Ala. 202; Austin v. Willis, 90 Ala. 421; Bolling v. Smith, 79 Ala. 535; Eatman v. Eatman, 83 Ala. 478; Thompson v. Boswell, 97 Ala. 570; Griffin v. Griffin, 3 Ala. 623; Garner v. Toney, 107 Ala. 352. **What good plea to application.**—Ford v. Garner, 49 Ala. 601; Rice v. Drennen, 75 Ala. 335; Watson v. Collins, 37 Ala. 587; Gayle v. Johnston, 72 Ala. 254; Garrett v. Garrett, 64 Ala. 263; Bond v. Smith, 2 Ala. 660; Teague v. Corbitt, 57 Ala. 529; Garrett v. Bruner, 59 Ala. 513; Scott v. Ware, 64 Ala. 174; Harwood v. Harper, 54 Ala. 659; McCain v. McCain, 12 Ala. 510; Johnson v. Collins, 12 Ala. 322; Whorton v. Moragne, 62 Ala. 201; Wimberly v. Wimberly, 38 Ala. 40; Warren v. Hearne, 82 Ala. 554. **What no answer.**—Rice v. Drennen, 75 Ala. 335; Duval v. Bank, 10 Ala. 636; Perkins v. Winter, 7 Ala. 855; Evans v. Matthews, 8 Ala. 99; Jennings v. Jenkins, 9 Ala. 285. **Burden of proof on administrator.** Davis v. Tarver, 65 Ala. 98; Garrett v. Garrett, 64 Ala. 263; Garrett v. Bruner, 59 Ala. 513; Bond v. Smith, 2 Ala. 660. **When minor interested,** decree for division should not be made unless it is shown to be to their interest.—Avery v. Avery, 47 Ala. 505. **Failure to state name of one of the heirs; remedy of heir.**—Lyons v. Hamner, 84 Ala. 197; Duval v. Bank, 10 Ala. 636; Satcher v. Satcher, 41 Ala. 26; Duval v. McLoskey, 1 Ala. 708; Townsend v. Steel, 85 Ala. 580.

159 (2107) (2451, 2454) (2223, 2224) (1869). **Day fixed for trial; appointment of a guardian ad litem.**—The court must appoint a day, not less than forty days from the time of making such application, for the hearing thereof, and must appoint a proper person, not a petitioner or of kin to a petitioner, as guardian ad litem, to represent the minors or persons of unsound mind, if any there be, and must issue a citation to the heirs or devisees of full age and residing in this state, notifying them of the application, and of the day appointed for hearing the same, which must be served on them ten days before the day appointed for the hearing.

Notice to heirs, record must show affirmatively.—Summersett v. Summersett, 40 Ala. 596; Page v. Matthews, 41 Ala. 719; Laird v. Reese, 43 Ala. 148; Cloud v. Barton, 14 Ala. 347; Hoard v. Hoard, 41 Ala. 590; Bolling v. Smith, 79 Ala. 535. **Guardian ad litem.**—Craig v. McGehee, 16 Ala. 41; Hooper v. Hardie, 80 Ala. 114; Laird v. Reese, 43 Ala. 148; Frierson v. Travis, 39 Ala. 150.

160 (2108) (2451) (2223) (1869). **When notice given by publication.**—If such application be for the sale of land for the payment of debts, notice must also be given by publication, once a week for three successive weeks, in some newspaper published in the county, or by posting up notices at the court-house door and three other public places in the county, at the discretion of the court; but if no newspaper is published in the county, notices must be posted as above prescribed.

161 (2109) (2452) (2227) (1871). **Publication as to non-residents.**—If any of the heirs or devisees reside out of this state, such heirs or devisees may be brought into court by publication, once a week for three successive weeks, in a newspaper published in the

county in which the application is made, or if none is published therein, then in the newspaper published nearest to the court-house of such county.

Dec. 13, 1894, p. 144.

162. Unknown parties; notice; appointment of special guardian; shares paid into court.—If it shall be averred in an application for the sale of lands for the payment of debts or for division, that the names of any of the heirs or devisees are unknown, that the petitioner has made diligent inquiry and cannot ascertain the same, the cause may proceed against them without naming them; but the court must make publication as in case of non-residents, describing such unknown parties as near as may be by the character in which they are made parties and with reference to their interest in the lands sought to be sold, and must appoint a suitable and competent person, not of kin or of counsel to the petitioner, as special guardian to represent such unknown parties. The shares or interests of such unknown parties, in the proceeds of lands sold for division, shall be paid into court and there retained and paid out to the proper parties when ascertained.

163 (2110) (2454) (2224). **Duty, authority, and compensation of guardian ad litem and special guardian.**—The person appointed to represent minors, or persons of unsound mind, or unknown parties, must deny in writing the allegations contained in the application, and, if necessary, must employ counsel to defend the interests of those he represents. He is entitled to reasonable compensation, to be fixed by the court and taxed and collected as costs.

164 (2111) (2455) (2084) (1758). **Sale for payment of debts; proof of insufficiency of personalty.**—On the day appointed for hearing an application for the sale of land for the payment of debts, or on any other day to which it is continued, the applicant must show to the court that the personal property of the estate is insufficient for the payment of debts; and such proof must be made by the deposition of disinterested witnesses, and filed and recorded.

Competency and sufficiency of evidence.—Davis v. Tarver, 65 Ala. 98; Garrett v. Bruner, 59 Ala. 513; Alford v. Alford, 96 Ala. 385; Hooper v. Hardie, 80 Ala. 114; Thompson v. Boswell, 97 Ala. 570; (declaring Stevenson v. Murray, 87 Ala. 442, unsound); Garner v. Toney, 107 Ala. 352. **Insufficiency of personal property must be shown by personal representative.**—Garrett v. Bruner, 59 Ala. 513; Cotton v. Holloway, 96 Ala. 544; Quarles v. Campbell, 72 Ala. 64; Kent v. Mansell, 101 Ala. 334; Pettus v. McClannahan, 52 Ala. 55; Goodwin v. Sims, 86 Ala. 102; Smith v. Brannon, 99 Ala. 445; Meadows v. Meadows, 73 Ala. 356.

165 (2112) (2456) (2086) (1760). **When order of sale granted.** On the hearing of such application, if the court is satisfied that the personal property of the estate is insufficient to pay the debts, and, when the application is by an executor or administrator with the will annexed, that no power is given by the will for that purpose, the court may direct the sale of all, or such portion of the real estate as may be necessary to pay the debts; and such sale may be had on such credit as the court may direct, not exceeding two years.

166 (2113) (2457) (2228) (1872). **Sale of land for division; proof by deposition; order of sale.**—The facts stated in an appli-

cation to sell land for distribution must be proved by the deposition of disinterested witnesses, which must be filed and recorded; and on such proof being made, the court may order a sale of the land, which must be sold on such terms as the court may direct, not exceeding a credit of three years.

Affidavit for taking depositions not essential.—Bozeman v. Bozeman, 83 Ala. 416.

167 (2114) (2458) (2225). **When minors, etc., interested, proceedings void, unless testimony taken by deposition.**—No order for the sale of land belonging to any estate, whether for the payment of debts, or for division, must be made, when there are minors or persons of unsound mind or unknown parties interested in such estate, unless the probate court has taken evidence by deposition as in chancery proceedings, showing the necessity of such sale; and such evidence must be taken, whether the allegations in the petition are denied or not by the guardian appointed by the court to represent the minors or persons of unsound mind or unknown parties; and any order of sale and sale, made without a compliance with the requisitions of this section, shall be wholly void.

Proceedings void unless testimony taken by deposition.—Pettus v. McClannahan, 52 Ala. 55; Satcher v. Satcher, 41 Ala. 26; Wright v. Ware, 50 Ala. 549; Bland v. Bowie, 53 Ala. 152; Robertson v. Bradford, 70 Ala. 385; (See Quarles v. Campbell, 72 Ala. 64). **Record reciting ascertainment of necessity for sale according to statutory procedure cannot be assailed collaterally.** Pettus v. McClannahan, 52 Ala. 55; Clark v. Bernstein, 49 Ala. 596; Wright v. Ware, 50 Ala. 549; Bibb v. Bishop, 61 Ala. 326; Massey v. Smith, 73 Ala. 173; Gilchrist v. Shackleford, 72 Ala. 7; Goodwin v. Sims, 86 Ala. 102; Thompson v. Boswell, 97 Ala. 570; Chardavoyne v. Lynch, 82 Ala. 376.

168 (2115) (2459) (2087) (1761). **When application to be dismissed; costs.**—If, on the hearing of the application, the facts are not proved, the same must be dismissed at the cost of the applicant, for which execution may issue against him and his sureties.

169 (2116) (2460) (2088) (1762). **Advertisement of sale.**—When the application for the sale of land for the payment of debts or division is granted, and the land directed to be sold, the executor or administrator must give notice of the day, place and terms of sale, and a description of the property to be sold, by advertisement for three successive weeks in some newspaper published in the county where the sale is to take place; and in case of a sale of lands lying in one body, but in more than one county, such notice must be given in each of the counties. If there be no such paper published in the county, or in any county in which notice is required to be given, then, as to the county having no such paper, the notice must be given by posting at the court-house door and at three other public places in the county. And in addition to the notice herein prescribed, the court may direct the giving of notice by printed handbills, or posters, to be distributed and posted in the manner best calculated to give extended notice of the sale.

Failure to give statutory notice does not render sale void on collateral attack.—Matheson v. Hearin, 29 Ala. 210; Field v. Goldsby, 28 Ala. 218; Pollard v. Hanrick, 74 Ala. 334.

170. **Hours of sale; when bid rejected and sale postponed; fail-**

ure of purchaser to comply; resale; deficiency.—Sections 146, 148, and 149 of this Code are applicable to sales of real estate.

171 (2117) (2461) (2089) (1763). **How purchase-money secured.** The executor or administrator must secure the purchase-money by taking the notes or bonds of the purchaser, with at least two sufficient sureties.

Personal liability of administrator for violating statute.—May v. Green, 75 Ala. 162; Walls v. Grigsby, 42 Ala. 473; James v. Faulk, 54 Ala. 184; Betts v. Blackwell, 2 Stew. & Port. 373; Dean v. Rathbone, 15 Ala. 328; Cruikshank v. Luttrell, 67 Ala. 318.

172 (2118) (2462) (2090) (1764). **Place of sale.**—Lands may be sold at such place in the county where they lie, as the court may direct; and if they lie in one body, but in more than one county, they may be sold in either of the counties, as the court may direct.

Place as affecting validity of sale.—Matheson v. Hearin, 29 Ala. 210; Brown v. Brown, 41 Ala. 215; Calloway v. Kirkland, 57 Ala. 476; Cruikshank v. Luttrell, 67 Ala. 318; Calloway v. Kirkland, 50 Ala. 401; Bozeman v. Bozeman, 82 Ala. 389.

173 (2119) (2463) (2091) (1765). **Return of sales to be made and examined.**—The executor or administrator must, within thirty days after such sale, report on oath his proceedings to the court, who must examine the same, and may also examine witnesses in relation thereto.

Report of sale.—Webb v. Ballard, 97 Ala. 584.

174 (2120) (2464) (2092) (1766). **When sales set aside.**—If, on such examination, the court is satisfied that the sale was not fairly conducted, or that the amount for which the land, or any portion of the same, sold, was greatly less than its real value, the court may vacate such sale, either in whole or in part.

When sale set aside.—Field v. Gamble, 47 Ala. 443; Cruikshank v. Luttrell, 67 Ala. 318; Pettus, v. McClannahan, 52 Ala. 55; Collins v. Johnson, 45 Ala. 548; Smitha v. Flournoy, 47 Ala. 345; Snedicor v. Mobley, 47 Ala. 517. **Purchaser cannot have sale set aside.**—Bland v. Bowie, 53 Ala. 152. See Pettus v. McClannahan, 52 Ala. 55.

175 (2121) (2465) (2093) (1767). **Sales not confirmed until sufficient security is given.**—If it is made to appear to the court, previous to the confirmation of such sale, that the sureties taken on the notes or bonds of the purchasers are insufficient, such sale, as to every such purchaser, must not be confirmed until he gives security for the purchase-money to the satisfaction of the court; and if such security is not given, the sale must be vacated as to the purchaser thus failing.

Personal representative individually liable if sufficient security not taken.—May v. Green, 75 Ala. 162; James v. Faulk, 54 Ala. 184; Walls v. Grigsby, 42 Ala. 473.

176 (2122) (2466) (2094) (1768). **When resale to be made.** When any sale of land is vacated, in whole or in part, according to the provisions of the two preceding sections, the court must direct another sale to be had, which must be advertised and conducted in all respects as is provided for the sale of land under the provisions of this article.

Cruikshank v. Luttrell, 67 Ala. 318; Field v. Gamble, 47 Ala. 443.

177 (2123) (2467) (2095) (1769). **When sale confirmed.**—Whenever the court is satisfied that such sale was fairly conducted, and the land sold for an amount not greatly less than its real value, and the purchase-money is paid, or sufficiently secured, it must make an order confirming such sale; but such order of confirmation shall not be made until after the expiration of ten days after the report of sale is filed.

Confirmation of sale.—Webb v. Ballard, 97 Ala. 584; Meadows v. Meadows, 81 Ala. 451; Cruikshank v. Luttrell, 67 Ala. 318; Eatman v. Eatman, 83 Ala. 478. **When sale void.**—McMillan v. Rushing, 80 Ala. 402; Bland v. Bowie, 53 Ala. 152; Stevenson v. Murray, 87 Ala. 442; Robertson v. Bradford, 70 Ala. 385. **When a personal representative who has no interest in the estate purchases at his own sale, the sale is void** at the election of the heirs, seasonably expressed; but if he has an interest, his purchase will be sustained if made in the ordinary mode and there is no unfairness.—James v. James, 55 Ala. 525; Dugger v. Tayloe, 60 Ala. 504; Anderson v. Bradley, 66 Ala. 263; Foxworth v. White, 72 Ala. 224; Daniel v. Stough, 73 Ala. 379; Feilder v. Childs, 73 Ala. 567; McMillan v. Rushing, 80 Ala. 402; Ligon v. Ligon, 84 Ala. 555; Penny v. Jackson, 85 Ala. 67; Brannan v. Oliver, 2 S. 47; McLane v. Spence, 6 Ala. 894; Montgomery v. Givhan, 24 Ala. 568, 585; Bolling v. Smith, 108 Ala. 411; Bogart v. Bell, 112 Ala. 412; Allison v. Allison, Ala. (21 So. 1008). **When the personal representative becomes the purchaser at his own sale, the record must show notice to the heirs of the proceedings after the sale;** an order to convey, made without such notice, and a conveyance thereunder, are void, even on collateral attack, whether the representative had an interest or not.—Dugger v. Tayloe, 60 Ala. 504; Anderson v. Bradley, 66 Ala. 263; Ligon v. Ligon, 84 Ala. 555; Bolling v. Smith, 108 Ala. 411; Bogart v. Bell, 112 Ala. 412; Allison v. Allison, Ala. (21 So. 1008). **The effect of confirmation.**—Wallace v. Nichols, 56 Ala. 321; Cruikshank v. Luttrell, 67 Ala. 318; Farley v. Dunklin, 76 Ala. 530; May v. Marks, 74 Ala. 249; Smith v. Wert, 64 Ala. 34; Fore v. McKenzie, 58 Ala. 115; Lowe v. Guice, 96 Ala. 80. **When confirmation presumed.**—Smith v. Wert, 64 Ala. 34. **Until confirmation and order of conveyance made, title in heirs not divested.**—Doe v. Hardy, 52 Ala. 291; Lightfoot v. Lewis, 1 Ala. 475; Cummings v. McCullough, 5 Ala. 324; Bonner v. Greenlee, 6 Ala. 411; Wallace v. Hall, 19 Ala. 367. **Conclusiveness of recitals in decree.**—Hudgens v. Cameron, 50 Ala. 379; Dugger v. Tayloe, 46 Ala. 320. **The court, not the administrator, is the vendor.** Pollard v. Hanrick, 74 Ala. 334; Hutton v. Williams, 35 Ala. 503; Wallace v. Hall, 19 Ala. 367; Jennings v. Jenkins, 9 Ala. 285; Perkins v. Winter, 7 Ala. 855.

178. Report of payment of purchase-money.—When lands have been sold on credit, and when the whole of the purchase-money has been paid, the executor or administrator must, within thirty days after such complete payment has been made, report the fact of such payment to the court of probate; and if he fail to do so within the time herein specified, such report may be compelled of him, in the manner provided by sections 180 (2125) and 181 (2126) of this Code.

179 (2124) (2468) (2096) (1770). **Conveyance; when, by whom, and to whom made.**—After such confirmation, and when the whole of the purchase-money has been paid by the purchaser, or his heirs, or any other person holding under him, directly or derivatively, on the application of such purchaser, or his heirs, or such other person holding under him, or of the executor or administrator, the court must order a conveyance to be made to such purchaser, or to his heirs, or to such other person holding under him, as the case may be, by the executor or administrator, or such other person as the court may appoint, conveying all the right, title and interest which the decedent had, at the time of his death, in such lands; and such order shall operate to vest the right, title and interest of the dece-

dent in such purchaser, or his heirs, or such other person holding under him.

What necessary before title of heirs divested.—Dugger v. Tayloe, 60 Ala. 504; Doe v. Hardy, 52 Ala. 291; Lightfoot v. Lewis, 1 Ala. 475; Cummings v. McCullough, 5 Ala. 324; Bonner v. Greenlee, 6 Ala. 411; Wallace v. Hall, 19 Ala. 367; Ketchum v. Creagh, 53 Ala. 224; May v. Marx, 74 Ala. 249; Wilburn v. McCalley, 63 Ala. 436; Corbitt v. Clenny, 52 Ala. 480; Wallace v. Nichols, 56 Ala. 321; Ligon v. Ligon, 84 Ala. 555; Gardner v. Kelsoe, 80 Ala. 497. Landford v. Dunklin, 71 Ala. 594. **A conveyance executed, without the order of the court, is not operative to pass title.**—Doe v. Hardy, 52 Ala. 291; Landford v. Dunklin, 71 Ala. 594; Nelson v. Murfee, 69 Ala. 598; McCully v. Chapman, 58 Ala. 325; Tyson v. Brown, 64 Ala. 244; Cruikshank v. Luttrell, 67 Ala. 318; Ketchum v. Creagh, 53 Ala. 224; Van Hoose v. Bush, 54 Ala. 342; Pruitt v. Holly, 73 Ala. 369. **When court may authorize person other than personal representative to convey.**—Pollard v. Hanrick, 74 Ala. 334. **When the administrator becomes the purchaser at his own sale, the heirs are entitled to notice of his application for conveyance;** order to convey, made without such notice, and conveyance thereunder, are void, even on collateral attack. Dugger v. Tayloe, 60 Ala. 504; Anderson v. Bradley, 66 Ala. 263; Ligon v. Ligon, 84 Ala. 555; Bolling v. Smith, 108 Ala. 411; Bogart v. Bell, 112 Ala. 412; Allison v. Allison, Ala. (21 So. 1008).

180 (2125). **When purchaser or party claiming under him may cite executor or administrator to report sale.**—If the executor or administrator fail, within the time required by law, to report any sale of lands made by him under the provisions of this article, the purchaser, or his heirs, or any other person claiming under him, directly or derivatively, may, by motion in the probate court, have citation to issue to such executor or administrator, citing him to appear within twenty days from the date of the service of the citation, and report the sale; and if such executor or administrator is then a non-resident of the state, or his place of residence is unknown to the party asking for the citation, the court, on affidavit being made of either of these facts, must cause service of such citation to be made by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, in the newspaper published nearest the court-house of such county.

Decree without notice is void.—Dugger v. Tayloe, 60 Ala. 504; Anderson v. Bradley, 66 Ala. 263; Mead v. Larkin, 66 Ala. 87; Ligon v. Ligon, 84 Ala. 555; May v. Marks, 74 Ala. 249. **Who may ask for conveyance by administrator.**—Anderson v. Bradley, 66 Ala. 263.

181 (2126). **Proceedings when executor or administrator fails to obey citation.**—If the executor or administrator fails to appear and report the sale, as required by such citation, the probate court must, on the day such executor or administrator is cited to appear, or on such other day as may be set by the court, proceed to hear evidence touching the regularity of the sale, the compliance with the terms of sale, and the adequacy of the price bid for the lands; and if from the evidence the court is satisfied that the sale was regular and fair, that the purchase-money has been paid or secured, according to the terms of sale, and that the amount bid at the sale is an adequate price for the lands, an order confirming the sale, and, if the sale was for cash, and the purchase-money has been paid, designating and authorizing some person to convey the title to the lands to the party entitled thereto, must be made.

See citation to preceding section.

182 (2127) (2469) (2229) (1873). **With widow's consent, dower may be sold.**—In all cases where, under the provisions of this article, the lands of a decedent can be ordered to be sold by the probate court, the widow may file in the office of the judge of probate her written consent, that her dower interest in the land may be sold, so as to vest in the purchaser the complete title; and thereupon, the court must order such dower interest to be sold with the residue of the lands.

Dower interest cannot be sold, unless by written consent of widow, and purchaser acquires no title.—Bradford v. Bradford, 66 Ala. 252; Jenks v. Terrell, 73 Ala. 238; Clancy v. Stephens, 92. Ala. 577.

183 (2128) (2470, 2471) (2230, 2231) (1874, 1875). **Value of dower interest; how fixed and paid.**—When the sale is confirmed, the court, on the application of the widow, must make an order that a fair equivalent for the dower interest be paid to her by the personal representative, when the purchase-money is collected, the value of such interest to be ascertained by proof, having regard to the age and health of the widow, but in no case to exceed one-sixth of the purchase-money.

Inchoate right of dower, how estimated.—Gordon v. Tweedy, 71 Ala. 202; Sherard v. Sherard, 33 Ala. 488; Martin v. Wharton, 38 Ala. 637; Beavers v. Smith, 11 Ala. 20; Gordon v. Tweedy, 74 Ala. 232.

184 (2129) (2472) (2128). **Mistake in description of lands sold under order of probate court; how corrected.**—When a mistake has been made in the description of lands of a decedent sold in good faith under an order of the probate court, either in the petition, order, or other proceedings, the court ordering the sale has authority, on the written application of the purchaser, or his heirs or personal representatives, or any person holding under him, verified by affidavit, to correct such mistake. The application must contain a correct description of the lands sold, and must state the facts, and the names, ages and places of residence of the personal representative and heirs or devisees of such decedent, if known, and if there be no personal representative, that fact must be stated; and, upon the filing of such application, the court must appoint a day for the hearing, of which, and of the nature of the application, notice must be given, by personal service, to the personal representative of such decedent, and such of his heirs as are of age, and are of sound mind, if residents of the state, at least twenty days before the day appointed for the hearing, and also by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, in a newspaper published nearest to the courthouse thereof. If there is no personal representative of the estate of such decedent, the court must appoint an administrator ad litem to represent the estate in such proceeding; and the court must also appoint a guardian ad litem for such of the heirs or devisees as are under the age of twenty-one years, or are of unsound mind.

When court has authority to correct mistake.—Brown v. Williams, 87 Ala. 353; Lee v. Williams, 85 Ala. 189.

185 (2130) (2472) (2128). **Decree on such application.**—If, upon

the hearing, the court is satisfied from the evidence adduced, that the sale of such lands was made in good faith, and that a mistake was made in the description of the lands sold, as stated in the application, a decree must be made and entered, correcting the mistake; and if the purchase-money has been fully paid, and a deed executed, the court must order the personal representative, or, if there be none, the administrator ad litem, to execute to the party making the application a new deed, conveying to him the lands according to the description as corrected.

186 (2131) (2473) (2129). **Evidence of title on application to sell lands.**—In applications to the probate court for the sale of lands, the patent or deed shall be sufficient evidence to authorize the court to proceed and hear the application.

187 (2132) (2507) (2132). **Jurisdiction to sell or divide land received on compromise.**—Real estate received by an executor or administrator in payment of any bad or doubtful claim, on a compromise of such claim made under an order of the probate court, may be distributed by the court having jurisdiction of the estate, by sale or division, upon the same proceedings as are had for the sale or division of real estate of decedents; but such real estate, or the proceeds thereof, if sold, must otherwise be treated and distributed as personal property.

ARTICLE 8.

SALE AND PARTITION OF PARTNERSHIP LANDS IN WHICH A DECEDENT HAD AN INTEREST AS PARTNER.

188 (2295). **Sale or partition of lands in which decedent had an interest as partner; jurisdiction declared.**—Whenever a member of any partnership dies, leaving the business thereof unsettled, whether such partnership had been dissolved or not at the time of his death, and there are lands, the property of the partnership, or of the partners as tenants in common, or in which the partnership, or the partners as tenants in common may have any interest growing out of the partnership business, the probate court having jurisdiction of the estate, in cases of intestacy, or where the will does not grant such power to any person, or does not prohibit the grant of such power to the executor or administrator, has jurisdiction to confer upon the executor or administrator of such decedent, on his application in writing, duly verified by oath, general authority to join the surviving partner, or partners, in privately selling and conveying any or all of such lands, or any interest therein, whenever it may be necessary or to the advantage of the estate to sell the same for the payment of the debts of the partnership; and also to agree with such surviving partner, or partners, as to the partition of all such lands, or such part thereof as may not be sold, and to execute and receive all such conveyances as may be necessary to perfect such partition.

189 (2296). **Contents of application.**—Such application must describe the lands as to which such authority is sought, must state the interest of the deceased partner therein, the probable value of such interest, after the payment of the debts of the partnership, the names and places of residence of the heirs or devisees, and whether any, and, if so, which of them are under the age of twenty-one years, or are persons of unsound mind, or are married women. Any person interested in the estate of such decedent may contest the application.

190 (2297). **Day fixed for hearing; guardian ad litem; notice.** Upon the filing of such application, the court must appoint a day, not less than forty days thereafter, for the hearing of the same, must appoint a proper person guardian ad litem to represent such of the heirs or devisees as are minors or of unsound mind, and must issue a citation to such of the heirs or devisees as are of full age and reside in this state, notifying them of the application and of the day appointed for its hearing, which must be served on them ten days before the hearing. Notice of the application, and of the day appointed for the hearing, must also be given by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, then in the newspaper published nearest the court-house of such county; and if any of the heirs or devisees reside out of, or are then absent from the state, such publication shall be sufficient to bring them into court.

191. **Unknown parties.**—If any of the heirs or devisees are unknown, they may be made parties in the manner provided by section 162, which is applicable to proceedings under this article.

192 (2298). **Duty, authority and compensation of guardian ad litem and special guardian.**—The person appointed to represent minors, or persons of unsound mind, or unknown parties, must deny in writing the allegations contained in the application, and, if necessary, must employ counsel to defend the interests of those he represents. He is entitled to reasonable compensation, to be fixed by the court and taxed and collected as costs.

193 (2299). **Hearing and decree.**—On the day appointed for the hearing, or on any other day to which it may be continued, the court must proceed to hear and determine the application; and if the allegations of the application are proved to its satisfaction by competent evidence, the court may grant an order conferring upon the executor or administrator the authority authorized by the provisions of this article.

194 (2300). **How testimony taken when minors or persons of unsound mind are interested.**—If any of the heirs or devisees are minors or of unsound mind, or unknown parties, such order must not be made, unless evidence has been taken as in chancery cases, showing that such application should be granted; and such evidence must be taken whether the guardian ad litem, or special guardian, denies the truth of the allegations of the application or not, and

must be recorded; and any order granted without a compliance with the provisions of this section shall be wholly void.

195 (2301). **When application dismissed; costs.**—If, on the hearing of the application, the facts are not proved, it must be dismissed at the cost of the executor or administrator, for which execution may issue against him and his sureties.

196 (2302). **Record of order when granted.**—If such order is granted, it shall be the duty of the executor or administrator to have a certified copy thereof recorded, within three months thereafter, in the office of the judge of probate of each county in which any part of such lands may be situated.

197 (2303). **Report of conveyances made; when conveyances confirmed, and when vacated.**—The executor or administrator must, within sixty days after making or receiving any conveyance under the provisions of this article, report on oath his proceedings to the court, which must examine the same, and may also examine witnesses in relation thereto; and if, upon such examination, the court is satisfied that such proceedings were fairly conducted, and that the interests of the estate are not unduly prejudiced thereby, it must make an order confirming the same, and must indorse upon each conveyance so made by the executor or administrator, upon its presentation to the court, a certificate of such confirmation, and the date thereof, which shall be evidence of such confirmation, and must be recorded with the conveyance; but if the court is not so satisfied as to any such conveyance, it must vacate the same, and thereupon the authority granted to the executor or administrator shall continue in force.

198 (2304). **Title vested by conveyance.**—Any conveyance made by the executor or administrator, and confirmed by the probate court, under the provisions of this article, shall have the effect of vesting in the party to whom it is made all the right, title and interest that the deceased partner may have had in the lands conveyed at the time of his death.

199 (2305). **Lands subject to administration, and may be conveyed to heirs or devisees.**—Any lands conveyed to the executor or administrator of a deceased partner, under the provisions of this article, shall be subject to administration in all respects as if the full legal title thereto had been vested in him at the time of his death; and the probate court shall have authority, upon proper application and due proof, to order the executor or administrator, or any other person it may appoint, to convey the same, or a proper interest therein, to the heirs or devisees of such decedent.

200 (2306). **Authority may be continued in successor without application.**—The authority conferred under the provisions of this article shall remain in the executor or administrator only so long as he continues as such; but the probate court may, without application therefor, make an order continuing such authority in his successor, if it shall consider him a suitable person to exercise the same.

ARTICLE 9.

SETTLEMENTS AND DISTRIBUTIONS.

201 (2133) (2508) (2136) (1801). **Partial settlements; when to be made.**—Every executor or administrator must make annual settlements of his administration; and he may, when necessary for the interests of the estate, be required to make a settlement at any time.

Annual settlement is not conclusive, but subject to examination on final settlement.—Tayloe v. Bush, 75 Ala. 432; Ditmar v. Bogle, 53 Ala. 169; Scruggs v. Orme, 46 Ala. 533; McCreelis v. Hinkle, 17 Ala. 459; Smith v. Smith, 13 Ala. 329; Thompson v. Hunt, 22 Ala. 517; Jones v. Jones, 42 Ala. 218; Daughdrill v. Daughdrill, 108 Ala. 321. **Cannot be converted into a final settlement.**—King v. Collins, 21 Ala. 363; Wharton v. Moragne, 59 Ala. 641; Sims v. Waters, 65 Ala. 442; Daughdrill v. Daughdrill, 108 Ala. 321.

202 (2134) (2528) (2157) (1821). **Final settlement; when may be made.**—A final settlement may be made at any time after twelve months from the grant of letters, if the debts are all paid, and the condition of the estate, in other respects, will admit of it.*

Final settlement within eighteen months after grant of letters, void. Matthews v. Douthitt, 27 Ala. 273; Williamson v. Mason, 18 Ala. 87. **Decree on final settlement.**—Merrill v. Jones, 2 Ala. 192; Jones v. Jemison, 4 Ala. 632; Davis v. Davis, 6 Ala. 611; Harrison v. Harrison, 9 Ala. 470; Shortridge v. Easley, 10 Ala. 520; Slatter v. Glover, 14 Ala. 648; Brazier v. King, 16 Ala. 730; Carroll v. Moore, 7 Ala. 615; Petty v. Wafford, 11 Ala. 143; Rhodes v. Turner, 21 Ala. 210; Hollis v. Coughman, 22 Ala. 478; Watson v. Hutto, 27 Ala. 513; Griffin v. Griffin, 40 Ala. 296; Cook v. Cook, 69 Ala. 294; Watt v. Watt, 37 Ala. 543; Barnett v. Tarrence, 23 Ala. 463; Allman v. Owen, 31 Ala. 167; Moore v. Lesuerur, 33 Ala. 237; Perkins v. Moore, 16 Ala. 9; King v. Brown, 108 Ala. 68; Daughdrill v. Daughdrill, 108 Ala. 321; Waring v. Lewis, 53 Ala. 615; Hall v. Pegram, 85 Ala. 522; Hatcher v. Dillard, 70 Ala. 343. **Administration pending, right of distributees to settlement.**—Hooper v. Smith, 57 Ala. 557; Chighizola v. LeBaron, 21 Ala. 406; Alexander v. Steele, 84 Ala. 332; Masterson v. Girard, 10 Ala. 60; Sankey v. Elsberry, 10 Ala. 455; Jackson v. Rowell, 87 Ala. 685. **Administrator occupying antagonistic positions, decree on settlement.**—Vaughan v. Suggs, 82 Ala. 357; Hays v. Cockrell, 41 Ala. 75; Tankersly v. Pettis, 61 Ala. 354; Alexander v. Alexander, 70 Ala. 212; Cleere v. Cleere, 82 Ala. 581; Ex parte Lyon, 60 Ala. 650; Clark v. Head, 75 Ala. 373; Bruce v. Strickland, 47 Ala. 192; Alexander v. Steele, 84 Ala. 332; Hutton v. Williams, 60 Ala. 107. **What not ground for deferring.**—Ditmar v. Bogle, 53 Ala. 169; Gayle v. Elliott, 10 Ala. 264; Alexander v. Fisher, 18 Ala. 374; Simmons v. Price, 18 Ala. 405; Ligon v. Ligon, 84 Ala. 555; Tarver v. Tankersley, 51 Ala. 309; Waring v. Lewis, 53 Ala. 615. **When final settlement does not discharge administrator.**—Ligon v. Ligon, 84 Ala. 555; Simmons v. Price, 18 Ala. 405; Tarver v. Tankersley, 51 Ala. 309. **Compelling administrator to make settlement.**—Vincent v. Daniel, 59 Ala. 602; Waring v. Lewis, 53 Ala. 615; Alexander v. Steele, 84 Ala. 332; Hooper v. Smith, 57 Ala. 557; Cook v. Cook, 69 Ala. 294; Chighizola v. LeBaron, 21 Ala. 406; Eatman v. Eatman, 82 Ala. 223. **Party complaining should show an interest in estate.**—Vincent v. Daniel, 59 Ala. 602. **Bill to remove administration into chancery court** may be filed at any time after grant of letters.—Baker v. Mitchell, 109 Ala. 490.

203 (2135) (2509) (2137) (1802). **Settlements; account; vouchers and statement of heirs or legatees.**—In making settlements of an administration, the executor or administrator must proceed as follows:

1. He must make out an account between himself and the estate he represents, charging himself with all the assets of the deceased which have come into his possession, except the lands, and crediting himself with all the credits he is by law entitled to; which account,

*"Eighteen" changed to "twelve" by joint committee.

verified by his oath, must be filed with the judge of probate of the court having jurisdiction.

2. With such account he must also file the vouchers and written evidence in his possession, on which he relies to sustain the credit side of such account.

3. He must, at the same time, file a statement, on oath, of the names of the heirs and legatees of such estate, specifying particularly which are under the age of twenty-one years; and if any of them are married women or persons of unsound mind, it must be stated; but if the names, ages, or condition of such heirs or legatees are unknown, and they reside out of the state, they may be made parties as unknown heirs or legatees.

Statement of heirs, and parties to settlements.—Boyett v. Kerr, 7 Ala. 9; Eddings v. Long, 10 Ala. 203; Reynolds v. Reynolds, 11 Ala. 1023; Hall v. Andrews, 17 Ala. 40; McConico v. Cannon, 25 Ala. 462; Thomas v. Dumas, 30 Ala. 83; Hutton v. Williams, 60 Ala. 107; Otis v. Dargan, 53 Ala. 178; McMullen v. Brazelton, 81 Ala. 442; Walker v. Jones, 23 Ala. 448; Eddings v. Long, 10 Ala. 203; Clack v. Clack, 20 Ala. 461; Watt v. Watt, 37 Ala. 543; Sims v. Waters, 65 Ala. 442.

204 (2136) (2511) (2139) (1804). **Damages for failure to file such statement.**—If such statement is not filed, the executor or administrator and his sureties are liable for all damages arising therefrom.

205 (2137) (2510) (2138) (1803). **Appointment of guardian ad litem.**—The court must appoint a competent person as guardian ad litem to represent the interests of minors, and persons of unsound mind, interested in such settlement.

Settlement without guardian ad litem, voidable.—Frierson v. Travis, 39 Ala. 150; Wilson v. Wilson, 18 Ala. 176; McCreeliss v. Hinkle, 17 Ala. 459; King v. Collins, 21 Ala. 363; Cunningham v. Poole, 9 Ala. 615; Hutton v. Williams, 60 Ala. 133; Turrentine v. Daly, 82 Ala. 205; Modawell v. Hudson, 80 Ala. 265; Alexander v. Alexander, 70 Ala. 353; Petty v. Britt, 46 Ala. 491; Willis v. Willis, 16 Ala. 652. **No necessity for guardian ad litem when general guardian appears.**—Smith v. Smith, 21 Ala. 761; King v. Collins, 21 Ala. 363; Morgan v. Morgan, 35 Ala. 303; Jones v. Fellows, 58 Ala. 343; Hatcher v. Dillard, 70 Ala. 343. **Record must show that infants were represented by guardian or guardian ad litem.**—Clack v. Clack, 20 Ala. 461; Jenkins v. Jenkins, 16 Ala. 693; Searcy v. Holmes, 43 Ala. 608; Petty v. Britt, 46 Ala. 491; Morris v. Morris, 58 Ala. 443. **Settlement with infant represented by guardian ad litem, binding.**—Stabler v. Cook, 57 Ala. 22; Waring v. Lewis, 53 Ala. 615; Preston v. Dunn, 25 Ala., 507; Hunt v. Ellison, 32 Ala. 173; Dow v. Whitman, 36 Ala. 604; Trawick v. Trawick, 67 Ala. 271. **Guardian ad litem must accept appointment and be present at settlement.**—Laird v. Reese, 43 Ala. 148.

206 (2138) (2512) (2140) (1805). **Day appointed for settlement; notice.**—Upon the filing of such account, vouchers, evidence and statement, the judge of probate must appoint a day for such settlement, and must give notice of the same by publication in some newspaper published in the county, for three successive weeks; or, if none is published therein, by posting such notice at the courthouse and three other public places in such county, for the same length of time; but if the settlement be only an annual one, publication shall only be given by posting up notices as above provided.

Record must show that parties in interest had notice.—Bruce v. Strickland, 47 Ala. 192; Frierson v. Travis, 39 Ala. 150; Willis v. Willis, 16 Ala. 652; Jenkins v. Jenkins, 16 Ala. 693; Searcy v. Holmes, 43 Ala. 608. **What is legal notice.**—Bruce v. Strickland, 47 Ala. 192; Otis v. Dargan, 53 Ala. 178;

Stabler v. Cook, 57 Ala. 22; McRee v. McRee, 34 Ala. 165; Frierson v. Travis, 39 Ala. 150; Allen v. Martin, 34 Ala. 442; s. c., 36 Ala. 330; Jenkins v. Jenkins, 16 Ala. 693. **Settlement without notice invalid.**—Bruce v. Strickland, 47 Ala. 192; Laird v. Reese, 43 Ala. 148; Searcy v. Holmes, 43 Ala. 608; Carter v. Carter, 53 Ala. 365. **Notice of annual settlement will not authorize final distribution.**—King v. Collins, 21 Ala. 363; Whorton v. Moragne, 59 Ala. 641; Sims v. Waters, 65 Ala. 442; Daughdrill v. Daughdrill, 108 Ala. 321.

207 (2139) (2513) (2141) (1806). **Contents of notice.**—Such notice must state the name of the executor or administrator, the name of the deceased, the day appointed for settlement, and the nature of the settlement, whether annual or final.

King v. Collins, 21 Ala. 363; Sims v. Waters, 65 Ala. 442. See citations to preceding section.

208 (2140) (2514) (2142) (1807). **On waiver of publication, notice given by posting.**—If the heirs or legatees are of age, and waive publication in a newspaper, notice must, in such case, be given by posting the same at the court-house door.

209 (2141) (2515, 2516, 2517) (2143, 2144, 2145) (1808, 1809, 1810). **Auditing of account; proof of credits.**—On the day appointed, or any other day to which the settlement is continued, the court must proceed to examine and audit the account; and, on such auditing, the executor or administrator must produce satisfactory proof of the correctness of each item on the credit side of the account, which may be made by the affidavit or oral examination of witnesses, or by any other legal evidence.

Proof of credits claimed by representative.—Jenks v. Terrell, 73 Ala. 238; Teague v. Corbitt, 57 Ala. 529; Savage v. Benham, 11 Ala. 49; Wright v. Wright, 64 Ala. 88; McDonald v. Carnes, 90 Ala. 147; Morgan v. Morgan, 35 Ala. 303; Henderson v. Simmon, 33 Ala. 291; Pearson v. Darrington, 32 Ala. 227; Gaunt v. Tucker, 18 Ala. 27; Martin v. Ellerbe, 70 Ala. 326; Landreth v. Landreth, 9 Ala. 430; Jackson v. Wood, 108 Ala. 209; Daughdrill v. Daughdrill, 108 Ala. 321; Harwood v. Pearson, 60 Ala. 410; Dickie v. Dickie, 80 Ala. 57. **Error on final settlement, how shown on appeal.**—King v. Brown, 108 Ala. 68.

210 (2142) (2520) (2148) (1813). **Liability for interest or profits; exculpatory oath.**—If any executor or administrator uses any of the funds of the estate for his own benefit, he is accountable for any profit made thereon, or legal interest; and in making out his account for a settlement, he must state the sum so used, the time, and the profit resulting from such use, if over legal interest; or he must expressly deny on oath that he has so used such funds; and any party interested may contest the same.

Liability, how avoided.—McCreeliss v. Hinkle, 17 Ala. 459; Clack v. Clack, 20 Ala. 461; Hollis v. Caughman, 22 Ala. 478; Bendall v. Bendall, 24 Ala. 295; Farmer v. Farmer, 26 Ala. 671; Roundtree v. Snodgrass, 36 Ala. 185; Harrison v. Harrison, 39 Ala. 489; Ivey v. Coleman, 42 Ala. 409; Nunn v. Nunn, 66 Ala. 35; Clark v. Knox, 70 Ala. 607; Clark v. Hughes, 71 Ala. 163; May v. Green, 75 Ala. 162; Englehardt v. Yung, 76 Ala. 534; Johnson v. Holifield, 82 Ala. 123; American Mtg. Co. v. Boyd, 92 Ala. 139; Eubank v. Clark, 78 Ala. 73; Ditmar v. Bogle, 53 Ala. 169; Smyley v. Reese, 53 Ala. 89; Moody v. Hemphill, 71 Ala. 169; Benagh v. Turrentine, 60 Ala. 557; Kent v. Mansel, 101 Ala. 334. **Covers period allowed by law for keeping funds of estate; if settlement unreasonably delayed, representative liable for interest though he make the affidavit.**—Clark v. Knox, 70 Ala. 607; Clark v. Hughes, 71 Ala. 163; May v. Green, 75 Ala. 162; Englehardt v. Yung, 76 Ala. 534; Eubank v. Clark, 78 Ala. 73; Mims v. Mims, 39 Ala. 716; Harrison v. Harrison, 39 Ala. 489; American Mtg. Co. v. Boyd, 92 Ala. 139. **Representative prima facie chargeable with interest and must discharge himself by oath.**—Brazaele v. Brazaele, 9 Ala. 491; Parker v. McGaha, 11 Ala. 521; King v. Cabaniss, 12 Ala. 598; McCreeliss v. Hinkle,

17 Ala. 459; Hollis v. Caughman, 22 Ala. 478; Roundtree v. Snodgrass, 36 Ala. 185; Smyley v. Reese, 53 Ala. 89. **Affidavit that he has always had on hand a sum equal to the trust fund, but not denying the use of the trust fund, insufficient to relieve from interest.**—Farmer v. Farmer, 26 Ala. 671; Harrison v. Harrison, 39 Ala. 489; Ivey v. Coleman, 42 Ala. 409; Owen v. Peebles, 42 Ala. 338. **He is chargeable with interest on trust funds mixed with his own.**—Ivey v. Coleman, 42 Ala. 409; Ditmar v. Bogle, 53 Ala. 169; Key v. Boyd, 10 Ala. 154; DeJarnette v. DeJarnette, 41 Ala. 708; Henderson v. Henderson, 58 Ala. 582. **And on the value of the rents and hires of property used by him.**—Harrison v. Harrison, 39 Ala. 489. **And on moneys misappropriated.**—Moody v. Hemphill, 71 Ala. 169; Harris v. Parker, 41 Ala. 604; Foley v. Leva, 101 Ala. 395; Bass v. Bass, 88 Ala. 408; Parks v. Parks, 66 Ala. 326. **And on debts which he negligently failed to collect.**—Smyley v. Reese, 53 Ala. 89; Harris v. Parker, 41 Ala. 604; Alexander v. Steele, 84 Ala. 332. **And on moneys which he neglected to lend.**—Nunn v. Nunn, 66 Ala. 35; Foscue v. Lyon, 55 Ala. 440; s. c. 60 Ala. 468; Moore v. Randolph, 70 Ala. 575. **Affidavit may be made on settlement**; if parties surprised, continuance proper.—Bendell v. Bendell, 24 Ala. 295.

211 (2143) (2519) (2147) (1812). **Contest of account; evidence in support thereof.**—Any person interested may appear and contest any item of the account, and may examine the executor or administrator, or any other witness, and may introduce any legal evidence, in support of his contest.

Who are parties in interest.—Owens v. Thurmond, 40 Ala. 289; Eatman v. Eatman, 82 Ala. 223; Byrd v. Jones, 84 Ala. 336. **Manner of contesting.** Cummings v. Bradley, 57 Ala. 224; Robertson v. Black, 74 Ala. 322; Waller v. Ray, 48 Ala. 468.

212 (2144) (2519) (2147) (1812). **Depositions; how taken, and when admissible.**—The depositions of witnesses may be taken on interrogatories, and read in evidence, by any party to the settlement, in the same cases, for the same causes, and under the same rules, as depositions are taken and read in civil actions in common-law courts.

213 (2145) (2521) (2149) (1814). **Costs of contests; by whom paid.**—If any item, as charged by the executor or administrator, is reduced or not allowed, the costs of the contest in relation to such item must be paid by the executor or administrator; otherwise, by the party contesting.

Rule for taxing costs.—Jones v. Deyer, 16 Ala. 221; Henderson v. Renfro, 31 Ala. 101; Bendall v. Bendall, 24 Ala. 295; Anderson v. Anderson, 37 Ala. 683; Teague v. Corbitt, 57 Ala. 529; Moody v. Hemphill, 71 Ala. 169.

214 (2146) (2522) (2150) (1815). **Items may be withdrawn on paying costs.**—The executor or administrator may, before the decision of the court on any item, withdraw the same; but in such case he must pay the costs of the contest as to such item.

215 (2147) (2523) (2152) (1816). **Account to be stated and recorded.**—On auditing the account, the court must state the same, and render a decree passing it as stated; and the same must be recorded.

The statement of account, rights of parties in auditing.—Bendall v. Bendall, 24 Ala. 295; Pearson v. Darrington, 32 Ala. 227; Taylor v. Kilgore, 33 Ala. 214; Moody v. Hemphill, 71 Ala. 169.

216 (2148) (2529). **Proceedings, etc., when representative guardian of distributee.**—The jurisdiction of the probate court to make partial or final settlements or distributions of the estates of decedents, is not affected by the fact that the executor or admin-

trator making the settlement is also guardian of any heir or distributee, devisee, or legatee of the decedent; but in such case, the court must appoint a special guardian, without bond, to represent such heir or distributee, devisee, or legatee, on the settlement and distribution; and upon final settlement, any decree to which such ward may be entitled must be rendered against the executor or administrator in the name of the special guardian, for the use of the ward; and thereafter the executor or administrator, in the capacity of guardian, shall be accountable for such decree. The special guardian shall be entitled to reasonable compensation for his services, and for the services of counsel properly employed, to be allowed by the court, and to be paid by such general guardian out of the estate of the ward.

Jurisdiction and remedy.—Carswell v. Spencer, 44 Ala. 204; Tankersly v. Pettis, 61 Ala. 354; Bruce v. Strickland, 47 Ala. 192; Vincent v. Martin, 79 Ala. 540; Cleere v. Cleere, 82 Ala. 581; Hutton v. Williams, 60 Ala. 107.

217 (2149) (2531) (2159) (1823). **Previous settlements presumed to be correct.**—Upon the final settlement, any item of account included in any previous settlement may be re-examined; but its allowance in the previous settlement is presumptive evidence of its correctness.

Onus on distributee, on final settlement, to overcome this presumption. Dickie v. Dickie, 80 Ala. 57; Newberry v. Newberry, 28 Ala. 691; Ditmar v. Bogle, 53 Ala. 169; Ashley v. Martin, 50 Ala. 537; Bentley v. Dailey, 87 Ala. 406; Holman v. Sims, 39 Ala. 709. **Partial settlements prima facie correct.** Smith v. Smith, 13 Ala. 329; Jones v. Jones, 42 Ala. 218; Thompson v. Hunt, 22 Ala. 517; Ditmar v. Bogle, 53 Ala. 169; Radford v. Morris, 66 Ala. 283; Bentley v. Dailey, 87 Ala. 406; Tayloe v. Bush, 75 Ala. 432. **Must conform to requirements of statute.**—McCreeliss v. Hinkle, 17 Ala. 459; Jones v. Jones, 42 Ala. 218; Radford v. Morris, 66 Ala. 283.

218 (2150) (2532) (2160) (1824). **When representative chargeable with other items.**—Upon final settlement, any person contesting may also show that the executor or administrator has failed to charge himself with, or to account for all the assets of the decedent received by him, or that he has failed to collect the same, or any portion thereof; or that by any abuse of, or failure to discharge his trust, such assets, or any portion thereof, have been depreciated, injured, or destroyed.

219 (2151) (2533) (2161) (1825). **Compensation to executors or administrators.**—Executors and administrators may be allowed such commissions on all receipts and disbursements by them, as such, as may appear to the probate court a fair compensation for their trouble, risk and responsibility, not to exceed two and one-half per cent. on the receipts, and the same percentage on the disbursements; and the court may also allow actual expenses, and, for special or extraordinary services, such compensation as is just.

Compensation and commissions on receipts and disbursements.—Allen v. Martin, 34 Ala. 442; Wright v. Wilkerson, 41 Ala. 267; Moore v. Randolph, 70 Ala. 575; Newberry v. Newberry, 28 Ala. 691; Neilson v. Cook, 40 Ala. 498; Beadle v. Steele, 86 Ala. 413; Key v. Jones, 52 Ala. 238; Phillips v. Thompson, 9 Port. 664; Carroll v. Moore, 7 Ala. 615; Watson v. McClannahan, 13 Ala. 57; Long v. Easley, 13 Ala. 239; Harris v. Martin, 9 Ala. 895; Gould v. Hays, 25 Ala. 426; Pinckard v. Pinckard, 24 Ala. 250; Bendall v. Bendall, 24 Ala. 295; Bates v. Vary, 40 Ala. 421. **Includes special administrators.**—Wright v. Wilkerson,

41 Ala. 267. **"Receipts" means pecuniary assets only.**—Ib. **To deprive personal representative of his compensation,** he must have been guilty of gross negligence, or willful default, resulting in injury to the estate.—Smith v. Kennard, 38 Ala. 695; Neilson v. Cook, 40 Ala. 498; Powell v. Powell, 10 Ala. 900; Ivey v. Coleman, 42 Ala. 409; Henderson v. Simmons, 33 Ala. 291; Craig v. McGehee, 16 Ala. 41; Gould v. Hays, 19 Ala. 438; Stewart v. Stewart, 31 Ala. 207; Hall v. Wilson, 14 Ala. 295; Pearson v. Darrington, 32 Ala. 231; Moore v. Randolph, 70 Ala. 575; May v. Carlisle, 68 Ala. 135; Harris v. Parker, 41 Ala. 604. **Expenses.**—Phillips v. Thompson, 9 Port. 664; Pearson v. Darrington, 32 Ala. 231. **Compensation for special or extraordinary services.**—Ashurst v. Ashurst, 13 Ala. 782; Gould v. Hays, 25 Ala. 426; Reese v. Gresham, 29 Ala. 91; Holman v. Sims, 39 Ala. 709; Dockery v. McDowell, 40 Ala 476; Ivey v. Coleman, 42 Ala. 409; Waller v. Ray, 48 Ala. 468; Hinson v. Williamson, 74 Ala. 180; Raines v. Raines, 51 Ala. 237; May v. Green, 75 Ala. 162; Newberry v. Newberry, 28 Ala. 691; Phillips v. Thompson, 9 Port. 664; Pearson v. Darrington, 32 Ala. 231. **When allowed for services as an attorney.**—Harris v. Martin, 9 Ala. 895; Bendall v. Bendall, 24 Ala. 295; Bates v. Vary, 40 Ala. 421; Teague v. Corbitt, 57 Ala. 529; Moore v. Randolph, 70 Ala. 575; Clark v. Knox, 70 Ala. 608; Clark v. Eubank, 80 Ala. 584; Smyley v. Reese, 53 Ala. 89; Ditmar v. Bogle, 53 Ala. 169; Munden v. Bailey, 70 Ala. 63; Taylor v. McCall, 71 Ala. 52; Jones v. Deyer, 16 Ala. 221; Holman v. Sims, 39 Ala. 709; Williamson v. Mason, 23 Ala. 488; Pinckard v. Pinckard, 24 Ala. 250; Harris v. Parker, 41 Ala. 604; Pickens v. Pickens, 35 Ala. 442; Anderson v. Anderson, 37 Ala. 683; Henderson v. Simmons, 33 Ala. 291; Pearson v. Darrington, 32 Ala. 227; Mims v. Mims, 39 Ala. 716; Smith v. Kennard, 38 Ala. 695.

220 (2152) (2534) (2162). **Commissions on property and money distributed.**—Upon the appraised value of all personal property, and the amount of money and solvent notes distributed by executors or administrators, they shall be allowed the same commissions as upon disbursements.

221 (2153) (2535) (2163) (1826). **How personal property of estate of inhabitant of another state disposed of.**—When administration is taken out in this state on the estate of any person who, at the time of his death, was an inhabitant of any other state or country, his personal estate, after the payment of debts and charges on his estate, must be disposed of according to his last will, if probated in this state; and if no such will is probated in this state, according to the law of the state or country of which he was an inhabitant.

222 (2154) (2536) (2164) (1827). **Distribution of such estate.** Upon the settlement of such estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate may be distributed and disposed of according to the provisions of the preceding section; or it may be transmitted or paid over to the executor or administrator of the state or country where the deceased had his domicil.

223 (2155) (2524) (2153) (1817). **When settlement compelled by attachment, or account stated by court.**—Any executor or administrator may be required by citation to file his accounts and vouchers, and to make a settlement; and if, after service of the citation, he fails to file his accounts and vouchers for a settlement by the day named in the citation, the probate court may compel him to do so by attachment, or may proceed to state the account against him from the materials on file, or such other information as may be accessible, charging him with such assets as may have come to his hands.

Parties, procedure, and jurisdiction.—Blackwell v. Vastbinder, 6 Ala. 218;

Vincent v. Daniel, 59 Ala. 602; Cook v. Cook, 69 Ala. 294; Spence v. Savery, 25 Ala. 723; King v. Shackleford, 13 Ala. 435; State v. Judge, 15 Ala. 740; Simmons v. Price, 18 Ala. 405; Croft v. Ferrell, 21 Ala. 351; Chighizola v. LeBaron, 21 Ala. 406; George v. Goldsby, 23 Ala. 326; Howard v. Howard, 26 Ala. 682; Matthews v. Douthitt, 27 Ala. 273.

224 (2156) (2525, 2526) (2154, 2155) (1818, 1819). **When account stated, to be audited and restated; citation and notice.** After stating such account, the court must issue citation to such executor or administrator, to appear on a day therein named, and file his accounts and vouchers for settlement, or that the account so stated will be passed, which must be served on him at least ten days before the day named therein; and must also give notice of such settlement by publication, as in case of settlements voluntarily made by executors and administrators; and if, on the day named, such executor or administrator fails to appear and file his accounts and vouchers for settlement, as required by law, the court must proceed to examine the account so stated, and audit, and, if necessary, restate the same.

When court to compel a settlement.—Sankey v. Sankey, 6 Ala. 607; Duffee v. Buchanan, 8 Ala. 27; Petty v. Wafford, 11 Ala. 143; Ashley v. Ashley, 15 Ala. 15; Harrison v. Harrison, 9 Ala. 470; Ditmar v. Bogle, 53 Ala. 169; George v. Goldsby, 23 Ala. 326; Vincent v. Daniel, 59 Ala. 602; May v. Carlisle, 68 Ala. 135; Hooper v. Smith, 57 Ala. 557. See also citations to preceding section.

225 (2157). **Proceedings on settlement of such account.**—On the day appointed for auditing such account, any person may attend on the part of such executor or administrator, and show that he is entitled to additional credits; and any person interested may attend and contest any item of such account, or in any previous account; or may show assets not accounted for; or that such executor or administrator has failed to collect any assets from want of due diligence; or that, by any abuse of, or failure to discharge his trust, such assets, or any portion thereof, have been injured, destroyed, or depreciated; and in case of such proof, the executor or administrator must be charged therewith; and upon such settlements, decrees must be rendered as upon settlements voluntarily made.

Carroll v. Moore, 7 Ala. 615; Cook v. Cook, 69 Ala. 294.

226 (2158) (2527) (2156) (1820). **Decree set aside on filing accounts before settlement.**—If, however, such executor or administrator appears and files his accounts and vouchers for settlement and pays such costs as have accrued upon the proceedings had under the three preceding sections, the court may set aside such decree, and proceed as if none had been rendered.

227 (2159) (2644). **When credit allowed for expenses of minor distributees.**—When the estate of a decedent is solvent, the executor or administrator, out of the assets in his hands, may defray the necessary and reasonable expenses of maintaining and educating minors who are entitled to distribution therein, and who have no legal guardian; and upon any partial or final settlement by him the probate court must allow him credit for such expenses, to be charged against the shares of such minors, and deducted therefrom on any distribution of the estate.

Advances made by administrator for distributees.—Cary v. Simmons, 87 Ala. 524.

228 (2160) (2645). **Separate accounts and vouchers for such expenses.**—An executor or administrator, defraying such expenses, must file with his account for a settlement a separate account of the amounts paid therefor on account of each of such minors, accompanied by proper vouchers, showing the amounts, and for what expended.

Cary v. Simmons, 87 Ala. 524.

229 (2161) (2530) (2158) (1822). **Distribution to be made on final settlement.**—On the final settlement of an estate, the court may make such orders of distribution as may be necessary; and, on the confirmation of the same, may render a decree thereon, and the property must be delivered according to such decree; or if there is money only to be divided, it may render a decree in favor of each distributee entitled to the same, for his distributive share, against the executor or administrator.

Parties to, and decrees on settlement.—Davis v. Davis, 6 Ala. 611; Sankey v. Sankey, Ib. 607; Graham v. Abercrombie, 8 Ala. 552; Key v. Vaughn, 15 Ala. 497; Green v. Fagan, Ib. 335; Kavanaugh v. Thompson, 16 Ala. 817; Reynolds v. Reynolds, 11 Ala. 1023; Thomas v. Dumas, 30 Ala. 83; Simmons v. Knight, 35 Ala. 105; Petty v. Wafford, 11 Ala. 143; Frazier v. Praytor, 36 Ala. 691; Rhodes v. Turner, 21 Ala. 210; Slatter v. Glover, 14 Ala. 648; Hollis v. Caughman, 22 Ala. 478; Watts v. Watts, 37 Ala. 543; Davis v. Davis, 10 Ala. 299; King v. Brown, 108 Ala. 68. **Married woman's distributive share** should be decreed to her alone.—King v. Brown, supra. See also citations to section 202 (2134).

230 (2162) (2496) (2119) (1792). **Orders of distribution; by whom executed.**—All orders of distribution must be directed to five disinterested persons appointed by the court, must specify the property to be divided, the persons, and their respective shares, and must require them to return their proceedings on a day specified in such order.

231 (2163) (2497) (2120) (1793). **Distribution to be made and returned.**—The persons therein named, or a majority of them, must proceed to make distribution according to such order, having first taken an oath to make such distribution fairly and impartially, if the same can be made, which oath may be administered by the executor or administrator, and must return their proceedings in writing, signed by them, to the court by the day specified in such order.

232 (2164) (2498) (2121) (1794). **When property cannot be divided.**—If the property cannot be divided equitably without a sale of all or some portion thereof, the commissioners must so report.

233 (2165) (2499) (2122) (1795). **Exceptions to commissioners' report.**—Any person may file exceptions to the report of the commissioners within thirty days after the day appointed for the return; or if returned at any time thereafter, within thirty days after the return.

234 (2166) (2500) (2123) (1796). **Distribution set aside or confirmed; when sale of property ordered.**—The court, for cause

shown on such exceptions, or otherwise, may set aside such distribution and direct another distribution; or, if the same is just, may confirm it; or, if it appears from such report that the property cannot be equitably divided without a sale of all or some portion thereof, it may direct a sale of all, or any portion of the personal property.

Order of sale for purposes of distribution.—Hamlet v. Johnson, 26 Ala. 557; Harris v. Parker, 41 Ala. 604.

235 (2167) (2501) (2124) (1797). **Sale; how advertised and made.**—Such a sale must be advertised and made as sales of personal property under the order of the court for the payment of debts.

236 (2168) (2502) (2125) (1798). **Property delivered on confirmation.**—Upon the confirmation of any order of distribution, the executor or administrator must deliver the property to the persons entitled thereto.

237 (2169) (2503) (2126) (1799). **Division of claims.**—Any judgments or claims in favor of the estate, which are not collected at the time of final distribution, may be divided among the persons entitled, on final distribution; or, if such division cannot be equitably made, may be sold as other personal property.

As to moneyed decree under this section.—Offutt v. Nance, 42 Ala. 243.

238 (2170) (2504) (2127) (1800). **Assignment of such judgments or claims.**—The executor or administrator must assign any such judgment or claim to the distributee, legatee, or purchaser, as the case may be; and such person is entitled to collect the same by suit or otherwise.

239 (2171). **When indebtedness of distributees set off against their shares; defense.**—If, on final settlement, any distributee or legatee owes the estate any debt, contracted with the decedent in his lifetime, or with the executor or administrator in his representative capacity, the court shall allow the same in favor of the executor or administrator, as a set-off against the distributive share of such distributee or legatee, and shall decree satisfaction of his distributive share to the extent of such debt or demand; but the distributee or legatee may make any defense to the set-off that would be available to him in a direct proceeding for the recovery of the debt.

240 (2172). **No judgment, in such case, for excess; but balance may be collected by suit.**—In no case, however, shall a decree be rendered in favor of the executor or administrator against such distributee or legatee for the excess, when the debt is greater in amount than the distributive share; nor shall the executor or administrator be prevented from prosecuting a suit in the proper court for any excess that may be due him from such distributee or legatee.

241 (2173) (2537, 2590) (2165, 2232) (1876). **Settlement after representative's death, removal, or resignation.**—When an executor or administrator dies, resigns, or is removed, or his letters are revoked, or his authority ceases from any cause, he must, within

one month after his authority ceases, or, in case of his death, his personal representative must, within six months after the grant of letters, file his accounts, vouchers and statement of the heirs and legatees for, and must make final settlement of the administration of such executor or administrator; of which settlement notice must be given in the same manner, and such settlement must be conducted and governed, except as herein otherwise provided, by the same rules and provisions of law, as other final settlements by executors or administrators.

Remedy against sureties.—Martin v. Ellerbe, 70 Ala. 326; Stallworth v. Farnham, 64 Ala. 259; Woods v. Legg, 91 Ala. 511. Who are proper parties on such settlements.—Waller v. Ray, 48 Ala. 468; Hatchett v. Billingslea, 65 Ala. 16; Hays v. Cockrell, 41 Ala. 75; Whitworth v. Oliver, 39 Ala. 286; Buchanan v. Thomason, 70 Ala. 401; Sampey v. Sowell, 93 Ala. 447.

242 (2174) (2538) (2166). **Remaining or succeeding executor or administrator a party; notice.**—The remaining or succeeding executor or administrator of the estate of the decedent, if there be one, must be made a party to such settlement, and, if a resident of this state, must have personal notice of the time of making the same served on him, at least ten days before the day appointed therefor.

See citations to preceding section.

243 (2175) (2591) (2233) (1877). **Decree against representative for balance.**—If there remains any act of administration to be done, other than making settlement and distribution, or payment of legacies, and there is a remaining or succeeding executor or administrator, a decree must be rendered in his favor for the amount found due on such settlement, and for the delivery of any personal property in the hands of the executor or administrator whose authority has ceased, or, if dead, of his personal representative; but if more than twelve months have elapsed from the original grant of letters, and there remains no other act of administration to be done than making distribution or payment of legacies, and the estate is solvent, the court must at once proceed to decree distribution or payment of legacies directly to those entitled; or, if in the case last mentioned there are money assets in the hands of the outgoing executor or administrator, or, if dead, of his personal representative, in excess of a sum sufficient for the payment of debts and expenses of further administration, such excess must be distributed, or legacies paid therefrom, directly to those entitled, without passing through the hands of the remaining or succeeding administrator.*

244 (2176) (2539) (2167). **Decree against remaining or succeeding executor or administrator.**—If, on such settlement, a balance is ascertained to be due from the estate of such decedent to the deceased or outgoing executor or administrator, the probate court may, if twelve months have elapsed from the grant of original letters, render a decree in favor of the outgoing executor or administrator, or, if dead, of his personal representative, against the remaining or succeeding executor or administrator, for such balance; and if the es-

*"Eighteen" changed to "twelve" by joint committee.

tate is solvent, payment thereof may be enforced by execution against him, to be levied on any effects of such estate in his hands unadministered; but if the estate is insolvent, such decree is to be paid as other claims against insolvent estates; and if such balance, or any part thereof, is for expenses of administration necessarily incurred, such balance, or such part thereof as may be for such expenses, shall be a preferred claim against such estate, and shall be paid as other preferred claims are paid.*

Cunningham v. Beard, 44 Ala. 317.

245 (2177) (2540) (2168). **When execution may be stayed.**—The probate court may stay execution on any decree rendered under the provisions of the preceding section, for any time, not exceeding six months, if, in the judgment of the court, the interest of the estate requires extension.

Stay of execution, when ordered.—Cunningham v. Beard, 44 Ala. 317.

246 (2178) (2592) (2234) (1881). **Settlement against outgoing or deceased representative compelled, or account stated.**—If such outgoing executor or administrator, or, if dead, his personal representative, fails to make settlement within the time required by this article, the court may, of its own motion, or on the application of any party in interest, compel him to do so by attachment, or may state the account against him from the materials on file, or such other information as may be accessible to the court, charging him, or his personal representative, with such assets as may have come to the hands of such executor or administrator.

247 (2179) (2593) (2235) (1879). **When account examined, audited and restated; notice and citation.**—After stating such account, the court must issue citation to such executor or administrator, or if dead, to his personal representative, to appear on a day therein named, and file his account and vouchers for settlement, or that the account so stated will be passed, which must be served on him, or if dead, on his personal representative, at least ten days before the day named therein; and must also give notice of such settlement by publication, as in case of final settlements voluntarily made by executors or administrators; and if, on the day named, such executor or administrator, or if dead, his personal representative, fails to appear and file his accounts and vouchers for settlement, as required by law, the court must proceed to examine the account, audit, and, if necessary, restate the same.

248 (2180) (2594) (2236) (1880). **Proceedings on final settlement of such account.**—On the day appointed for auditing such account, any person may attend, on the part of such executor or administrator, or if dead, of his personal representative, and show that he is entitled to additional credits; and any person interested may attend and contest any item of such account, or in any previous account; or may show assets not accounted for; or that such executor or administrator has failed to collect any assets from want of

"Eighteen" changed to "twelve" by joint committee.

due diligence; or that, by any abuse of, or failure to discharge his trust, such assets, or any portion thereof, have been injured, destroyed or depreciated; and in case of such proof, the executor or administrator, or if dead, his personal representative, must be charged therewith. On such settlements, decrees must be rendered as upon like settlements voluntarily made.

249 (2181). **Decree set aside on filing accounts before settlement.**—If, however, such executor or administrator, or if dead, his personal representative, appears and files his accounts and vouchers for settlement, and pays such costs as have accrued upon the proceedings had under the three preceding sections, the court may set aside such decree, and proceed as if none had been rendered.

250 (2182) (2596) (2238) (1882). **Proceedings no bar to other suits.**—The proceedings for the settlement of the accounts of deceased or outgoing executors or administrators, provided for in this article, do not prevent any action by the remaining or succeeding executor or administrator, or by any other person entitled thereto, against such executor or administrator, or his personal representative, for any property remaining in his hands, or for any other cause of action.

251 (2183) (2541) (2169). **Arbitration of controversies on settlement of estates.**—On the settlement of the estate of a decedent, when such estate is free from debt, the probate court in which such settlement may be pending has authority to refer all matters of controversy arising in such settlement to arbitration, if, in the opinion of the court, the interests of the parties can be best subserved thereby, and the parties, or their attorneys, consent thereto.

Holdsombeck v. Fancher, 112 Ala. 469.

252 (2184) (2542) (2170). **Guardian may consent for ward.**—If any person interested in such estate be an infant, or of unsound mind, his guardian shall have authority to consent to the reference to arbitration, which consent must be in writing, and when so given, shall be binding on such person as fully and effectually as if he was of full age or of sound mind.

253 (2185) (2543) (2171). **Number and qualifications of arbitrators.**—The arbitrators must not exceed three in number, and must be entirely disinterested, and must be appointed by order of the probate court.

254 (2186) (2544) (2172). **Award to be made in writing.**—The arbitrators must make their award in writing, and, within ten days after making the same, they must return it to such court; and, if approved by the court, it must be entered of record, and shall be final and conclusive upon all the parties. But such award must not be approved until after the expiration of ten days from the time it is returned to the court.

255 (2187) (2545) (2173). **When award to have effect of a judgment.**—If such award, or any part thereof, be for the payment of money, it shall, when approved and entered of record, have the force and effect of a judgment at law in favor of the person to whom the

money may be awarded; and execution may issue thereon as in other cases.

256 (2188) (2546) (2174). **When award may be set aside.**—If such award be not approved by the court, it must be set aside; and the court may refer the matters again to the same or other arbitrators.

257 (2189) (2547) (2175). **Objections to award; proceedings thereon.**—Any of the parties may, within ten days after such award has been returned to the court, file objections to the same; and if objections are filed, the court must appoint a day, not less than thirty days from the filing of such objections, to hear and determine the same, notice of which must be given as now required by law in cases of applications for final settlements of the estates of decedents by executors or administrators.

258 (2190) (2548) (2176). **Sections applicable.**—Sections 511 (3224), 512 (3225), 514 (3227), 515 (3228), 516 (3229), 517 (3230), 518 (3231), and 520 (3235) of this Code are made applicable to the settlement of estates by arbitration.

ARTICLE 10.

PAYMENT OF LEGACIES, AND PARTIAL DISTRIBUTION BEFORE FINAL SETTLEMENT.

259 (2191) (2474) (2097) (1771). **Distribution before final settlement.**—When the executor or administrator is satisfied that the estate is solvent, he may at any time, so report it, and obtain an order of distribution as to the whole, or any part of the property; but in such case, if the order is made before a final settlement of such estate, the order and proceedings thereon are not a defense in any action brought against such executor or administrator as such.

When estate to be settled.—Williamson v. Mason, 18 Ala. 87; Walker v. Johnson, 82 Ala. 347; Jackson v. Rowell, 87 Ala. 685; Horton v. Averett, 20 Ala. 719; Hallett v. Allen, 13 Ala. 554; Austin v. Jordan, 35 Ala. 642; Whitfield v. Woolf, 5 Ala. 202; Handley v. Heflin, 84 Ala. 600.

260 (2192) (2475) (2098) (1772). **When payment of legacies may be compelled.**—After the expiration of twelve months from the grant of letters testamentary, or of administration with the will annexed, if there are more than sufficient assets in the hands of such executor or administrator to pay the debts of the deceased, any legatee may apply to the probate court of the county in which letters were granted, to compel the payment of his legacy; and a widow who has dissented from her husband's will, or her personal representative, if she is dead, shall have like remedy to compel the payment of the distributive share to which she may be entitled.*

When application not granted.—Smith v. Hall, 20 Ala. 777; Chighizola v. LeBaron, 21 Ala. 406; McReynolds v. Jones, 30 Ala. 101; McAllister v. Thompson, 32 Ala. 497; Sankey v. Elsberry, 10 Ala. 455; Johnston v. Fort, 30 Ala. 78.

*"Eighteen" changed to "twelve" by joint committee.

261 (2193) (2476) (2099) (1773). **Contents of application.**—The application for such purpose must be in writing, verified by affidavit, must set forth the applicant's claim, and must allege a sufficiency of assets in the hands of such executor or administrator to pay the same, after discharging the debts of the testator, charges on his estate, and other legacies entitled to priority of payment.

262 (2194) (2477) (2100) (1774). **Day fixed for hearing; citation to representative.**—The court must appoint a day for hearing such application, and a citation must be issued and served on the executor or administrator, notifying him of the grounds of such application, and of the day appointed for hearing the same, ten days before such day.

263 (2195) (2478) (2101) (1775). **When court may direct payment of legacy, on giving refunding bond.**—On the day appointed, or on any other day to which the hearing of the application may be continued, the court must hear the same, and if it appears that the applicant is a legatee, and that, after the payment of his legacy, there will be a sufficiency of assets to pay all the debts which have been presented, charges and other legacies which are entitled to priority, the court may direct the payment or delivery of such legacy, or any part thereof, according to the proof of assets, and of the other legacies in the same degree with that of the applicant, on the legatee executing a refunding bond according to the provisions of the next section.

264 (2196) (2479) (2102) (1776). **Terms and conditions of refunding bond.**—Such refunding bond must be payable to the executor, or administrator with the will annexed, and must be in double the amount directed to be paid, or in double the value of the property to be delivered, to be ascertained by the appraisement or other evidence satisfactory to the court, with at least two sufficient sureties, conditioned to refund the amount paid, or to return the property, or pay the value thereof, with interest on such amount or value from the time the same was received, should the assets prove insufficient to discharge the other debts presented, and charges, and other legacies entitled to priority of payment.

When refunding bond must be given.—Johnson v. Fort, 30 Ala. 78; Rowland v. Day, 17 Ala. 681; Erwin v. Ferguson, 5 Ala. 167; Whitfield v. Woolf, 51 Ala. 202; Horton v. Averett, 20 Ala. 719.

265 (2197) (2481) (2104) (1777). **How payment of legacy enforced.**—If the legacy is not payable in money, the value thereof, as ascertained under the preceding section, must be entered of record; and if the amount directed to be paid, or the property directed to be delivered, is not paid or delivered within sixty days after such order, an execution may issue for such amount, or the value of such property, against such executor, or administrator, and his sureties.

In equity.—Walker v. Johnson, 82 Ala. 347.

266 (2198) (2480) (2103). **What provisions applicable to widow.** The five sections next preceding apply to the widow who has dissented from her husband's will, and seeks to compel the payment of

her distributive share, or if she is dead, to her administrator or executor.

267 (2199) (2482) (2105) (1778). **Distribution made on application after twelve months.**—The court may also, in cases of intestacy, make an order of distribution out of the assets of the decedent, on the application of any person entitled to distribution, after twelve months from the grant of letters.*

Application must conform to statute.—Johnston v. Fort, 30 Ala. 78; Gunn v. Howell, 27 Ala. 663; Harrison v. Harrison, 9 Ala. 470; Harrison v. Meadors, 41 Ala. 274; Ward v. Oates, 42 Ala. 225.

268 (2200) (2483) (2106) (1779). **Contents of application.**—Such application must be in writing, verified by affidavit; must specify the share to which the applicant is entitled, and must allege that the assets of the decedent are more than sufficient to pay the debts of the decedent, and the charges on his estate.

269 (2201) (2484) (2107) (1780). **Day fixed for hearing; citation.**—A day must be appointed for the hearing of such application, and a citation must be issued and served on the administrator ten days before the day appointed, notifying him of the grounds of the application, and the day of hearing the same.

See citations to section 267, (2199).

270 (2202) (2485, 2486) (2108, 2109) (1781, 1782). **Order of distribution; when made.**—On the day appointed, or on any other day to which the application may be continued, if the court is satisfied from the evidence that the assets are more than sufficient to pay the debts and charges, it may make an order of distribution for such portion of the distributive share of the applicant as may be authorized by the evidence; but in making such order, the court must not exceed the share to which the applicant would be entitled on a final settlement and distribution.

Harrison v. Meadows, 41 Ala. 274.

271 (2203) (2486) (2109) (1782). **Order made on giving refunding bond; terms and conditions of such bond.**—Such order must not in any case be made, unless the applicant give a refunding bond, with two sufficient sureties, to be approved by the judge of probate, payable to the administrator, in double the amount distributed to the applicant, or in double the value of his share of the property directed to be distributed, to be ascertained by the appraisement or other evidence, and entered of record, and conditioned to refund the amount directed to be paid, or to return the property received on such distribution, or to pay the value thereof and interest on such amount or value from the time the same was received, if the assets are insufficient to discharge the debts and charges against the estate.

Johnson v. Fort, 30 Ala. 78.

272 (2204) (2487) (2110) (1783). **Costs.**—If any application made under the provisions of this article is determined against the applicant, he must pay the costs.

*"Eighteen" changed to "twelve" by joint committee.

273 (2205) (2488) (2111) (1784). **Bond recorded; transcript evidence.**—All refunding bonds provided for in this article must be recorded by the judge of probate, and then delivered to the executor or administrator; and a transcript of any such bond as recorded, duly certified, is evidence to the same extent as the original would have been, if produced.

274 (2206) (2489, 2490) (2112, 2113) (1785, 1786). **For whom such bond a security.**—Such refunding bond stands as security for the executor or administrator, should the assets in his hands, after any payment of money or delivery of property under the order of the court, prove insufficient to pay the debts, claims and charges against the estate, and the executor or administrator pays the same; and also as security for the creditors of the estate; and any creditor may sue thereon.

Alexander v. Fisher, 18 Ala. 374.

275 (2207) (2491) (2114) (1787). **Suits and recoveries on such bond.**—The extent of the recoveries on such bond is the amount or value of property received by the legatee or distributee, and interest on such amount or value from the date of its receipt; and the value of property received may be proved by the entry of record, made according to the provisions of this article, or other evidence; and such bond may be sued on from time to time, in the name of any person aggrieved, until the whole amount of the liability, as determined by this section, is recovered.

276 (2208) (2492) (2115) (1788). **Rights of parties to such bonds among themselves.**—Any party making a payment on any refunding bond taken under this article may recover against the parties to any other refunding bond such an amount as shall be in the same proportion to the amount collected from the plaintiff, as the amount of money and value of the property delivered on both bonds bear to the amount of money or property delivered on the bond of the defendant.

277 (2209) (2493) (2116) (1789). **Order made after twelve months protects representative.**—The order of the court, made after twelve months from the grant of letters, on the application of any legatee or person entitled to distribution, is a protection to the executor or administrator, to the extent of the amount or value of the legacy or share ordered to be paid or distributed.*

ARTICLE 11.

KEEPING ESTATES TOGETHER.

278 (2210) (2602) (2263) (1902). **Continuing plantation and employing laborers.**—The probate court may authorize the executor or administrator, on application made, and good cause shown, to keep the real and personal estate, or any portion thereof, together

*"Eighteen" changed to "twelve" by joint committee.

for such length of time as the court may deem advisable, not exceeding ten years, and employ laborers to cultivate, improve, keep in repair, and carry on the plantation belonging to the estate.

When administrator should be allowed expenses and compensation for properly maintaining estate.—Craig v. McGehee, 16 Ala. 41; Harris v. Martin, 9 Ala. 895; Gerald v. Bunkley, 17 Ala. 170; Stewart v. Stewart, 31 Ala. 207; Pickens v. Pickens, 35 Ala. 442; Hinson v. Williamson, 74 Ala. 180; Pinckard v. Pinckard, 24 Ala. 250; Waller v. Ray, 48 Ala. 468; Cannon v. Copeland, 43 Ala. 259; Ivey v. Coleman, 42 Ala. 409; Smith v. Kennard, 38 Ala. 695; Clopton v. Jones, 38 Ala. 121. Keeping estate together without order of court.—Harrison v. Harrison, 39 Ala. 489; Glenn v. Glenn, 41 Ala. 571; Hinson v. Williamson, 74 Ala. 180; Steele v. Knox, 10 Ala. 608; Loeb v. Richardson, 74 Ala. 311; McCreeliss v. Hinkle, 17 Ala. 459; Morgan v. Nelson, 43 Ala. 586; Stewart v. Stewart, 31 Ala. 207. Final settlement.—Sampey v. Sowell, 93 Ala. 447.

279 (2211) (2603) (4431). **Time extended for good cause shown.** Whenever any executor or administrator has kept an estate together, under the order of the probate court, for ten years, the time may be extended annually, upon application and good cause shown, if the court is of the opinion that the interest of such estate demands such extension.

280 (2212) (2604) (2264). **When distributed share kept and worked with undivided portion of estate.**—When a share or shares of real or personal property of any decedent is or are set apart or distributed to any widow, heir at law, or distributee of such decedent, and it appears to the satisfaction of the court that it is to the interest of the parties interested in the estate that such share or shares should be kept and worked together with such estate remaining undivided, the probate court, upon the application of the executor or administrator, and of the owner or owners of such share or shares, may order the executor or administrator to keep such share or shares, and work the same, together with the estate remaining undivided, for a term not exceeding ten years; but such order must not be granted, if in conflict with the will of the testator.

281 (2213) (2605) (2265). **Distributee's share of proceeds; how paid or enforced.**—The executor or administrator must pay, at the end of each year, to the owner or owners of such share or shares a proportionate share of the profits arising from such estate, and is entitled to a credit for the same; but if it shall appear, on a settlement of his accounts, that he has not paid the same, a decree therefor in favor of such owner or owners must be rendered by the probate court.

On failure to receive proceeds of share. Bowen v. Montgomery, 48 Ala. 353.

282 (2214) (2606) (2266). **Authority to administrator to hire laborers to cultivate plantation.**—The probate court has power to grant orders authorizing administrators, in cases of intestacy, to hire a sufficient number of laborers to keep up and cultivate the plantations of their intestates, where it is deemed by the court advisable to order the same to be kept together for a term of years.

Compensation.—Craig v. McGehee, 16 Ala. 41; Harris v. Martin, 9 Ala. 895; Savage v. Benham, 11 Ala. 49.

283 (2215) (2606) (2266). **Application for such order; notice and report.**—Before granting such order, the court must require the ad-

ministrator to file a petition under oath, setting forth the facts upon which the application is based; and, upon the filing of such petition, the court must appoint a day for the hearing of the same, and must give ten days notice thereof by advertisement in some newspaper published in the county; or if there is no newspaper published therein, then by posting the notice at the court-house door; and on the day appointed, the court must proceed to hear and determine the same upon the evidence adduced by the petitioner, or the other parties in interest, and any other evidence that the court may, in its discretion, cause to be adduced; and unless good cause be shown to the contrary, the court must grant such order, and must require the petitioner to return a written report of such hiring under oath, on or before a day specified in such order.

284 (2216) (2607) (2267) (1903). **Real estate cultivated, but dower reserved.**—When the estate of any decedent is kept together, the real estate may be cultivated under the direction of the executor or administrator; but the dower of the widow must in all cases be reserved.

285 (2217) (2608) (2268) (1904). **Only kept together when not in conflict with will.**—The provisions of the preceding sections of this article must not be so construed as to conflict with the will of the testator.

286 (2218) (2609, 2610) (2269, 2270) (1905, 1906). **Annual settlement of such estates.**—The executor or administrator must make annual settlements of such estates, as required in other cases, and in such settlements he must show how such estate has been managed, crop made, expenses incurred, and the disposition of all moneys received; and he must also show the amounts appropriated and expended for each and every person entitled to any distribution from such estate.

Effect of failure to make annual settlement.—Craig v. McGehee, 16 Ala. 41; Hall v. Wilson, 14 Ala. 295; Powell v. Powell, 10 Ala. 900. **Jurisdiction to require settlements.**—Savage v. Benham, 11 Ala. 49.

287 (2219) (2611) (2271) (1907). **Filing accounts, etc.; notice and contest.**—The account and vouchers, evidence and statement of the heirs and legatees must be filed, notice given, and contest made, in the same manner as on annual settlements in other cases.

288 (2220) (2612) (2272) (1908). **Settlement compelled; account stated by the court.**—Such settlement may be compelled by attachment, or the probate court may proceed in the same manner as in other cases when an executor or administrator, being cited to make a settlement, fails to do so.

289 (2221) (2613) (2273) (1909). **What rights not affected.** The provisions of this article in relation to keeping estates together must not be so construed as to affect the rights of creditors, or to prevent any legatee or distributee from receiving his proportion of the estate on his arriving at full age.

ARTICLE 12.

INSOLVENT ESTATES.

290 (2222) (2549) (2177) (1828). **Order of payment of debts.** When the real and personal property of any decedent is insufficient for the payment of the debts, the proceeds arising from the sale thereof must be distributed as directed by section 126 (2079) in proportion to the amounts due to each class of creditors, in the order in such section specified.

291 (2223) (2550) (2178) (1829). **When and by whom estate reported insolvent.**—Whenever the executor or administrator of any estate is satisfied that the property of the estate is insufficient to pay its debts, he must file with the judge of probate of the court having jurisdiction of the estate a report in writing, that such estate is, to the best of his knowledge and belief, insolvent.

Declaration of insolvency.—Banks v. Speers, 97 Ala. 560; Steele v. Weaver, 20 Ala. 540; Clark v. West, 5 Ala. 117; Lee v. Leachman, 22 Ala. 452; Heydenfeldt v. Towns, 27 Ala. 423; Hine v. Hussey, 45 Ala. 496; Black v. Black, 20 Ala. 401; Life Association v. Neville, 72 Ala. 517; Hullett v. Hood, 109 Ala. 345. **Effect of judgments and decrees.**—Lee v. Leachman, 22 Ala. 452; Watts v. Gayle, 20 Ala. 817; Banks v. Speers, 97 Ala. 560; see 23 Ala. 523-794; Heydenfeldt v. Towns, 27 Ala. 423; Brazeale v. Brazeale, 9 Ala. 491; Chandler v. Wynne, 85 Ala. 301; Randle v. Carter, 62 Ala. 95; Hullett v. Hood, 109 Ala. 345; McGehee, v. Lomax, 49 Ala. 131; Lambert v. Mallet, 50 Ala. 73; Balkum v. Harper, 50 Ala. 429; Thames v. Herbert, 61 Ala. 340; Thornton v. Moore, 61 Ala. 347; Dolan v. Dolan, 89 Ala. 256. **Premature payment of debt.**—Jackson v. Wood, 108 Ala. 209; Hullett v. Hood, 109 Ala. 345; Prior v. Davis, 109 Ala. 117. **Parties to insolvency proceedings.**—Randle v. Carter, 62 Ala. 95; McGuire v. Shelby, 20 Ala. 456; Bank v. Ellis, 30 Ala. 478; Lambeth v. Garber, 6 Ala. 870; Edwards v. Gibbs, 11 Ala. 292; Hine v. Hussey, 45 Ala. 496; Eubank v. Clark, 78 Ala. 73. **Dower and homestead.**—Banks v. Speers, 97 Ala. 560; Corr v. Shackleford, 68 Ala. 241; Norton v. Norton, 94 Ala. 481; Kilgore v. Kilgore, 103 Ala. 614. **Removal of settlement into equity.**—Dolan v. Dolan, 91 Ala. 152; Corr v. Shackleford, 68 Ala. 241; Shackleford v. Bankhead, 72 Ala. 476; Hardin v. Pulley, 79 Ala. 381; Wright v. Dunklin, 83 Ala. 317. **When report of insolvency forms a good plea in bar.**—Shiver v. Rousseau, 68 Ala. 564; Dangaix v. Lunsford, 112 Ala. 403.

292 (2224) (2551) (2179) (1830). **Statements to be filed with report.**—He must file with such report—

1. A statement of all the goods and chattels, evidences of debt, and other personal property, with the estimated value of each, and the amount of money belonging to such estate.

2. A full statement of the real property of the deceased, or any interest therein, and the local situation and estimated value thereof.

3. A full statement of the claims against the estate which have come to his knowledge, the character and amount of each claim, and the name and residence of each creditor, if known.

Contents of report of insolvency.—Raines v. Raines, 30 Ala. 425; Feagan v. Kendall, 43 Ala. 628. **Refusal to declare insolvent,** when no bar to second application.—Feagan v. Kendall, 43 Ala. 628.

293 (2225) (2552) (2180) (1831). **Report and statement to be verified by affidavit.**—Such report and statement must be accompanied by an affidavit of the executor or administrator to the effect that they are correct, to the best of his knowledge, information and belief.

See citations to preceding section.

294 (2226) (2553) (2181) (1832). **Day fixed for hearing; notice, how given.**—The probate court, on the filing of such report and statements, must appoint a day, not less than thirty, nor more than sixty days therefrom, to hear and determine the same; and must give notice to the creditors of the estate of the filing of the report, and the day appointed to hear and determine the same, by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, in the newspaper published nearest to the court-house of such county, and by posting such notice at the court-house door for the same length of time, and by forwarding such notices by mail to all creditors whose places of residence are known.

295 (2227) (2554) (2182) (1833). **Hearing of such report.**—Upon the day appointed, or on any other day to which the hearing is continued, the court must proceed to hear and determine such report.

296 (2228) (2555, 2558) (2183, 2186) (1834, 1837). **Issue of insolvency; trial by jury.**—Any creditor, or other person interested in the estate, may make an issue as to the correctness of such report, by denying in writing that the estate is insolvent, which issue must be tried by a jury on the application of either party; but only one issue must be made, in which any number of the creditors may join at any time before the determination thereof.

297 (2229) (2556, 2557) (2184, 2185) (1835, 1836). **When report dismissed; payment of costs.**—If such issue is decided against the executor or administrator, the report must be dismissed, and execution for the costs may issue against him and his sureties; but if it is decided in his favor, the costs must be paid by the contesting creditor, or out of the estate, as the court may direct.

Feagan v. Kendall, 43 Ala. 628.

298 (2230) (2559, 2560) (2187, 2188) (1838, 1839). **When declared insolvent; settlement ordered; notice, how given.**—If no creditor contests the correctness of the report, or if the issue is decided against him, the court must declare the estate insolvent, and must make an order for the executor or administrator, on a day therein named, not less than thirty, nor more than sixty days therefrom, to appear and make a settlement of his administration; and of such order, and of the day appointed for such settlement, notice must be given by the judge of probate as is required by section 294 (2226).

Proceedings in rem.—Hine v. Hussey, 45 Ala. 496. **Jurisdiction attaches on filing report.**—Hine v. Hussey, 45 Ala. 496; Hayes v. Collier, 47 Ala. 726. **Effect of decree of insolvency** is to transfer to the probate court exclusive jurisdiction of all claims against the estate.—Edwards v. Gibbs, 11 Ala. 292; Shiver v. Rousseau, 68 Ala. 564; Sharp v. Herrin, 32 Ala. 502; Ray v. Thompson, 43 Ala. 434; McEachin v. Reid, 40 Ala. 410; Thames v. Herbert, 61 Ala. 340. **It merely ascertains the status of the estate,** as between the personal representative and creditors of the estate; not affecting the rights of legatees or next of kin.—Randle v. Carter, 62 Ala. 95; McGuire v. Shelby, 20 Ala. 456; Thames v. Herbert, 61 Ala. 340. **Effect on suits pending or subsequently brought.**—Colbert v. Chandler, Minor, 254; Hale v. Cummings, 3 Ala. 398; Edwards v. Gibbs, 11 Ala. 292; McGehee v. Lomax, 49 Ala. 131; Walker v. Mock, 39 Ala. 568; Cunningham v. Lindsay, 77 Ala. 510; Seals v. Holloway,

Ib., 344; Cogburn v. McQueen, 46 Ala. 551. **What liens destroyed by decree of insolvency.**—Fitzpatrick v. Edgar, 5 Ala. 499; Burk v. Jones, 13 Ala. 167; Lamar v. Gunter, 39 Ala. 324; McEachin v. Reid, 40 Ala. 410; Ray v. Thompson, 43 Ala. 434; Hale v. Cummings, 3 Ala. 398; Seals v. Holloway, 77 Ala. 344. **What liens not destroyed.**—McKinney v. Benagh, 48 Ala. 358. **Conclusive on administrator.**—McDonald v. McDonald, 50 Ala. 26. **Effect of insolvency on distributees.**—Eubanks v. Clark, 78 Ala. 73. **Decree does not ipso facto terminate authority of personal representative.**—Clay v. Gurley, 62 Ala. 14.

299 (2231) (2561) (2189) (1840). **Nomination of administrator by creditors.**—On the day appointed for such settlement, or on any day to which the same is continued, the creditors present or represented, may nominate to the court any fit person, an inhabitant of this state, as administrator of the property, rights and credits of such estate unadministered.

300 (2232) (2562) (2190) (1841). **Manner of voting in making nomination.**—In making the nomination, each creditor, in person or represented, votes as follows:

1. On claims held by any one creditor, not exceeding in the aggregate one thousand dollars, one vote for each hundred dollars.

2. On claims held by any one creditor, exceeding in the aggregate one thousand dollars, ten votes for the first thousand, and one for every additional five hundred dollars.

3. Every creditor is entitled to one vote, and no creditor to more than twenty.

301 (2233) (2563) (2191) (1842). **Mode of nominating and of proving claims.**—The nomination must be made in the presence, and under the direction of the court; and the amount of claims held by any creditor must be proved by affidavit, as required by section 133 (2083); and the court may require other evidence of the correctness and amount of the claim.*

302 (2234) (2564) (2192) (1843). **Plurality of votes nominates.** The person receiving a plurality of votes must be appointed by the court administrator of the property, rights and credits of the estate unadministered.

303 (2235) (2566) (2194) (1845). **Appointment, when creditors fail to attend.**—If none of the creditors attend at the time appointed, or if, from any other cause, no appointment of such administrator is made, the court may, in its discretion, continue the former executor or administrator, or may appoint any fit person, or the general administrator of the county, or should there be none, the sheriff or coroner of the county, to administer the estate according to the provisions of this article.

Clay v. Gurley, 62 Ala. 14.

304 (2236) (2565) (2193) (1844). **Appointment to a vacancy.** Whenever a vacancy occurs in the office of such administrator, the court, on motion of any creditor of the estate, may order another meeting of creditors, and hold another election, and make the appointment of the person elected, in all respects, as upon the first meeting of the creditors.

305 (2237) (2567) (2195) (1846). **Appointment revokes former**

*Last clause added by joint committee.

letters.—Whenever an administrator is appointed under the provisions of this article, any former grant of letters on the estate is thereby revoked; and the property of such estate is thereby vested in such administrator.

306 (2238) (2568) (2196) (1847). **When claims barred; affidavit to claims.**—Every person, having any claim against the estate declared insolvent, must file the same in the office of the judge of probate, within six months after such declaration, or after the same accrues, verified by affidavit as required by section 133 (2083). Any defect or insufficiency in the affidavit may be supplied by amendment at any time. And when, prior to the declaration of insolvency, a claim has been duly filed in the office of the judge of probate as required by said section, such claim shall be considered as duly filed under this section.*

What claims to be filed. Generally.—Thames v. Herbert, 61 Ala. 340; Gamble v. Dunklin, 48 Ala. 425; Ray v. Thompson, 43 Ala. 434; Murdock v. Rousseau, 32 Ala. 611; Hollinger v. Holly, 8 Ala. 454. Judgments must be verified and filed.—Campbell v. Campbell, 11 Ala. 730; Sharp v. Herrin, 32 Ala. 502; Walden v. Spigener, 87 Ala. 390. Judgments rendered before declaration of insolvency.—Whitfield v. Clark, 48 Ala. 555; Gamble v. Dunklin, Ib. 425. But not judgments rendered in suit pending at time of declaration of insolvency. Gamble v. Dunklin, 48 Ala. 425. Whether demands in suit at time of declaration, quære.—McDougal v. Dawson, 30 Ala. 553. Such demands must be filed. Murdock v. Rousseau, 32 Ala. 611. Contra.—Erwin v. McGuire, 44 Ala. 499; Waller v. Nelson, 48 Ala. 531; Dolberry v. Trice. 49 Ala. 207. The exception of claims on which suits are pending is the result of judicial decision, which, though in conflict with former decisions, perhaps ought not now to be disturbed.—Thames v. Herbert, 61 Ala. 340. Preferred, as well as other claims, must be filed.—Hatchett v. Curbow, 59 Ala. 516. But not claim for family expenses under will.—Prince v. Prince, 47 Ala. 283. Failure to file does not bar equity to enforce vendor's lien.—Flinn v. Barber, 61 Ala. 530. **By whom claim may be filed and prosecuted.**—Hogan v. Calvert, 21 Ala. 194; Henry v. Black, 24 Ala. 417; Blankenship v. Nimmo, 50 Ala. 506; Thornton v. Moore, 61 Ala. 347 (overruling Miller v. Parker, 47 Ala. 312); Page v. Bartlett, 101 Ala. 193. **Filing.** What a sufficient filing.—Rutherford v. Br. Bank, 14 Ala. 92; Erwin v. McGuire, 44 Ala. 499; Levert v. Reid, 54 Ala. 529 (overruling Clement v. Nelson, 46 Ala. 634, and Brewer v. Moseley, 49 Ala. 79); Shelton v. Poulson, 60 Ala. 578; Henderson v. Henderson, 67 Ala. 519; Woodruff v. Winston, 68 Ala. 412. What not a sufficient filing.—Beene v. Phillips, 37 Ala. 312; Phillips v. Beene, 38 Ala. 248; Henderson v. Henderson, 67 Ala. 519. **Statement of claim; when sufficient.**—Flinn v. Shackleford, 42 Ala. 202; Woodruff v. Winston, 68 Ala. 412; Rowdon v. Young, 12 Ala. 234; Ransom v. Quarles, 16 Ala. 437; Hogan v. Calvert, 21 Ala. 194; Stubbs v. Beene, 37 Ala. 627; Thornton v. Moore, 61 Ala. 347. **Verification of claim.** When sufficient.—Trowbridge v. Pinckard, 31 Ala. 424; Carhart v. Clark, Ib. 396; P. & M. Bank v. Smith, 14 Ala. 416; Norvill v. Williams, 35 Ala. 551. When insufficient.—Beene v. Collenberger, 38 Ala. 647; Lay v. Clark, 31 Ala. 409; Dennis v. Coker, 34 Ala. 611; Cook v. Davis, 12 Ala. 551; Pickle v. Ezzell, 27 Ala. 623. **Amendment of affidavit.**—P. & M. Bank v. Smith, 14 Ala. 416; Dennis v. Coker, 34 Ala. 611; Fox v. Dawson, 44 Ala. 319; Prestridge v. Irwin, 46 Ala. 653; Thornton v. Moore, 61 Ala. 347. **Effect of failure to file.**—Murdock v. Rousseau, 32 Ala. 611; Thames v. Herbert, 61 Ala. 340. Failure of creditors to file their claims does not annul decree of insolvency.—McCuan v. Turrentine, 48 Ala. 68. If a surplus is left after paying claims which have been filed, distributees entitled in preference to creditors who did not file their claims.—Puryear v. Puryear, 34 Ala. 555. But see Phelan v. Phelan, 13 Ala. 679, and Middleton v. Maul, 16 Ala. 479. Representative not authorized to pay claim which has not been filed.—Sharp v. Sharp, 35 Ala. 574. Claim not filed within the time required by the statute not available as an offset in suit by personal representative.—Bell v. Andrews, 34 Ala. 538; Shelton v. St. Clair, 64 Ala. 565. **Filing claim operates a presentation.**—Lattimore v. Williams, 8 Ala. 428. **Effect of taking claim from file.**—Ross v. Ross, 21 Ala. 322. **Claim duly filed, and not objected to, stands as a judgment.**—Wright v. Dunklin, 83 Ala. 317; Chandler v. Wynne, 85 Ala. 301.

*"Nine" changed to "six" by joint committee.

307 (2239) (2569) (2197) (1848). **Longer time allowed infants and lunatics.**—The provisions of the preceding section, as to the time within which claims are to be filed, do not apply to infants and persons of unsound mind who have no legal guardian at the time of the declaration of insolvency; but such minors and persons of unsound mind are allowed nine months after the appointment of a guardian, or, if none be appointed, nine months after the removal of their respective disabilities, in which to file their claims.

308 (2240) (2570) (2198) (1849). **Verification of claims in another state.**—When a claim against such estate is verified by the oath of a person out of this state, but within the United States, such oath may be made before a notary public, justice of the peace, or any judge of a court of record, or a commissioner of this state; and when made before a justice of the peace it must be certified that such officer was a justice of the peace, and that his attestation is genuine, by some judge of a court of record, or a commissioner of this state; but when made before either of the other officers specified, no other proof of the taking of such oath is necessary than the certificate of such officer.

Carhart v. Clark, 31 Ala. 396; Fox v. Lawson, 44 Ala. 319.

309 (2241) (2571) (2199) (1850). **Verification of claim in foreign country.**—When such oath is taken out of the United States, it may be taken before any judge of a court of record, mayor or chief magistrate of any county, city, borough, or town, notary public, or diplomatic, consular, or commercial agent of the United States; and no other proof of the taking of such oath is necessary than the certificate of such officer.

310 (2242) (2572) (2200) (1851). **Receipt for claim; indorsement of filing.**—The judge of probate must, when required, give a receipt for such claim to the claimant, his agent, or attorney, and must indorse on the claim the day when the same was filed, and sign his name thereto.

311 (2243) (2573) (2201) (1852). **Docket of claims.**—Such judge must keep a docket of all the claims thus filed, which must be at all times, during office hours, subject to the inspection of the administrator and creditors of, or any person interested in the estate.

312 (2244) (2574) (2202) (1853). **When claim allowed without further proof.**—If no opposition is made, in the manner hereinafter provided, within twelve months after the time when the estate was declared insolvent, such claim must be allowed against the estate without further proof.

Claim duly filed and not objected to, or allowed against objection, **stands as a judgment.**—Wright v. Dunklin, 83 Ala. 317; Chandler v. Wynne, 85 Ala. 301; Cunningham v. Lindsay, 77 Ala. 510.

313 (2245) (2575) (2203) (1854). **Objections to claims; issue, trial, costs.**—At any time within nine months after the declaration of insolvency, the administrator, or any creditor, heir, legatee, devisee, or distributee may object to the allowance of any claim filed against the estate, by filing objections thereto in writing; and there-

upon the court must cause an issue to be made up between the claimant and objector, in which issue the correctness of such claim must be tried as in an action of law, if required; and if it is found for the claimant to the whole amount thereof, the same must be allowed, and such claimant recover the costs of the trial of such issue; but if against the claimant, the claim must be rejected, and the party contesting recovers the costs of the trial of such issue.*

Allowance of claims, unless objections filed within time allowed, a matter of right.—McNeil v. Macon, 20 Ala. 772; Hardy v. Meachem, 33 Ala. 457; Thames v. Herbert, 61 Ala. 340; Thornton v. Moore, Ib., 347; Guard v. Hale, 64 Ala. 479; Clark v. Knox, 70 Ala. 607; Wright v. Dunklin, 83 Ala. 317; Chandler v. Wynne, 85 Ala. 301. **But matters subsequently occurring** may be raised at any time before decree allowing claim.—Thames v. Herbert, 61 Ala. 340; Thornton v. Moore, Ib. 347. **An objection as to time of filing** may be made at any time before or on settlement.—Carhart v. Clark, 31 Ala. 396; Bartol v. Calvert, 21 Ala. 42. **But as to verification or correctness,** must be filed within time allowed.—Gaffney v. Williamson, 21 Ala. 112; Hogan v. Calvert, 21 Ala. 194; Hardy v. Meachem, 33 Ala. 457; Moore v. Winston, 66 Ala. 296; and authorities first supra. **Objection by distributees.**—Eubank v. Clark, 78 Ala. 73. **When motion to strike plea from file properly sustained.**—Thornton v. Moore, 61 Ala. 347. **Trial by jury.**—Blankenship v. Nimmo, 50 Ala. 506; Nooe v. Garner, 70 Ala. 443. **Contest between partnership and individual creditors.**—Claflin v. Behr, 89 Ala. 503. **Liability of administrator of insolvent estate for costs.**—McDonald v. Cox, 104 Ala. 379; Patapsco Guano Co. v. Ballard, 107 Ala. 710. **Plea of statute of limitations of three years** must aver claim an open account.—Clark v. Guard, 73 Ala. 456. **Bar must be complete when claim is filed.**—Woodruff v. Winston, 68 Ala. 412; Wright v. Dunklin, 83 Ala. 317. **Allowance of claim has force of judgment in personam.** Randle v. Carter, 62 Ala. 95; Wright v. Dunklin, 83 Ala. 317; Cunningham v. Lindsay, 77 Ala. 510; Chandler v. Wynne, 85 Ala. 301. **Effect of judgment rejecting claim.**—Saltmarsh v. Bird, 19 Ala. 665; McDougald v. Rutherford 30 Ala. 253; McDougald v. Dawson, Ib. 553; Coffin v. McCullough, 30 Ala. 107. **Proper mode of declaring on claim.**—Ross v. Ross, 20 Ala. 105. **Burden of proof on contest.**—Woodruff v. Winston, 68 Ala. 412; Dickie v. Dickie, 80 Ala. 57. **What necessary to equitable relief against allowance,** when no objection has been filed.—Moore v. Winston, 66 Ala. 296. **Representative paying debt prematurely,** subrogated to right of creditor.—Prior v. Davis, 109 Ala. 117.

314 (2246) (2576) (2204) (1855). **If part only found due, it must be allowed; costs.**—If a part only of such claim is found to be due, it must be allowed for that amount, and the costs paid by either party, or in such proportion by either party as the court may direct.

315 (2247) (2577) (2205) (1856). **When settlement to be made.** Every executor or administrator of an insolvent estate must make a settlement of his accounts as such, at such time as the court may appoint, not less than nine, nor more than fifteen months from the time the estate is declared insolvent.

Requisites of final decree.—Watt v. Watt, 37 Ala. 543; Lehman v. Robertson, 84 Ala. 489. **Parties to settlement.**—Baker v. Wood, 51 Ala. 345. **Jurisdiction to settle estates of deceased partners having common administrators.**—Baldwin v. Deming, 51 Ala. 553. **Settlement of insolvent estates,** in general.—Clark v. Guard, 73 Ala. 456. **Appeal lies from partial.**—Lehman v. Robertson, 84 Ala. 489.

316 (2248) (2578) (2206) (1857). **On such settlement, debts paid ratably; other settlements.**—At such settlement, the court must decree to each creditor whose claim has been allowed, as herein provided, his proportion of all moneys then found due from such executor or administrator, reserving in his hands a ratable proportion of such moneys for such claims as may be then contested and unde-

*"Twelve" changed to "nine" by joint committee.

cided; and a similar settlement and distribution must be made at least every six months thereafter, at such times as the court may appoint, until the estate is finally settled and distributed.

See citations to preceding section.

317 (2249) (2579) (2207) (1858). **Effect of report of insolvency on pending suits.**—During the progress of any suit against an executor or administrator, he may show that such estate has been reported insolvent, and upon such showing the cause must be continued until the final disposition of such report.

Pendency of suit does not take away jurisdiction of probate court.—Cunningham v. Lindsay, 77 Ala. 510. See citations to section 306 (2238).

318 (2250) (2580) (2208) (1859). **Plea of declaration of insolvency; proceedings thereon.**—The executor or administrator may also, at any time before judgment, plead specially that the estate has been declared insolvent; and, in such case, the other issues must be tried, and judgment rendered thereon.

Declaration of insolvency before suit, a bar.—Shiver v. Rousseau, 68 Ala. 564; Edwards v. Gibbs, 11 Ala. 292; Dolberry v. Trice, 49 Ala. 207; Lunsford v. Baskins, 6 Ala. 512. **After suit, must be specially pleaded,** not merely suggested.—Stern v. Collier, 101 Ala. 424. **Statute does not apply when representative is plaintiff.**—McDonald v. Cox, 104 Ala. 379. **Declaration of insolvency and failure to file claim, bars revivor.**—Sharp v. Herrin, 32 Ala. 502. **When judgment may be rendered against sureties on appeal bond.**—Mount v. Stewart, 86 Ala. 365.

319 (2251) (2581) (2209) (1860). **Judgment certified to probate court; execution for costs.**—If such judgment is for the plaintiff, and it is shown to the court that such estate has been declared insolvent, an order must be made to the effect that no execution issue on such judgment, but that the same be certified to the proper probate court; and upon a certified copy of such judgment being filed as a claim against the estate, it must be allowed with the costs against such estate, unless shown to have been obtained by collusion; and when such judgment is certified, the clerk may demand of the plaintiff payment of all costs incurred in obtaining the same, and if the plaintiff fails for twenty days after the judgment is so certified to pay such costs, execution may issue against him for the same as in other cases.

See citation to section 306 (2238).

320 (2252) (2582) (2210) (1861). **Effect of appeal on contest of report.**—If an appeal has been taken on a contest as to the report of insolvency, the case must, on motion, be continued during the pendency of such appeal.

321 (2253) (2583) (2211) (1862). **Claims not due may be presented; dividends on.**—Any creditor whose debt is not due may file the same as if due, and thereupon must be considered as a creditor under this article; and he is entitled to his dividend, or such an amount as, with the interest added from the time of payment to the maturity of the debt, would be equal to the amount thereof.

322 (2254) (2584) (2212) (1863). **Claims allowed after partial distribution entitled to full dividend.**—Any creditor of an insolvent estate, whose claim is allowed after a partial distribution, must

be allowed out of the remaining assets of such estate, if sufficient, such an amount as will give him his just dividend.

323 (2255) (2585) (2213) (1864). **When creditor may sue those receiving dividends for his proportion.**—Any creditor of an insolvent estate, whose claim is not barred, may sue any person who has received any dividend of such estate, and may recover from him such an amount of the dividend he has received as shall be in the same proportion thereto as the claim of the plaintiff bears to the debts of the estate distributed, including the claim of the plaintiff.

Contribution between creditors.—Shelton v. Carpenter, 60 Ala. 201; Clark v. Guard, 73 Ala. 456.

324 (2256) (2586) (2214) (1865). **Payment to another creditor reduces recovery.**—But in such action the defendant may reduce the recovery, by showing that such dividend has been reduced by the recovery or payment of the claims of other creditors of such estate in the like proportion.

325 (2257) (2587) (2215) (1866). **Costs in such cases.**—In such action, the plaintiff must pay the costs, unless he proves that he has exhibited his claim and demanded of the defendant his proportion of the dividend received by him, before the commencement of the action.

326 (2258). **Sale of lands after declaration of insolvency.**—On the application of an executor or administrator of an estate which has been declared insolvent, for an order for the sale of lands belonging to the estate for the payment of debts, he shall be allowed to obtain such order without taking any evidence by deposition, as in chancery cases, to show the necessity of such sale.

Substitutes the decree of insolvency for proof that there are debts of the estate to be paid, and that the personal assets are insufficient therefor. Meadows v. Meadows, 78 Ala. 240; Dolan v. Dolan, 89 Ala. 256, 261. **Decree of insolvency makes prima facie case of necessity to sell lands.**—Chandler v. Wynne, 85 Ala. 301, 311.

327 (2259). **Notice to heirs, etc., of such application.**—Such application shall be in writing, verified by affadivit, shall contain an accurate description of the lands sought to be sold, and shall set forth the names and places of residence of the heirs or devisees, and whether they are under or over the age of twenty-one years; and the court shall give notice to such heirs or devisees of the filing of such application, and of the day appointed to hear the same, by publication once a week for three successive weeks in some newspaper published in the county, or if none is published therein, in the newspaper published nearest to the court-house of such county, by posting notice at the court-house door for the same length of time, and by forwarding notices to those whose places of residence are known. If any of the heirs or devisees are unknown, they may be made parties in the manner provided by section 162.

328 (2260) (2588) (2216). **Representative may maintain action for recovery of lands.**—The administrator of an insolvent estate may maintain an action for the recovery of lands of the estate, in

every case in which such action might be maintained by him if the estate was solvent.

Langford v. Dunklin, 71 Ala. 594, 605.

329 (2261) (2589) (4424). **Second declaration by succeeding administrator not necessary.**—An estate of a decedent having once been declared insolvent, it shall not be necessary for any succeeding administrator to apply for, or obtain a declaration or decree of insolvency; but a declaration of insolvency once had, and remaining unreversed, shall continue, and apply to, and be effectual under all subsequent administrations, as if obtained under each of them.

ARTICLE 13.

SUITS BY AND AGAINST EXECUTORS AND ADMINISTRATORS, AND ENFORCEMENT OF JUDGMENTS AND DECREES; ADMINISTRATORS AD LITEM; AUTHORITY OF FOREIGN EXECUTORS AND ADMINISTRATORS TO SUE FOR, AND RECOVER OR RECEIVE PROPERTY.

330 (2262) (2615) (2277) (1918). **In what county representatives may be sued.**—Executors or administrators are liable to be sued, in their representative character, in all cases, in the county in which letters were granted; and service of summons may be made on them in any county in the state.

Averment of representative capacity.—Rhodes v. Walker, 44 Ala. 213; Morrow v. Taggart, 45 Ala. 293; Graham v. Gunn, 45 Ala. 577; Taylor v. Perry, 48 Ala. 240; Christian v. Morris, 50 Ala. 585. **Pleas.**—Wilson v. Bothwell, 50 Ala. 378; Riddle v. Hill, 51 Ala. 224; Shiver v. Rousseau, 68 Ala. 564; Whitfield v. Woolf, 51 Ala. 202.

331 (2263) (2614) (2276) (1917). **Not to be sued for six months, etc.**—No suit must be commenced against an executor or administrator, as such, until six months, and no judgment rendered against him, as such, until twelve months after the grant of letters testamentary or of administration.*

Process of garnishment may be sued out before the lapse of six months. Moore v. Stainton, 22 Ala. 831. **Suit commenced within six months, abated on plea.**—Espy v. Comer, 76 Ala. 501; Goldsmith v. Eichold, 94 Ala. 116; Word v. Word, 90 Ala. 81. **The period of six months, excluded in computation of statute of limitations.**—Hood v. League, 102 Ala. 228; Goldsmith v. Eichold, 94 Ala. 116. **Statute applies only to suits against the representative as such.**—Ala. State Bank v. Glass, 82 Ala. 278; Torrey v. Bishop, 104 Ala. 548. **Nor to revivor on death of defendant in ejectment.**—Torrey v. Bishop, supra.

332 (2264) (2621) (2283) (1924). **Suits begun by special administrator, continued by successor.**—Suits commenced by a special administrator do not abate by the appointment of an executor or administrator in chief, but may be prosecuted by such executor or administrator.

333 (2265) (2622) (2284) (1925). **Suits begun by or against representative, prosecuted by or against successor.**—When any action has been commenced by or against the personal representative of a decedent, the same may be prosecuted by or against any succeed-

*"Eighteen" changed to "twelve" by joint committee.

ing executor or administrator, who may, on motion, be made a party.*

Revivor of action by succeeding general administrator.—Russell v. Erwin, 41 Ala. 292; Brown v. Tutwiler, 61 Ala. 372; Pope v. Irby, 57 Ala. 105; Wells v. Elliott, 68 Ala. 183; Reynolds v. Crook, 95 Ala. 570.

334 (2266) (2624) (2286) (1927). **On death of one representative, suit continued against survivor.**—If any one of two or more executors or administrators, against whom a suit is pending, die during the pendency of the suit, it does not abate, but may be continued against the survivor or survivors, on a suggestion of such death on the record.

335 (2267) (2632) (2288) (1929). **Damages to realty survive to representatives.**—All proceedings to ascertain damages done to real property survive to the executors or administrators.

Representative may maintain bill in equity to enjoin trespass without showing necessity to sell land to pay debt.—Sullivan v. Rabb, 86 Ala. 433.

336 (2268) (2631) (2287) (1928). **Representatives of those who were liable to an estate also liable.**—The executor or administrator of any decedent who, as executor or administrator, or otherwise, has wasted or converted to his own use any assets of any other decedent, is liable in the same manner as his testator or intestate would have been, if living.

337 (2269) (2616) (2278) (1919). **Limit of representative's liability.**—No executor or administrator is liable, except in the case provided by section 124 (2077), beyond the amount of assets which have come to his hands, or which have been lost, destroyed, wasted, injured, depreciated, or not collected, by want of diligence on his part, or an abuse of his trust.

Dangaix v. Lunsford, 112 Ala. 403. **Representative liable for timber cut and sold** from lands of intestate without authority.—Glenn v. Glenn, 41 Ala. 571; Billingslea v. Glenn, 45 Ala. 540. **But not for the value of property lost or destroyed** without fault on his part.—Brazeale v. Brazeale, 9 Ala. 491; Harrison v. Harrison, 39 Ala. 489.

338 (2593). **Liability of personal representative and sureties.** The personal representative, and the sureties on his bond are liable to the parties in interest for the due and legal distribution of all damages recovered by such representative under section 26 (2588), or section 27 (2589), or section 1751 (2591), and are subject to all

---

*On Nov. 30th, 1896 (Pamph. Acts 1896–7, p. 23), an act was approved, entitled "An act to revive judgments and decrees against administrators de bonis non, in cases where such judgments or decrees have been rendered against administrators in chief, and such administrators in chief have died, been removed or have resigned before the payment of such judgment or decree," which is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That in all cases where judgment or decree has been rendered against an administrator in chief, of any estate, and such administrator in chief dies, resigns, or is removed before the satisfaction of such judgment or decree, such judgment or decree may be revived in favor of the owner of such judgment or decree, or his personal representative, against the administrator de bonis non of such estate on ten days notice to such administrator de bonis non; *Provided*, such liabilities shall only bind the administrator de bonis non to the extent of the assets of the estate which have come into his possession. Approved November 30th, 1896."

remedies which may be pursued against such representative and sureties for the due administration of personal assets.

339 (2270) (2617) (2279) (1920). **When resignation no defense.** No executor or administrator can allege his resignation in defense to any action or proceeding, without an averment that he has settled his administration, and delivered over the assets of the estate, as required by law.

No executor of a solvent estate can allege that his authority has ceased without an averment of settlement.—Cogburn v. McQueen, 46 Ala. 551; Shiver v. Rousseau, 68 Ala. 564; Skinner v. Frierson, 8 Ala. 915; Gayle v. Elliott, 10 Ala. 264; Whitfield v. Woolf, 51 Ala. 202.

340 (2271) (2636) (2292) (1933). **Executor de son tort only liable to representative; exception.**—No person is liable to an action, as executor of his own wrong, for having taken, received, or interfered with the property of a deceased person, but is liable to the executor or administrator for the value of all the property so taken or received, and for all damages caused by his act to the estate of the deceased; but the provisions of this section must not be construed so as to prevent any creditor from maintaining a suit against any one in possession of property fraudulently transferred by such deceased person.

Creditor cannot subject, in equity, funds of decedent in hands of executor de son tort.—Winfrey v. Clarke, 107 Ala. 355; (overruling Cameron v. Cameron, 82 Ala. 392 and Dunlap v. Newman, 47 Ala. 429). See Watts v. Gayle, 20 Ala. 817; Wood v. Cosby, 76 Ala. 557. **Retaining possession under color of title, in good faith, will not make party chargeable as executor de son tort.**—Ward v. Bevill, 10 Ala. 197; Simonton v. McLane, 25 Ala. 353; see also Marx v. Nelms, 95 Ala. 304. **Administrator has plain remedy at law to recover assets of estate,** bill seeking to charge parties as executors de son tort, without equity.—Abernathy v. Bankhead, 71 Ala. 190. **When executor may sue in his own name.**—Dunlap v. Newman, 47 Ala. 429; McGehee v. Slater, 50 Ala. 431; Morrow v. Taggart, 45 Ala. 293. **Voluntary sales by executor de son tort confers no title on purchaser.**—Carpenter v. Going, 20 Ala. 587; Nelson v. Goree, 34 Ala. 565; Keith v. Ham, 89 Ala. 590.

341 (2272) (2403) (2034) (1713). **Suit on bond of representative.**—Any bond given by an executor or administrator, as such, may be sued or proceeded on in the name of the party aggrieved, until the whole penalty is exhausted.

How suit brought.—Amason v. Nash, 24 Ala. 279. Who is a party aggrieved. Williams v. Stoutz, 92 Ala. 516; Amason v. Nash, 24 Ala. 279; Morrow v. Wood, 56 Ala. 1. **To what extent sureties liable.**—Grace v. Martin, 47 Ala. 135.

342 (2273) (2404) (2035) (1714). **Bond irregularly taken a statutory bond.**—The bond of the general administrator of the county, or of any executor or administrator, is valid and operative as a statutory bond, and is of the same obligation, force and effect as a statutory bond, though it may not be approved, or in the penalty, or payable, or with the condition required by law.

Irregularity within meaning of statute.—Steele v. Tutwiler, 68 Ala. 107; Sprowl v. Lawrence, 33 Ala. 674.

343 (2274). **Conditional execution or delivery of bond.**—A surety on the bond of the general administrator of the county, or on the bond of any executor or administrator, cannot avoid liability thereon, on the ground that he signed or delivered it on condition that

it should not be delivered to the judge of probate, or should not become perfect, unless it was executed by some other person who does not execute it.

344 (2275) (2634) (2290) (1931). **When legatee may sue at law for legacy.**—Any legatee, after twelve months from the grant of letters testamentary, or of administration with the will annexed, may sue at law and recover his legacy, upon proof that the executor assented to the same.*

Assent to legacy, implied.—Cox v. McKenney, 32 Ala. 461. Action for recovery of legacy.—Cox v. McKenney, 32 Ala. 461; Bonner v. Young, 68 Ala. 68 Ala. 35; Wood v. Wood, 3 Ala. 756; Gause v. Hughes, 9 Port. 552; Pettigrew v. Pettigrew, 1 Stew. 580.

345 (2276) (2618) (2280) (1921). **How judgments and decrees of probate court enforced against representative.**—All judgments, orders and decrees of the probate court against an executor or administrator, for the payment of money, may be enforced by execution, or by process of garnishment, which may issue in like cases and manner as it may issue on judgments in courts of law, and may, in like manner, be prosecuted to judgment against the garnishee; for the delivery of personal property, by attachment, or a special order to the sheriff, requiring him to take such property and deliver the same according to the judgment, order, or decree; for the possession of land, by a writ to the sheriff against the executor or administrator, requiring him to put the heir or devisee in possession of the same.

346 (2277) (2619) (2281) (1922). **When sureties liable to execution or garnishment.**—When an execution against an executor or administrator, issued from the probate court on any judgment, order, or decree for money, is returned to any regular term of such court "no property" by the sheriff of the county, such judgment, order, or decree may be enforced against the executor or administrator and his sureties, by execution, or by process of garnishment, which may issue in like cases and manner as it may issue on judgments in courts of law, and may, in like manner, be prosecuted to judgment against the garnishee.

When return of "no property" authorizes execution against sureties. Little v. Heard, 16 Ala. 358; Thompson v. King, 15 Ala. 346; Jenkins v. Gray, 16 Ala. 100; Poacher v. Weisinger, 20 Ala. 102; Kirby v. Anders, 26 Ala. 466; Jewett v. Hoogland, 30 Ala. 716; Grace v. Martin, 47 Ala. 135; McGehee v. Lomax, 49 Ala. 131; Hudson v. Modawell, 64 Ala. 481; Payne v. Thompson, 48 Ala. 535; Stallworth v. Farnham, 64 Ala. 259; Steele v. Graves, 68 Ala. 17; s. c., 68 Ala. 21; Martin v. Tally, 72 Ala. 23; Berry v. Perry, 81 Ala. 103.

347 (2278) (2620) (2282) (1923). **When execution issues de bonis propriis.**—When any judgment is rendered in the circuit court against any executor or administrator, as such, and an execution thereon has been returned "no property" by the sheriff or other officer of the county in which such judgment was rendered, an execution may issue against the executor or administrator personally, to be levied on his goods and chattels, lands and tenements.

Personal liability of representative on return "no property."—McGehee v.

*"Eighteen" changed to "twelve" by joint committee.

Lomax, 49 Ala. 131; Lambert v. Mallet, 50 Ala. 73; Balkum v. Harper, 50 Ala. 429; Allen v. Allen, 80 Ala. 154. **No exemptions against judgment for a devastavit.**—Dangaix v. Lunsford, 112 Ala. 403.

348 (2279) (2623) (2285) (1926). **Executions in favor of successor.**—Any subsequent administrator, or administrator with the will annexed, may have execution on any judgment recovered by any person who preceded him in the administration of the same estate, without reviving the same, or without proceeding to notify the defendant in such judgment.

349 (2280) (2633) (2289) (1930). **How judgments against decedents enforced against representatives.**—When a judgment has been rendered against a decedent before his death, no execution can issue thereon against his personal representative, except in the case provided for in section 1895 (2897); but such judgment may be revived against his personal representative by scire facias after the lapse of twelve months from the grant of letters; and sections 317 (2249), 318 (2250), 319 (2251), and 320 (2252), of this Code are applicable to such proceeding.*

Revivor of judgment.—Hurst v. Williamson, 42 Ala. 296; Kirby v. Anders, 26 Ala. 466; May v. Parham, 68 Ala. 253; Bobo v. Gunnels, 92 Ala. 601; Reynolds v. Crook, 95 Ala. 570; Enslen v. Wheeler, 98 Ala. 200; Brown v. Newman, 66 Ala. 275.

350 (2281). **Representative may purchase under decree or execution for estate.**—The executor or administrator of any decedent may purchase for the estate property sold under any decree of the chancery court, or under any execution, in his favor as such executor or administrator.

351 (2282) (2635) (2291) (1932). **How inventory, when read in evidence, explained by proof.**—In an action against an executor or administrator, in which the fact of his having administered the estate of his testator or intestate, or any part thereof, comes in issue, and the inventory of the property of the deceased, filed by him, is given in evidence, the effect of the same may be repelled by evidence—

1. That any property has been omitted in such inventory, or was not returned therein at its full value, or since the filing thereof has increased in value.

2. That such property has perished, or been lost without the fault of such executor or administrator, or that it has been fairly sold, according to law, at a less price than the value so returned, or that, since the return of the inventory, such property has deteriorated or decreased in value; and in such action the defendant cannot be charged for any thing in action specified in the inventory, unless it appears that it was, or might have been collected by the exercise of due diligence.

352 (2283) (2625). **When administrator ad litem appointed.** When, in any proceeding in the probate or chancery court, or other court having chancery jurisdiction, the estate of a deceased person must be represented, and there is no executor or administrator of

*As amended by joint committee.

such estate, or he is interested adversely thereto, it shall be the duty of the court to appoint an administrator ad litem of such estate for the particular proceeding, without bond, whenever the facts rendering such appointment necessary shall appear in the record of such case, or shall be made known to the court by the affidavit of any person interested therein; and when such proceedings are pending in the chancery court, or court having like jurisdiction, the register, or the officer discharging the duties of register, of such court shall have authority to make such appointment in vacation.

Appointment of administrator ad litem.—Hays v. Cockrell, 41 Ala. 75; Teague v. Corbitt, 57 Ala. 529; Ex parte Lyon, 60 Ala. 650; Dooley v. Villalonga, 61 Ala. 129; Malone v. Hill, 68 Ala. 225; Clark v. Knox, 70 Ala. 607; Gayle v. Johnston, 72 Ala. 254. **When administrator ad litem should not be appointed.**—Marcy v. Howard, 91 Ala. 133; Page v. Bartlett, 101 Ala. 193.

353 (2284) (2626). **Decree in favor of administrator ad litem.** When, in such proceedings, the estate represented by the administrator ad litem is entitled to a decree for the recovery of money, or for the possession of real or personal property, such decree shall be rendered in favor of the administrator ad litem for the use of the estate.

354 (2285) (2626). **Execution on money decree, how issued; money paid into court.**—When such decree is for the recovery of money, and the estate has no executor or administrator, execution shall issue thereon in favor of the administrator ad litem for the use of the estate, and the money, when collected, shall be paid by the officer to the judge of the probate court, or to the register, or officer acting as register, of the chancery or other court having like jurisdiction, from which the execution issued; and the party against whom such decree is rendered may pay the same to such judge, register, or officer acting as register, before the issue of execution, whose receipt to him therefor shall be a full discharge of such decree.

355 (2286) (2627). **When writ issues under decree for recovery of property.**—When such decree is for the recovery of real or personal property, and the estate has no executor or administrator, no writ of possession, or other writ for the enforcement of such decree, shall issue thereon, until there shall be some person duly authorized under the laws of this state to receive the possession of such property, and then such writ shall issue in favor of such person.

356 (2287) (2628). **Decree when executor or administrator adversely interested; how enforced.**—When such administrator ad litem is appointed on account of the adverse interest of the executor or administrator, and the decree is rendered against such executor or administrator, no execution, writ of possession, or other writ for the enforcement of the decree, shall issue thereon, but in such decree the court shall require the executor or administrator to charge himself, as executor or administrator of the estate represented by the administrator ad litem, with the money or property recovered of him by the administrator ad litem; but when the decree is not against the executor or administrator, execution, writ of possession,

or other writ for the enforcement of the decree, shall issue thereon in favor of such executor or administrator.

357 (2288) (2629). **Duty and compensation of judge of probate or register; penalty.**—It shall be the duty of the judge of probate, register, or officer acting as register, receiving the money, to pay over the same, less one-half of one per cent. thereon, to the person entitled thereto, on demand; and for failure to do so, he incurs a penalty in favor of such person of ten per cent. thereon, which, together with the money received and interest thereon, may be recovered by suit on his bond.

358 (2289) (2630). **Compensation of administrator ad litem; how paid.**—Such administrator ad litem must be allowed for his services such compensation as the judge of probate or chancellor appointing him may direct, to be taxed and collected, as part of the costs of the proceedings, either out of the estate represented by him, or out of the general fund administered therein, or out of any party to the cause who may be taxed therewith, as the court may direct.

Compensation of such administrator.—Harris v. Martin, 9 Ala. 895; Gould v. Hayes, 25 Ala. 426; Clark v. Knox, 70 Ala. 607.

359 (2290) (2637) (2293) (1934). **When foreign representative may sue for and recover, or receive property.**—Any executor or administrator who has obtained letters testamentary or of administration on the estate of a person who was not, at the time of his death, an inhabitant of this state, in any other of the United States, and who has not obtained letters testamentary or of administration thereon in this state as authorized by article 2 of this chapter, may maintain suits and recover or receive property in this state—

1. By recording, at any time before judgment, or the receipt of the property, a copy of his letters, duly authenticated according to the laws of the United States, in the office of the judge of probate of the county in which such suit is brought or property received.

2. By giving bond, with at least two good and sufficient sureties, payable to and approved by such judge of probate, in such amount as he may prescribe, to be determined with reference to the value of the property to be recovered or received, and conditioned to faithfully administer such recovery or property according to law.

Foreign executors authorized to maintain suits, but must comply with statute before rendition of judgment.—Hatchett v. Berney, 65 Ala. 39; Barclift v. Treece, 77 Ala. 528; Ferguson v. Morris, 67 Ala. 389; Harris v. Moore, 72 Ala. 507; Grimball v. Patton, 70 Ala. 626. **Action defeated by domestic grant to defendant.**—Broughton v. Bradley, 34 Ala. 694. **Administrator of estate of non-resident collects assets, and holds for debts and ulterior administration.**—Grimball v. Patton, 70 Ala. 626; Ex parte Grimball, 61 Ala. 598; Welch v. Welch, 14 Ala. 76; Gardner v. Gantt, 19 Ala. 666; Lockhart v. Cameron, 29 Ala. 355; Fretwell v. McLemore, 52 Ala. 124. **Sale under power in mortgage, by foreign administrator.**—Sloan v. Frothingham, 65 Ala. 593; s. c., 72 Ala. 589.

360 (2291) (2637) (2293). **Suit by foreign representative not affected by appointment of resident representative; right to intervene.**—No suit brought by such foreign executor or administrator, under the provisions of the preceding section, must be abated,

barred, or affected by the grant of letters of administration in this state, either prior or subsequent to the institution of such suit; but, in such case, the administrator appointed in this state may, if necessary for the protection of creditors, distributees, or legatees, resident in this state, intervene in such suit, and shall be entitled to the recovery therein.

361 (2292) (2638) (2294) (1935). **Compliance with such requirements must be proved.**—Before a judgment is rendered in a suit brought by such foreign executor or administrator, the plaintiff must prove that he has complied in all respects with the provisions of section 359 (2290), and failing to do so, he cannot recover.

See citations to second preceding section.

362 (2293) (2639) (2295) (1936). **Amount of bond, how determined; security thereby afforded.**—The judge of probate, in determining the amount of the bond which such executor or administrator should give, may examine him on oath; and such bond, when given, stands as security, on its condition being broken, for any person thereby injured.

363 (2294) (2640) (2296) (1937). **Delivery of property or recovery of judgment protects defendant.**—A delivery of property or the recovery of judgment, under the provisions of section 359 (2290), is a protection to the defendant, or to the person delivering the property, to the extent of such judgment, or the value of such property.

CHAPTER 4.

ADOPTION OF CHILDREN. 364–367.

364 (2364) (2742) (2404) (2008). **The marriage of the parents legitimates the children.**—The marriage of the mother and reputed father of a bastard child renders it legitimate, if recognized by the father as his child.

Bastards; inheritance by and from.—Lingen v. Lingen; 45 Ala. 410; Butler v. Elyton Land Co., 84 Ala. 384.

365 (2365) (2743) (2405) (2009). **Proceedings to legitimate bastard children; effect of.**—The father of a bastard child may legitimate it, and render it capable of inheriting his estate, by making a declaration in writing, attested by two witnesses, setting forth the name of the child proposed to be legitimated, its sex, supposed age, and the name of the mother, and that he thereby recognizes it as his child, and capable of inheriting his estate, real and personal, as if born in wedlock; the declaration being acknowledged by the maker before the judge of probate of the county of his residence, or its execution proved by the attesting witnesses, filed in the office of the judge of probate, and recorded on the minutes of his court, has the effect to legitimate such child.

Bastard legitimated in foreign country cannot inherit in Alabama.—Lingen

v. Lingen, 45 Ala. 410. **Statutory provisions ministerial**; not to be construed so strictly as to defeat legislative intent.—Abney v. DeLoach, 84 Ala. 393. **Adoptive parent assumes duties of natural parent, and is entitled to custody and earnings** of child against all persons, unless it be non-consenting parents.—Tilley v. Harrison, 91 Ala. 295.

366 (2366) (2744) (2406) (2010). **Child's name changed at same time.**—The father may, at the same time, change the name of such child, stating in his declaration the name it is then known by, and the name he wishes it afterwards to have.

367 (2367) (2745) (2407) (2011). **Mode of adopting child; effect of.**—Any person desirous to adopt a child so as to make it capable of inheriting his estate, real and personal, or to change the name of one previously adopted, may make a declaration in writing, attested by two witnesses, setting forth the name, sex, and age of the child he wishes to adopt, and the name he wishes it thereafter to be known by, which, being acknowledged by the declarant before the judge of probate of the county of his residence, filed and recorded as in the two preceding sections, has the effect to make such child capable of inheriting such estate of the declarant, and of changing its name to the one stated in the declaration; and, for services under this chapter, the judge of probate is entitled to a fee of one dollar. But the judge of probate may, on petition of said child, or the party adopting the child, after notice given as prescribed by him and after hearing and for good cause shown, by a decree to be entered of record, annul in whole or in part any such declaration whereby any child has been adopted under the provisions of this section. As amended Feb. 18, 1897, p. 1296.

Failing to state age of child, not fatal.—Abney v. DeLoach, 84 Ala. 393. **Validity of declaration of husband not affected by wife joining.**—Ib. **Certificate of acknowledgment in form prescribed for conveyances, valid.**—Ib. **Adopted child entitled to exemptions** in estate of adoptive parent.—Cofer v. Scroggins, 98 Ala. 342. **But does not take under will** made prior to adoption devising property to testator's "children."—Russell v. Russell, 84 Ala. 48.

CHAPTER 5.

AGRICULTURE.

ARTICLE 1.—QUALIFICATION, DUTIES AND SALARY OF THE COMMISSIONER AND HIS CLERKS. 368–377.
2.—PROVISIONS REGULATING THE SALE OF FERTILIZERS. 378–395.
3.—FUNDS OF THE DEPARTMENT OF AGRICULTURE. 396, 397.
4.—AGRICULTURAL EXPERIMENT STATIONS AND SCHOOLS. 398–415.
5.—FARMERS' INSTITUTES AND AGRICULTURAL FAIRS. 416–418.

ARTICLE 1.

QUALIFICATION, DUTIES AND SALARY OF THE COMMISSIONER AND HIS CLERKS.

368 (129). **Department of agriculture.**—A department of agriculture is created and established under the management and control

of a public officer to be known as the "commissioner of agriculture," who must be a practical and experienced agriculturist.

Statute "clearly constitutional."—Steiner v. Ray, 84 Ala. 93.

Feb. 18, 1891, p. 1213. Feb. 21, 1893, p. 1091, §2.

369 (130). **Term of office of commissioner; vacancy filled by the governor.**—The commissioner of agriculture holds office for the term of two years from the first day of September next after his election, and until his successor is elected and qualified. Vacancies are filled by the governor for the unexpired term, and until the election and qualification of a successor.

Lane v. Kolb, 92 Ala. 636.

370 (131). **Oath of office; bond.**—The commissioner, before entering on the duties of the office, must take and subscribe the oath of office prescribed by the Constitution; and must enter into bond, payable to the State of Alabama, with at least two good and sufficient sureties, in the penalty of five thousand dollars, with condition for the faithful performance of all the duties which are, or may be by law required of him. The bond must be approved by the governor, and, with the oath of office, filed in the office of the auditor.

371 (132). **Salary.**—The salary of the commissioner is twenty-one hundred dollars annually, payable monthly.

372 (133). **Location of office.**—The commissioner must keep his office in the state capitol.

373 (134). **Clerks; oaths of office; bonds; term of office.**—The commissioner must appoint two clerks, one of whom shall be known as the chief clerk, the other as assistant clerk; each of them must take an oath to discharge faithfully all the duties which are, or may be required of him by law. The chief clerk must give bond, with at least two good and sufficient sureties, to be approved by the commissioner and the governor, in the penalty of five thousand dollars, payable to the State of Alabama, with condition for the faithful performance of all the duties which are, or may be required of him by law. The assistant clerk must give bond, with at least two good and sufficient sureties, to be approved by the commissioner and the governor, in the penalty of three thousand dollars, payable to the State of Alabama, with condition for the faithful performance of all the duties which are, or may be required of him by law. The official oaths and bonds of the chief clerk and assistant clerk must be filed in the office of the auditor. The chief clerk and assistant clerk hold office during the term of the commissioner by whom they are appointed, and until the appointment and qualification of their successors, unless sooner removed.

374 (135). **Duties of clerks.**—The clerks must discharge such duties as may be prescribed by the commissioner. It is the duty of the chief clerk to take charge of the "fertilizer tags" of the department; to furnish the same to dealers, and to make such reports as may be required by the commissioner; under the supervision of the commissioner, to make sale of the tags to licensees; to keep a correct account of all tags sold by the department, showing to whom

and when sold, and, as far as practicable, the fertilizer or fertilizers for which they are intended; and to keep an account of all licenses issued by the commissioner, to whom and when issued, and of the fees received therefor; and, under the direction of the commissioner, to render monthly accounts to the auditor of all moneys received by the department, and of all its expenditures; and to pay into the state treasury such moneys as are properly payable thereto, on the certificate of the auditor.

375 (136). **Compensation of clerks.**—The annual salary of the chief clerk is fifteen hundred dollars, and of the assistant clerk twelve hundred dollars, payable monthly, on the certificate of the commissioner. Expenses necessarily incurred by them in traveling on the business of the department, under the direction of the commissioner, must be paid from, and charged against the department fund.

376 (137). **Duties of commissioner.**—The following are the duties of the commissioner:

1. He shall encourage the proper development of agriculture, horticulture and kindred industries.

2. He shall encourage the organization of neighborhood and county agricultural clubs and associations, and out of these the organization of a state agricultural association.

3. He shall collect and publish statistics, and such other information in regard to the industries of this state, and of other states, as may be of benefit in developing the agricultural resources of the state. To this end, he shall put himself in communication, and shall co-operate with the departments of agriculture in other states, and with the commissioner of agriculture of the United States, and shall provide for the proper and careful distribution of all seeds, plants, documents and information coming into his possession on account of the department, that may be of interest and benefit to the people of the state; and he may purchase seeds for distribution.

4. He shall cause to be investigated the diseases of grain, fruits and other crops growing in this state, and also remedies for such diseases, and also the habits and propagation of the various insects that are injurious to the crops of the state, and the proper mode of their destruction.

5. He shall investigate the subject of grasses, and report upon their value, and the cultivation of the varieties best adapted to the different sections of the state, and the mode of preserving the same.

6. He shall inquire into all matters connected with the dairy that he may deem of interest to the people of the state, and in this connection the raising of stock and poultry, the obtaining of such as are of the most value, and the breeding and propagation of the same; and shall encourage the raising of fish and the culture of bees.

7. He shall give attention to the subject of fencing, and the reduction of the cost thereof; and shall investigate the subject of sub-

soil drainage, and the best modes of effecting it; and of irrigation, and what portion of the state can be most benefited thereby.

8. He shall investigate and report upon the culture of wool, and the utility and profits of sheep-raising; also the culture of silk, and its manufacture and preparation for market.

9. He shall cause a proper collection of agricultural statistics to be made annually, and to this end, shall furnish blank forms to the tax-assessor, or some other county official of each county; and it is made the special duty of the tax-assessor, or other officer to whom such blanks are furnished, to collect such information as may be desired, and report the same without delay to the commissioner.

10. He shall appoint county correspondents, who will report to him from time to time, as may be desired.

11. He shall prepare and keep in his office books of registry, wherein any person may have entered, upon payment of a registry fee of one dollar for each tract or lot, any real estate for sale, with the terms of sale; and shall file in his office any plats, or descriptive papers desired; and such books, plats and papers shall be open to inspection, free of charge. He shall also obtain from the auditor and keep in his office, the registry of the lands which may be held by the state for sale for non-payment of taxes, or for other cause, with their value, and the nature and characteristics of the soil.

12. He shall collect specimens of wood, suitable for manufacturing and other purposes, and specimens of agricultural, mineral, phosphate, and marl deposits of the state, and cause correct analysis of such as may be deemed expedient to be made and recorded in a substantial book to be kept for this purpose.

13. He shall also as soon as practicable, prepare a convenient handbook, with the necessary illustrative maps, which shall contain all necessary information, as to the mines, minerals, forests, soils, and and other products, climate, water, and water-powers; fisheries, mountains, streams, industries, and all such statistics as are best adapted to give proper information of the attractions and advantages which the state affords to immigrants, and shall make illustrative expositions thereof, whenever practicable, at international and state expositions.

14. He shall aid immigration by publishing each year such information as to the agricultural, mineral, and other industries and resources of the state, as shall be of interest to immigrants, or others, seeking a change of home, or seeking investments.

15. He shall, at the opening of each season, issue and distribute circulars, setting forth the brands of fertilizers, sold or exchanged, or offered for sale or exchange in the state, their analysis as claimed by the manufacturer or dealer in them, and, so far as known, their agricultural and commercial value.

16. He shall issue a license to such persons as propose to sell or exchange fertilizers.

As amended Feb. 1, 1891, p.442.

17. He shall obtain samples of each and every brand of fertilizers sold or exchanged, or offered for sale or exchange in this state, for

each season in which such fertilizers are offered for sale, and cause such samples to be analyzed by the state chemist; and he shall make publication of such analysis not later than the first day of August of each year.

18. He shall make and publish such rules and regulations as he may deem necessary to carry into effect the provisions of this chapter touching the sale or exchange of fertilizers.

19. He shall make a report to the governor, quarterly, of all the moneys received and disbursed by the department; and, on the expiration of the fiscal year must make a report of all such receipts and disbursements. Such annual report must include a list of all licenses issued during the year, with date of issuance, number of each license, name and address of each licensee, amount received for each license and the total amount received for licenses; also, a statement showing the date of each sale of tags during the year, the name and address of each purchaser, the number of tags purchased, the amount paid therefor, and the total amount received from the sale of tags.

20. He shall from time to time inquire into and examine into the sale or delivery within this state of any article, product or compound made wholly or partly out of any fat, oil, oleaginous substance, or compound thereof, not produced directly at the time of manufacture from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure, unadulterated milk, or cream from the same; and for the purpose of making said investigation, he shall be authorized to summon and examine witnesses and administer oaths to them, and whenever he has cause to believe from such investigation, that an offense has been committed against the laws of this state, it shall be his duty to report the same together with the evidence in the case to the solicitor of the proper circuit or county to be laid before the grand jury. The expenses incurred under the provisions of this subdivision, duly certified to, and verified by the affidavit of the commissioner of agriculture, and approved by the governor, shall be paid from the funds of the department of agriculture derived from the sale of tags.* Feb. 18, 1897, p. 1307.

*An act approved February 16, 1897 (Pamph. Acts, p. 1141) entitled "An act to encourage and protect the raising and growing of fruit in the State of Alabama," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That upon complaint being made to the commissioner of agriculture that in any county or section of the state there exists or is believed to exist any disease among any apple, peach, pear or other fruit trees, which is likely to permanently injure or destroy the orchards or fruit crops in said county or section, the said commissioner shall cause a sample of such diseased tree to be sent to him or to some of the agricultural experiment stations located in this state, where he shall cause the same to be thoroughly examined and analyzed and a written report furnished to him regarding the same.

"SEC. 2. *Be it further enacted*, That said commissioner of agriculture be, and he is hereby authorized and empowered to require the owner of any trees which as shown by the written report from any of the agricultural experiment stations to be infected with any blight or disease calculated to permanently injure or destroy the orchards or fruit crops in any county or section of this state to destroy and burn any and all trees so infected, provided that the owner of such trees shall first be permitted to show said commissioner, if he

377 (138). **State geologist to furnish information to the commissioner.**—It is the duty of the state geologist, on application, to furnish the commissioner all the information he may have, with reference to the mineral, agricultural, and other natural resources of the state, together with the analysis of soils, ores, marls, minerals and mineral waters, and with maps, charts, drawing and specimens, illustrative of the geological, agricultural, and mineral features of the state.

ARTICLE 2.

PROVISIONS REGULATING THE SALE OF FERTILIZERS.

378 (139). **Sale or exchange of commercial fertilizers; license required.**—Commercial fertilizers must not be sold or exchanged without a license from the commissioner authorizing the person making the sale or exchange to deal therein. All sales or exchanges made without such license are void.

See citations to section 386 (141).

379 (140). **License; fee; duration.**—On the payment of a fee of one dollar, the commissioner must issue license to any person or firm, or corporation, or association of persons, authorizing the sale or exchange of fertilizers during a season, expiring on the thirtieth day of September of each year.

380. Evidence.—The printed report of the commissioner or a certified copy of the record in his office showing the issuance of a license to sell or exchange commercial fertilizers, and to whom and when issued, is presumptive evidence of the fact that such license was issued to such person at such date. But this provision does not preclude the introduction of the license in evidence.

Feb. 23, 1893, p. 865.

381. Commissioner must make requisition upon auditor for tags. The commissioner must, prior to the beginning of each season, and at such other times as may be necessary, make written requisition upon the auditor for the estimated number of tags required to supply the demand during the ensuing season.

Ib.

382. Tags supplied by auditor and account kept against commissioner.—Upon the receipt of such requisition, the auditor must have printed the required number of tags of suitable material, with proper fastenings for attaching the same to packages, bags or barrels of fertilizers; and there shall be printed thereon the word "Guaranteed," with the year or season in which the tags are to be used, and a facsimile signature of the auditor and of the commissioner; and there shall also be printed thereon the words: "Alabama Tag Tax, 5 cents." The auditor must, as soon as practicable, deliver such

---

can, that such disease does not in fact exist, or is not dangerous to the orchards or fruit crops in his section.

"SEC. 3. *Be it further enacted*, That any person who fails or refuses to comply with the requirements of the commissioner of agriculture, after having been warned to do so, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined, not less than one hundred nor more than five hundred dollars."

tags to the commissioner, at the capitol, taking his receipt therefor; and the auditor shall keep a true and correct account with the commissioner, charging him with all the tags furnished, at the price of five cents each, and crediting him with all legally accounted for, at the same price. The commissioner must report to the auditor at the end of each month the number of tags sold during the month, and credit therefor must be given as above provided.

383. Surplus tags to be destroyed at end of season and credit therefor given.—All tags remaining in the hands of the commissioner at the end of the year or season must be destroyed in the presence of the treasurer, secretary of state, and attorney-general; and the certificate of these officers showing the number of tags so destroyed and the year or season for which they were intended, entitles the commissioner to credit therefor on his account with the auditor at the sum of five cents for each tag so destroyed. Ib.

384. Commissioner and his sureties liable for tags not accounted for.—The commissioner and the sureties on his official bond are liable to the state for all such tags not legally accounted for, at the rate of five cents each.

385. When auditor to certify account to attorney-general for suit.—If, for more than sixty days after the expiration of the year or season, the commissioner shall fail to account for all the tags so furnished him, the auditor must certify the account therefor to the attorney-general; and unless all such tags shall be legally accounted for within thirty days thereafter, the attorney-general must proceed by suit to enforce the liability against the commissioner and the sureties on his bond.

386 (141). Dealer must attach tags, else sale or exchange void. Feb. 4, 1895, p. 368, §1. Before selling or exchanging, or offering to sell or exchange fertilizers, the licensee must attach one of such tags to each bag, barrel or package containing two hundred pounds or any less number of pounds; two tags to each bag, barrel or package containing more than two hundred pounds and not more than four hundred pounds, and one additional tag for each additional two hundred pounds or fractional part thereof, contained in such bag, barrel or package; and a sale or exchange of fertilizers not so tagged is void.

A sale of commercial fertilizers, made in violation of statutory requirements, is void, and no recovery can be had for the price.—Campbell v. Segars, 81 Ala. 259; Steiner v. Ray, 84 Ala. 93; Clark's Cove Guano Co. v. Dowling, 85 Ala. 142; Merriman v. Knox, 99 Ala. 93; Brown v. Adair, 104 Ala. 652; Kirby v. Huntsville Fertilizer & Milling Co., 105 Ala. 529. **When contract of sale made in this state.**—Johnson v. Hanover Nat. Bk., 88 Ala. 271; Hanover Nat. Bk. v. Johnson, 90 Ala. 549; Brown v. Adair, 104 Ala. 652. **Residence of seller and place of manufacture of goods are immaterial** when delivery made in this state.—Merriman v. Knox, 99 Ala. 93; Brown v. Adair, 104 Ala. 652. **Tags must be attached at the time of the sale;** if previously attached, and lost before the sale, others must be supplied, else the sale is void.—Clark's Cove Guano Co. v. Dowling, 85 Ala. 142; Kirby v. Huntsville F. & M. Co., 105 Ala. 529. **Action on commercial paper given for the price of fertilizers sold without compliance with statutory requirements cannot be maintained,** even by a bona fide purchaser before maturity.—Hanover Nat. Bk. v. Johnson, 90 Ala. 549. **When want of license pleaded, burden of proof on plaintiff.** Edisto Phosphate Co. v. Sandford, 112 Ala. 493.

387. Including tag tax in price of fertilizer vitiates sale.—When- Ib. §2.

ever any manufacturer, merchant or other person selling fertilizers shall, directly or indirectly, include such tag tax in the price of the fertilizer sold, such sale is void.

Dec. 8, 1886, p. 50, §1.

388. Contracts for the sale of fertilizers at fictitious price; only real market value recoverable.—In contracts for the sale of fertilizers in which an excessive or fictitious price is put upon such fertilizers with the stipulation that if such fertilizers are paid for on or before a certain date they may be paid for in a smaller sum than such excessive or fictitious price, or in cotton or other produce at an excessive or fictitious price, the difference between the excessive or fictitious price charged for the fertilizers and their real market value shall be held a penalty; and in all suits to enforce such contracts only the real market value of such fertilizers, with the interest thereon, shall be recovered.

Ib. §2.

389. Parol evidence competent.—Parol evidence is competent to show such market price, the situation of the parties and the consideration of such contracts, as in cases of usury, notwithstanding any writing in the premises.

390 (142). **Fertilizers to be submitted to commissioner.**—Before offering a fertilizer for sale or exchange, the person proposing to sell or exchange must submit to the commissioner a written or printed statement, setting forth—

1. The name and brand under which such fertilizer is to be sold or exchanged, the number of pounds contained in the bag, barrel, or package, in which it is to be put upon the market, the name or names of the manufacturers, and the place of manufacturing.

2. A statement setting forth the amount of the named ingredients which they are willing to guarantee such fertilizer to contain: First, nitrogen; second, water soluble phosphoric acid; third, citrate soluble phosphoric acid; fourth, acid soluble phosphoric acid; fifth, potash; and such statement shall be held to constitute a guarantee to the purchaser that every package of such fertilizer contains not less than the amount of each ingredient set forth in the statement, and when such statement sets forth the maximum and the minimum of any ingredient, the commercial value shall be estimated upon the minimum alone; but this shall not preclude the party from setting forth any other ingredients which the fertilizer may contain, which, as well as the preceding, shall be embraced in the guarantee.

See citations to section 386 (141).

As amended, Feb. 27, 1889, p. 778.

391 (143). **Fertilizers or chemicals for manufacturing to be branded.**—All fertilizers, or chemicals for manufacturing or composting the same, offered for sale, exchange, or distribution, must have branded upon, or attached to each bag, barrel, or package, in such manner as the commissioner may by regulation establish, the true analysis of such fertilizers or chemical, as claimed by the manufacturer, showing the percentage of valuable elements or ingredients such fertilizer or chemical contains, and its commercial value, calculated upon the standard of value of the principal ingredients as set

forth in the preceding section as priced by the commissioner of agriculture at the beginning of each season, and in every case the brand must specifically set forth the percentage contained in the fertilizer or chemical of the several ingredients specified in the preceding section, in the terms of that section.

392 (144). **Fertilizer; what not included in term.**—The term "fertilizer," or "commercial fertilizer," as used in this chapter, does not include common lime, land plaster, cottonseed, cottonseed meal, ashes, or common salt, not in combination.

393 (145). **Chemist of department.**—The professor of chemistry of the Agricultural and Mechanical College is the official chemist of the department. On the application of the commissioner, he must analyze and certify the analysis of all fertilizers, samples of which are furnished him; and, at the request of the commissioner, if he can without conflict with his duties as professor, must attend conventions of agricultural chemists, make reports of such matters as he may deem of interest to the department, and render such other services in the line of his profession as the commissioner may require.

394 (146). **Compensation of chemist.**—The chemist is entitled to his necessary traveling expenses while on duty assigned to him by the commissioner, payable from the funds of the department as provided in the next article.

395 (147). **Copy of official analysis evidence.**—The copy of the official analysis of any fertilizer or chemical, under the seal of the department of agriculture, shall be admissible as evidence in any of the courts of this state, on the trial of any issue involving the merits of such fertilizer or chemical.

ARTICLE 3.

FUNDS OF THE DEPARTMENT OF AGRICULTURE.

396 (148). **Funds of department.**—All moneys received by the department from fees for licenses, from sales of tags, from fees for the registration of lands for sale, or from any other source, must, except as is herein otherwise provided, be paid into the state treasury monthly; and such moneys must be, by the auditor and treasurer, entered on the books of their respective offices to the credit of the department of agriculture.

397 (149). **Expenses of department.**—The commissioner must submit, monthly, to the governor an account of the expenses of the department for the preceding month, and an estimate of the expenses for the succeeding month, and, with the approval of the governor indorsed thereon, may retain from the moneys in hand, or draw from the funds in the treasury to the credit of the department of agriculture, the amount of such estimate, not to exceed the sum of five hundred dollars, to meet such expenses, not including the salary of the commissioner and his clerks; such estimate, with the approval of the governor, to be filed in the office of the auditor. The

As amended Feb. 28, 1889, p. 729.

traveling expenses of the commissioner and clerks and of the chemist, on the accounts thereof being itemized and verified before payment, may be paid from the money so retained.

ARTICLE 4.

AGRICULTURAL EXPERIMENT STATIONS AND SCHOOLS.

As amended Feb. 28, 1889, p. 119.

398 (150). **Experiment station of A. & M. College.**—The trustees of the Agricultural and Mechanical College may establish and maintain an agricultural experiment station, at which careful experiments in scientific agriculture shall be made; the results whereof shall be furnished the commissioner monthly, and he shall make publication thereof as often as he may deem necessary; and if such station is established and maintained, the trustees of the college shall cause, without charge therefor, an analysis to be made of all fertilizers submitted by the commissioner for analysis; and one-sixth of the net proceeds arising from the sale of fertilizer tags shall be paid quarterly to the treasurer of the Agricultural and Mechanical College on the approval of the governor and of the commissioner, to be disbursed under the direction of the board of trustees for the development of the agricultural and mechanical department of the college.

As amended Feb. 16, 1887, p. 828, §1.

399 (151). **Canebrake Agricultural Experiment Station.**—A branch agricultural experiment station, for the purpose of conducting and making experiments in scientific agriculture, is established and located at or near Uniontown, in Perry county, known as the Canebrake Agricultural Experiment Station.

Ib. §2.

400 (152). **Board of control.**—The station is under the general supervision and control of a board of control composed of the commissioner of agriculture, the director of the experiment station at the Agricultural and Mechanical College, and five progressive farmers, to be appointed by the governor; who are actually engaged in cultivating canebrake lands, three of whom must reside within ten miles of the station, and who must not receive any compensation other than expenses actually incurred in visiting the station, and while there supervising its affairs.

Ib. §3.

401 (153). **Authority of board.**—The board has authority to purchase suitable lands, not exceeding in quantity forty acres, for the uses of the station, taking the title to the state, and to construct thereon the necessary buildings and other improvements, not expending more than two thousand dollars in making such purchase, and in the construction of such buildings and improvements. The board has authority also to appoint and to discharge at pleasure such officers, agents, or servants as are deemed necessary to the operation of the station, fixing their compensation; and may appoint a director to conduct and control the operations of the station, under the superintendence and direction, and subject to the rules and regulations

of the board, and may pay such director a reasonable salary, not to exceed two hundred and fifty dollars per annum.

402 (154). **Duties of board.**—The board must cause such experiments to be made at the station as will advance the interests of scientific agriculture, particularly on canebrake lands, and to cause such chemical analyses to be made as are deemed necessary; all such analyses, if requested, to be made, under the supervision of the commissioner of agriculture, by the chemist of the agricultural department without charge.

403 (155). **Expenses of station.**—The expenses of the Canebrake Agricultural Experiment Station, not exceeding twenty-five hundred dollars annually, must be paid out of the funds of the agricultural department, to the treasurer of the board of control, in equal quarterly installments, on the first days of January, April, July and October. Feb. 16, 1887, p. 828, §4.

404. **Branch agricultural experiment station and school for each congressional district.**—A branch agricultural experiment station and school is established at Athens, Limestone county, in the eighth congressional district, known as the North Alabama Agricultural Experiment Station and School; another at Abbeville, Henry county, in the third congressional district, known as the Southeast Alabama Agricultural Experiment Station and School; another at Albertville, Marshall county, in the seventh congressional district, known as the Northeast Alabama Agricultural Experiment Station and School; another at Evergreen, Conecuh county, in the second congressional district, known as the Southwest Alabama Agricultural Experiment Station and School; another at Hamilton, Marion county, in the sixth congressional district, known as the Sixth District Agricultural Experiment Station and School; another at Blountsville, Blount county, in the ninth congressional district, known as the Ninth District Agricultural Experiment Station and School; and three additional agricultural experiment stations and schools, to be located by the governor, commissioner of agriculture and superintendent of education, may be established in the first, fourth, and fifth congressional districts, respectively, to be known as the ——— District Agricultural Experiment Station and School, respectively, whenever the inhabitants of the district shall convey to the state, for the use of such stations and schools, respectively, not less than eighty acres of land, with suitable school buildings thereon of not less than five thousand dollars in value as approved by the commissioner of agriculture.* Feb. 28, 1889, p. 1036. Feb. 13, 1893, p. 526. Feb. 21, 1893, p. 695. Feb. 21, 1893, p. 749. Feb. 18, 1895, p. 838. Feb. 18, 1895, p. 581.

*On the 9th of December, 1896, an act was approved (Pamph. Acts 1896-7, p. 274) entitled "An act to amend section nine of an act approved February 18th, 1895, to establish five additional branch agricultural experiment stations and agricultural schools to be located in the first, fourth, fifth, sixth and ninth congressional districts, respectively, in the state of Alabama," which is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That section 9 of an act entitled 'An act to establish five additional branch agricultural experiment stations and agricultural schools to be located in the first, fourth, fifth, sixth and ninth congressional districts, respectively, in the State of Alabama' be amended so as to read as follows: 'Section 9. That no school or ex-

Jan. 30, 1897, p. 465, §3.

405. Board of control and executive committee; how constituted. Each of such stations is under the supervision of a board of control, appointed by the governor, to be composed of five members, a majority of whom shall be men whose principal business is farming, who shall be residents of the respective congressional district wherein the school for which they are appointed is located; and the superintendent of education and the commissioner of agriculture shall be ex officio members of each of such boards of control. Such board of control may appoint an executive committee composed of not less than three members of such board, who shall exercise such powers consistent with the acts creating the said school as are conferred upon them by the board of control. Of the five members of each board of control appointed by the governor, one shall be appointed for two years, two for four years, and two for six years from the date of their respective appointments, and as their terms expire the governor shall fill the vacancies, and the members appointed to fill such vacancies shall hold for six years from their appointments. And the governor, whenever he deems such action necessary or expedient, shall have authority to remove the board of control of any school or any member of such board. The members of said board must not receive any compensation other than traveling expenses actually incurred in attending meetings of the board of control.

Ib. §1.

406. Appropriations out of agricultural fund; when prorated. For the support of the nine branch agricultural schools and experiment stations, located in the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth congressional districts, respectively, in the State of Alabama, there shall be appropriated annually out of the agricultural fund the sum of two thousand five hundred dollars to each of said schools, one-fourth of such sum to be paid quarterly, to wit: January 1st, April 1st, July 1st, and October 1st, of each year to the treasurer of the board of control of such schools, pro-

---

periment station shall be established in either of said congressional districts until such district or the citizens thereof shall donate and convey to the state for the use of such station and school real estate and buildings not less than five thousand dollars in value to be approved by the commissioner of agriculture. *Provided*, that when the school is established in the sixth district it shall be established under this bill at Hamilton, Marion county, and that for the fifth district at Alexander City, Tallapoosa county; *Provided further*, that when located at Hamilton the people at Hamilton shall make title to the state for school building and eighty acres of land adjoining, and when located at Alexander City the people of that city shall make title to the state for the school building and lot on which it is located and eighty acres of land adjacent or as nearly adjacent as may be procured suitable for said station to be approved by commissioner of agriculture, and in addition thereto shall pay to the treasurer of the board of control of said station and school two thousand dollars on demand in money to be used as provided in this act in erecting buildings and the equipment and improvement of the school and station; *Provided further*, that in the event any other place in the fifth congressional district shall within thirty days from the passage of this act tender to the governor, superintendent of education and the commissioner of agriculture a donation of property and money equal to the amount stipulated in this act as the donation of Alexander City, then the governor, superintendent of education and commissioner of agriculture shall consider such tender of donations and shall locate said fifth congressional district agricultural experiment station and agricultural school at such place in the fifth congressional district as in their judgment offers the greatest inducement as to value of donations and desirability of location.' "

vided there is so much of said fund not otherwise appropriated; and if such fund is not sufficient to pay to each of said schools the said sum of two thousand five hundred dollars, then the same is to be equally divided among said schools.

Ib. §2.

407. Not less than five hundred dollars to be used in making agricultural experiments.—Not less than five hundred dollars of the sum so appropriated to each of said schools shall be used in maintaining, cultivating and improving the farms respectively, and making agricultural experiments thereon, under and by direction of the respective boards of control.

Ib. §3.

408. Treasurer to give bond in sum of one thousand dollars. The treasurer of the board of control shall give bond payable to the president of the board of control, in the sum of at least one thousand dollars, conditioned to faithfully keep and disburse the funds of the school, and such board of control may require an additional bond at any time it may deem necessary.

Ib. §4.

409. Director of school.—The president or principal of each of said schools shall be the director of the respective school and station in which he is employed, and he shall personally superintend the making of such experiments as will advance the interests of scientific agriculture and cause such chemical analyses to be made as are deemed necessary, and perform such other duties in reference to such experiment stations as shall be required of him by the board of control.

Ib. §5.

410. Bulletins to be prepared and published.—The president and board of control of said agricultural schools and experiment stations shall, from time to time, prepare bulletins of information for farmers and reports of agricultural experiments conducted by them, and answers to questions that may be asked them in practical farming and veterinary diseases, including condensed reports of the experiment station at Uniontown, and publish the same in all the weekly newspapers published in their respective congressional districts whose publishers will insert the same free of charge.

Ib. §6.

411. President to make annual report to superintendent of education.—It shall be the duty of the president or principal of each of said schools to make to the superintendent of education on or before September 30th of each year a full report of the financial condition, workings and progress of said school, embracing an itemized account of all receipts and disbursements of money appropriated to such schools by this article, and a like report to the commissioner of agriculture of the condition, expenses and workings of the experiment station connected with such school.

Ib. §7.

412. President to make quarterly report to board as to finances. It shall be the duty of the president and principal of each of such schools to report in writing quarterly to the board of control an itemized account of all incidental or matriculation fees and all other moneys received by him as such president or principal, together with the disposition of the same. He shall give receipts for all moneys received and take receipts for all moneys disbursed by him.

Ib. §9. **413. Scientific agriculture must be taught.**—Scientific and practical agriculture shall be taught at all the agricultural schools, and all male pupils over ten years of age who receive free tuition therein shall be required to take the course in scientific agriculture and horticulture, and all other pupils over the age of ten years receiving free tuition shall be required to take the course in floriculture and horticulture.

Ib. §10. **414. Appropriation withheld unless agricultural experiments conducted by school.**—None of the said schools shall receive the appropriation provided for in this article or any part thereof unless such school shall be actually conducting an agricultural experiment station and agricultural school wherein such experiments are made as will tend to advance the interests of scientific farming.

Ib. §11. **415. Course of study and training; certificate of proficiency or diploma.**—The board of control and president of the faculty of said schools shall adopt a course of study with a view to educating and training pupils for teachers in the public schools of this state, which course of study shall embrace the different grades adopted by the state; to grant certificates of proficiency or diplomas to such pupils as shall complete the course of study so adopted, provided, that such certificates of proficiency or diplomas shall not entitle the holder to teach in the public schools in the state without examination.

ARTICLE 5.

FARMERS' INSTITUTES AND AGRICULTURAL FAIRS.

Feb. 28, 1889, p. 669. **416. Farmers' institutes.**—The commissioner is authorized and directed to adopt annually such measures as may be necessary to successfully conduct, in different sections of the state, farmers' institutes, consisting of lectures on subjects related to agriculture by persons of scientific attainments, and by practical and successful farmers, with discussions relating thereto, and of such exhibitions as may prove instructive and of practical value to the farmers of the vicinity where such institutes are held, a report of which, with a detailed statement of the money expended in that connection, must be embodied in his annual report.

Ib. **417. Expenses of institutes.**—The commissioner is authorized to pay the necessary expenses incurred in conducting such farmers' institutes, including the expense of employing lecturers when necessary, and for distributing the reports thereof; and for this purpose there is annually appropriated out of the funds of the department of agriculture, three thousand dollars, or so much thereof as may be necessary to be paid from the monthly estimate and allowance for expenses of the department.

Feb. 18, 1891, p. 1191. **418. Agricultural fairs; taxes on privileges remitted to.**—All state, county and municipal taxes on privileges are remitted and released to all agricultural fairs which may be granted or sold by them and conducted on their grounds during the exhibition of such fairs,

on which a tax is now or may hereafter be levied by state, county or municipal authority; but this section shall not be construed to authorize any fair to sell or grant privileges on the grounds to wheels of fortune, or any game of chance, or any device inimical to the laws of the state.

CHAPTER 6.

ALIENS.

419 (1914) (2860). **Aliens may take, hold and transmit property.**—An alien, resident or non-resident, may take and hold property, real and personal, in this state, either by purchase, descent, or devise, and may dispose of, and transmit the same by sale, descent, or devise, as a native citizen.

Christian v. American Freehold Land Mortgage Co., 89 Ala. 198; Nicrosi v. Phillipi, 91 Ala. 299.

CHAPTER 7.

ANIMALS. 420–425.

420 (1378) (1600) (1295) (1114). **Fire-hunters liable for killing stock.**—If any person hunting deer by fire, in the night-time, kills any horse, mare, colt, or other domestic animal, he is liable to double damages, at the suit of the owner of the property.

421 (1379) (1601) (1296). **Liability on account of dogs killing stock, and killing the dogs.**—No person must keep any dog which has been known to kill or worry sheep, or other stock, without being set upon the same; and any person knowingly keeping such dog is liable for double the value of all stock killed or injured by such dog, to be recovered by the owner of such stock before any court of competent jurisdiction; and no action shall be maintained against any one for killing such dog.

422. Destruction of abandoned and diseased animals.—Any agent, officer or member of a duly incorporated society for the prevention of cruelty to animals, may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, which may appear in the judgment of two reputable citizens, called by him to view the same in his presence, to be superannuated, infirm, glandered, injured, or diseased past recovery for any useful purpose. Jan. 30, 1893, p. 218.

423. Dogs may be registered.—The judge of probate must procure a suitable book in which shall be recorded the name, a brief description of the dog, and the name of the owner of any dog entitled to be Feb. 12, 1887, p. 805.

registered therein; and the owner of any dog may cause his dog to be registered in such book; and dogs so registered shall be numbered in the order of their registration.

IB. **424. Fee; tax; certificate.**—At the time of such registration the owner of the dog must pay to the judge of probate a fee of twenty-five cents and a tax of one dollar, and thereupon the judge of probate must deliver to such owner a certificate stating the number, name and description of such dog, and the date of its registration; and only one registration shall be required for each dog.

IB. **425. Tax appropriated to public schools.**—All taxes collected under the provisions of the preceding section shall be appropriated to the use of the public schools in the county where collected.

CHAPTER 8.

APPEALS.

ARTICLE 1.—APPEALS FROM JUDGMENTS, DECREES AND ORDERS. 426–435.
2.—MANNER AND TIME OF TAKING APPEALS. 436–456.
3.—SPECIAL PROVISIONS AS TO APPEALS FROM PROBATE COURT. 457–469.
4.—PROCEEDINGS IN SUPREME COURT, ON APPEAL. 470–480.
5.—APPEALS FROM JUSTICES OF THE PEACE AND PROCEEDINGS THEREON. 481–495.

ARTICLE 1.

APPEALS FROM JUDGMENTS, DECREES AND ORDERS.

426 (3611) (3916) (3485) (3016). **Appeals to supreme court on all final judgments.**—From any final judgment or decree of the chancery, circuit, city, or probate court, except in such cases as are otherwise directed by law, an appeal lies to the supreme court, for the examination thereof, as matter of right, on the application of either party, or his personal representatives; and the clerk, register, or judge of probate, must certify the fact that such appeal was taken, and the time when, as part of the record, which gives the supreme court jurisdiction of the case.

What a final judgment at law sustaining an appeal.—Ethridge v. Hall, 7 P. 47; Withers v. State, 36 Ala. 252; Albritton v. Canterberry, 44 Ala. 290; Lapsley v. Weaver, Ib. 131; Ex parte Morris, Ib. 361; James v. Moseley, 47 Ala. 299; Ex parte Hendree, 49 Ala. 360; Jones v. Calloway, 56 Ala. 46; Ex parte Gilmer, 64 Ala. 234; Kendall v. Lassiter, 68 Ala. 181; Collins v. L. & N. R. Co., 70 Ala. 533; Ex parte Southern Tel. Co., 73 Ala. 564; M. & C. R. Co. v. Whorley, 74 Ala. 264; Foley v. Leva, 101 Ala. 395; Louisville Mfg. Co. v. Brown, Ib. 273; Lehman v. Robertson, 84 Ala. 489; LeBron v. Morris, 110 Ala. 115; Kelly v. Edmundson, 105 Ala. 619. **When judgment not final.**—Mabry v. Dickens, 31 Ala. 243; Guilford v. Hicks, 36 Ala. 95; Davis v. You, 43 Ala. 691; Bray v. Laird, 44 Ala. 295; Lawson v. Moore, Ib. 274; Montevallo Coal Co. v. Reynolds, Ib. 252; Overton v. State, 60 Ala. 73; Kinney v. S. & N. R. Co., 73 Ala. 536; Wagnon v. Keenan, 77 Ala. 519; Tannenbaum v. Tankersley, 52 Ala. 489; Lee v. Harper, 90 Ala. 548; Terry v. Hughes, 93 Ala. 432; Williams v. Harper, 95 Ala. 610; Bell v. Otts, 101 Ala. 186; Mann v. Hyams, Ib. 431; Joyner v.

State, 78 Ala. 448; Ayers v. State, 71 Ala. 11; Morgan v. Flexner, 105 Ala. 356; Stanton v. Heard, 100 Ala. 515; Nichols v. State, 100 Ala. 23; Wright v. State, 103 Ala. 95; Johnson v. Dismukes, 104 Ala. 520. **A decree in equity is final when it ascertains all the rights of the parties,** and an appeal will lie although further proceedings may be necessary to execute the decree. Weatherford v. James, 2 Ala. 170; Kennedy v. Kennedy, 3 Ala. 434; Bank of Mobile v. Hall, 6 Ala. 141; McKinley v. Irvine, 13 Ala. 681; Ansley v. Robinson, 16 Ala. 793; Garner v. Prewitt, 32 Ala. 13; Bradford v. Bradley, 37 Ala. 453; Jones v. Wilson, 54 Ala. 50; Smith v. Coleman, 59 Ala. 260; Waldrof v. Carnes, 62 Ala. 374; Broughton v. Wimberly, 65 Ala. 549; Hastie v. Aiken, 67 Ala. 313; Walker v. Crawford, 70 Ala. 567; Randle v. Boyd, 73 Ala. 282; Cochran v. Miller, 74 Ala. 50; May v. Green, 75 Ala. 162; Adams v. Sayre, 76 Ala. 509; Kimbrell v. Rogers, 90 Ala. 339; Marshall v. McPhillips, 79 Ala. 145; Voltz v. Voltz, 75 Ala. 555; Foley v. Leva, 101 Ala. 395; Ex parte Elyton Land Co., 104 Ala. 88. **As a rule there can be but one final decree.**—Randle v. Boyd, 73 Ala. 282. **But a decree may be partly final and partly interlocutory and support an appeal** so far as final.—Malone v. Marriott, 64 Ala. 486; Louisville Mfg. Co. v. Brown, 101 Ala. 273. **And there may be two decrees, one settling the merits, the other based on the report of the register,** and from each an appeal will lie.—Adams v. Sayre, 76 Ala. 509; Bradford v. Bradley, 37 Ala. 453; Malone v. Marriott, 64 Ala. 486; Jones v. Wilson, 54 Ala. 50. It is the practice to allow a **separate appeal from the determination of motions to set aside sale under execution.**—Allen v. Allen, 80 Ala. 154. **A decree against an insolvent estate is final** notwithstanding it must be certified to probate court.—Coffey v. Norwood, 81 Ala. 512. **A decree setting aside a decree for the sale of land** on petition of minor is final.—Tabor v. Lorance, 53 Ala. 543. **But a decree settling the equities only partially will not support an appeal.**—Garner v. Prewitt, 32 Ala. 13; Moore v. Randolph, 52 Ala. 530; Wilkinson v. Searcy, 74 Ala. 243; Broughton v. Wimberly, 65 Ala. 549; Cochran v. Miller, 74 Ala. 50; Rose v. Gibson, 71 Ala. 35. **A decree in a foreclosure suit adjudging a lien** for payment of any sum due, but referring the issue of indebtedness vel non to the register, is not final.—Kimbrell v. Rogers, 90 Ala. 339. **A decree allowing claim filed by third person against fund in hands of receiver will not support an appeal by the receiver.**—Dorsey v. Sibert, 93 Ala. 312. **But will support an appeal by a party to the suit.**—R. & D. R. Co. v. Sibert, 97 Ala. 393. **An appeal lies from order dismissing petition to set aside decree and be admitted to defend on merits.**—Buford v. Ward, 108 Ala. 307. **A decree dismissing a petition of intervention** in a pending suit is final and will support an appeal.—Thornton v. Highland, etc., 94 Ala. 353. **A decree of direction to the register is not final.**—Jackson Co. v. Gullatt, 84 Ala. 243; Thompson v. Maddux, 105 Ala. 326; Voltz v. Voltz, 75 Ala. 555. **Nor a mere order of reference.**—Thompson v. Maddux, 105 Ala. 326; Richardson v. Paegler, 111 Ala. 478. **When decree of probate court final.** Andrews v. Hall, 15 Ala. 85; McDaniel v. Whitman, 16 Ala. 343; Bartol v. Calvert, 21 Ala. 42; Hollis v. Caughman, 22 Ala. 478; May v. May, 28 Ala. 141; Cawlfield v. Brown, 45 Ala. 552; Field v. Gamble, 47 Ala. 443; Bruce v. Strickland, Ib. 192; Spence v. Parker, 57 Ala. 196; Lehman v. Robinson, 84 Ala. 489. **When such decree not final.**—Stewart v. Price, 16 Ala. 40; Devaney v. Devaney, 25 Ala. 722; Trammell v. Trammell, 50 Ala. 39; Boud v. Marx, 53 Ala. 177; Carswell v. Spencer, 44 Ala. 204; Shows v. Pendry, 93 Ala. 248; Lehman v. Robinson, 84 Ala. 489. **Appeal lies from order refusing a rehearing under the statute.**—White v. Ryan, 31 Ala. 400; Elliot v. Cook, 33 Ala. 490; Lawson v. Moore, 45 Ala. 519; Ex parte North, 49 Ala. 385; O'Neal v. Kelly, 72 Ala. 559. **But not from an order granting a rehearing; in such case mandamus the remedy.**—Calahan v. Lott, 42 Ala. 167; Ex parte North, 49 Ala. 385; Carroll v. Vaughn, 48 Ala. 352; Fuller v. Baggs, 49 Ala. 127; Heflin v. Rock Mills Co., 58 Ala. 613; O'Neal v. Kelley, 72 Ala. 559; Bruce v. Williamson, 50 Ala. 313; Ex parte Walker, 54 Ala. 577; Ex parte Wallace, 60 Ala. 267; Chastian v. Armstrong, 85 Ala. 215; Seymour v. Farquhar, 95 Ala. 527; Ex parte Farquhar, 99 Ala. 375. **Void judgment will not support an appeal.**—Garrison v. Burden, 40 Ala. 513; Hays v. Cockrell, 41 Ala. 75; Ex parte Boynton, 44 Ala. 261; Pettus v. McKinney, 56 Ala. 41; David v. David, Ib. 49; Leslie v. Tucker, 57 Ala. 483; Holdsombeck v. Fancher, 112 Ala. 469. **Two distinct judgments** cannot be united in one appeal.—Scranton v. Ballard, 64 Ala. 402; Kelly v. Dugan, 111 Ala. 152. **Where a judgment is against several,** the appeal must be taken in the names of all; summons and severance.—Cullom v. Batre, 1 Ala. 126; Savage v. Walsh, 24 Ala. 293; Moore v. McGuire, 26 Ala. 461; Harper v. Bibb, 45 Ala. 670; Millsap v. Stanley, 50 Ala. 319; Vaughan v. Higgins, 68 Ala. 546; Hodnett v. C. R. & B. Co., Ib. 562; Louisville Mfg. Co. v. Brown, 101 Ala. 273. **Only parties or privies can appeal.**—May v. Courtnay, 47 Ala. 185; Miller v. Parker, Ib. 312; Hunt v. Houtz, 62 Ala. 36; Reese v. Nolan, 99 Ala. 203. **Any party injuriously affected may appeal.**—Scholze v. Steiner, 100 Ala. 148. But a party **cannot assign errors on matters in which he has no**

interest.—Hayes v. Kolsky, 104 Ala. 418. **Administrator de bonis non may appeal from decree dismissing bill filed by his predecessor.**—Stoutz v. Huger, 107 Ala. 248. **An amicus curiæ cannot appeal.**—Birmingham L. & A. Co. v. First National Bank, 100 Ala. 249. **Appeal lies from judgment on contest of a claim of exemptions.**—Wright v. Jones, 103 Ala. 539; Kelly v. Edmundson, 105 Ala. 619. **Time computed from date of judgment on motion for new trial.** Florence C. & I. v. Field, 104 Ala. 471. **Appeal taken when claimed and security for costs filed,** without regard to citation.—Moore v. Spier, 80 Ala. 129; Kimbrell v. Rogers, 90 Ala. 339.

427 (3612) (3918). **Appeals from certain interlocutory decrees.** From any decree rendered by the chancery court in term time, or by the chancellor in vacation, sustaining or overruling a demurrer to a bill in equity, or sustaining or overruling a plea to such bill, or sustaining or overruling a motion to dismiss such bill for want of equity, an appeal lies to the supreme court, to be taken within thirty days after the rendition of such decree; the appeal shall be heard and determined by the supreme court in preference to all other than criminal cases, and if the decree of the chancellor is reversed, the court shall render such decree as should have been rendered by the chancellor; but nothing in this section shall be so construed as to prevent an assignment of errors on such decrees, on appeals taken after the final determination of the cause, if appeals are not taken under this section.

Appeal does not lie from decree sustaining demurrer to cross-bill and continuing cause.—Parish v. Galloway, 34 Ala. 163; Thornton v. Kyle, 46 Ala. 379; Ex Parte Thornton, Ib. 384; Barclay v. Spragins, 80 Ala. 357; Jones v. Woodstock, 90 Ala. 545; Festorazzi v. St. Stephen's Catholic Church, 96 Ala. 178; Buford v. Ward, 109 Ala. 309. **But does lie from decree sustaining demurrer and dismissing cross-bill.**—Winn v. Dillard, 57 Ala. 167; s. c., 60 Ala. 369. **And from decree on motion to dismiss for want of equity.**—S. & N. R. Co. v. Highland Ave. & B. R. Co., 104 Ala. 233. **And from adverse ruling on one or more grounds of demurrer,** though ruling as to other grounds favorable.—Ib. **Right of intervening creditors to appeal.**—Thornton v. Highland Ave. & B. R. Co., 94 Ala. 353; Louisville Mfg. Co. v. Brown, 101 Ala. 273; Highley v. White, 102 Ala. 604; Nabors v. Morris, 103 Ala. 543; S. & N. R. Co. v. Highland Ave. & B. R. Co., 104 Ala. 233. Entry, **"Submitted for decree on demurrers to the bill and demurrers sustained," is no decree.**—Mann v. Hyams, 101 Ala. 431. **When no appeal taken from interlocutory decree, errors may be assigned thereon on appeal from final decree.**—Nelms v. McGraw, 93 Ala. 245; Wadsworth v. Goree, 96 Ala. 227. **Mandamus lies to correct errors and prevent failure of justice when there is no other adequate remedy.**—Ex parte Robbins, 29 Ala. 71; Ex parte Morgan, 30 Ala. 51; Ex parte Haralson, 75 Ala. 543; Ex parte Barnes, 84 Ala. 540; Reynolds v. Crook, 95 Ala. 570; Ex parte Nicrosi, 103 Ala. 104; Ex parte Fechheimer, 103 Ala. 154; Ex parte Tower Mfg. Co., 103 Ala. 415; Bridgeport E. & I. Co. v. Bridgeport L. & I. Co., 104 Ala. 276; Wilson v. Duncan, Ala. (21 So. 1017).

428 (3613) (3922) (3439) (2982). **Appeals on orders sustaining, dissolving or discharging injunctions.**—An appeal lies to the supreme court on all interlocutory orders, in term time or vacation, sustaining, dissolving or discharging injunctions, which must be heard and determined at the first term after the appeal is taken, or if the supreme court is in session when the appeal is or has been taken, then the same shall be heard during such session, at least three days notice of the appeal having been first given to the adverse party.

Pearson v. Darrington, 21 Ala. 169; Powell v. Central Co., 24 Ala. 441; Jones v. Ewing, 56 Ala. 360; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; Ex parte Sayre, 95 Ala. 288; Scholze v. Steiner, 100 Ala. 148; Ex parte Fechheimer, 103 Ala. 154; Trump v. McDonald, 112 Ala. 256.

429 (3614) (3921) (4422). **Appeal from order appointing or refusing receiver.**—An appeal lies from an order of the chancellor, made in term time or in vacation, appointing or refusing to appoint a receiver, within thirty days from the filing of the order with the register; and such appeal must be taken and deemed by the supreme court as a preferred case, and must be heard during the term to which it is returnable in preference to all other than criminal cases, or other preferred cases having priority on the docket of the court.

Miller v. Lehman, 87 Ala. 517; Werborn v. Kahn, 93 Ala. 201.

430 (3615) (3917) (3486). **Appeals from certain interlocutory judgments.**—An appeal to the supreme court may be taken, before the final determination of the cause, from any judgment overruling a motion to dismiss or quash an attachment, or sustaining a demurrer to a plea in abatement to an attachment, or sustaining an attachment against matters set up in abatement of it, either in the way of an agreed case, or by plea, or otherwise; but such appeal shall be taken only after the consent of the opposite party, or his attorney, is obtained to its being taken; and on the trial of such appeal, there shall not be a reversal, if the supreme court discovers that the defect or error alleged or insisted on can be removed or remedied by amendment.

Crumley v. Bryan, 69 Ala. 91; Stanton v. Heard, 100 Ala. 515.

431 (3616) (3923). **Appeals from denial of remedial writs.**—Appeals may be taken to the supreme court from the judgment of judges of the circuit and city courts on application for writs of certiorari, supersedeas, quo warranto, mandamus and other remedial writs, upon plaintiff or defendant giving security for the costs of appeal, approved by the judge trying the same, within thirty days from the day of the judgment; but such appeal shall not operate as a supersedeas of the judgment, unless bond with sufficient sureties be given by the appellant, payable to the appellee, in such sum as the judge hearing the application shall require, conditioned to pay all damages thereby sustained.

Ex parte Candee, 48 Ala. 386; Thompson v. Holt, 52 Ala. 497; Ex parte City Council, 64 Ala. 463; Gardner v. Ingram, 82 Ala. 339; Clark v. Spencer, 80 Ala. 345; Dunn v. Court Co. Rev., 85 Ala. 144; Chastain v. Armstrong, Ib. 215.

432 (3617) (3924). **Application, etc., filed in clerk's office; manner of taking appeal.**—When any application mentioned in the foregoing section has been acted upon by any judge of the circuit or city court, such judge shall cause the application, together with his order thereon, and the other papers in the cause, to be filed in the office of the clerk of the circuit or city court of the county where the application is heard, and such clerk shall prepare the transcript thereof, and certify the appeal as in other cases.

433. **Appeals from partial settlements.**—From any decree rendered by a court of equity, or court of probate, on a partial or annual settlement of an estate of a deceased person, an appeal lies to the supreme court, to be taken within twelve months after the rendition of such decree; but this section shall not be so construed as

Feb. 2, 1893, p. 233.

to prevent an assignment of error on such decree upon appeal taken after a final determination of the cause.

Appeal from partial settlement and distribution of insolvent estate. Lehman v. Robertson, 84 Ala. 489.

Feb. 16, 1891, p. 779.

434. Appeals from decisions on motions for new trials.—Whenever a motion for a new trial shall be granted or refused by any circuit or city court in any civil case at law, either party may except to the decision of the court and may reduce to writing the reasons offered for the new trial together with the substance of the evidence in the case and also the decision of the court on the motion; and it shall be the duty of the judge before whom the motion is made to allow and sign the same; and such bill of exceptions shall be a part of the record in the cause, and may embrace the judgment and motion or other matters of record; and the appellant may assign for error that the court below improperly granted or refused to grant a new trial; and the supreme court shall have power to grant new trials or to correct any errors of the circuit or city court in granting or refusing the same.

Practice; motion; reserving exception; assignment of error; how considered and revised.—Cobb v. Malone, 92 Ala. 630; Loan Co. v. Deans, 94 Ala. 377; White v. Blair, 95 Ala. 147; Hoskins v. Hight, Ib. 284; Mobile v. Murphree, 96 Ala. 141; Birmingham Min. R. Co. v. Wilmer, 97 Ala. 165; Mary Lee C. R. Co. v. Chambliss, Ib. 171; Dillard v. Savage, 98 Ala. 598; Morris v. West, 101 Ala. 534; Kelly v. Eyster, 102 Ala. 325; Lee v. Debardeleben, Ib. 628; Sheppard v. Dowling, 103 Ala. 563; Holland v. Howard, 105 Ala. 538; Bray v. Landrum, Ib. 553; Winter v. Judkins, 106 Ala. 259. Court **will not reverse judgment granting** new trial "unless the evidence plainly and palpably supports the verdict."—Cobb v. Malone, 92 Ala. 630; White v. Blair, 95 Ala. 147; Dillard v. Savage, 98 Ala. 598; Lee v. Debardeleben, 102 Ala. 628; Sheppard v. Dowling, 103 Ala. 563; Holland v. Howard, 105 Ala. 538. **Nor reverse judgment refusing** new trial unless clearly convinced that the verdict was unjust. Cobb v. Malone, 92 Ala. 630; White v. Blair, 95 Ala. 147; Morris v. West, 101 Ala. 534; Kelly v. Eyster, 102 Ala. 325; Sheppard v. Dowling, 103 Ala. 563; Holland v. Howard, 105 Ala. 538; Bray v. Landrum, Ib. 553; Bank of Commerce v. Eureka B. & L. Co., 108 Ala. 89; Terst v. O'Neal, Ib. 250; Davis v. Miller, 109 Ala. 589. A **new trial should be granted** when the verdict of the jury is plainly and palpably opposed to the evidence.—Western Ry. v. Mutch, 97 Ala. 194. **And this** though the evidence be conflicting.—Birmingham Elec. Ry. Co. v. Clay, 108 Ala. 233. **Failure to reserve exceptions** to ruling at proper time cannot be cured by a motion for new trial.—Tobias v. Treist, 103 Ala. 664. **Does not apply to order setting aside judgment by default.**—Ledbetter v. Vinton, 108 Ala. 644. **Newly discovered evidence; diligence.**—K. C. M. & B. R. Co. v. Phillips, 98 Ala. 159; McLeod v. Shelby M. & I. Co., 108 Ala. 81. **Motion must be made during term judgment rendered.**—Ex parte Highland Ave. & B. Co., 105 Ala. 221. **Trial court no jurisdiction of motion after appeal from judgment in the cause.**—Hudson v. Bauer, 105 Ala. 200. **Does not apply to criminal cases.**—Jolly v. State, 94 Ala. 19; Reeves v. State, 95 Ala. 31; Hawthorn v. State, 100 Ala. 26; Knight v. State, 103 Ala. 48; Lowry v. State, Ib. 50; Jones v. State, 104 Ala. 30.

435 (3618) (3919, 3920). **Appeals from judgments or decrees of abolished courts.**—If an inferior court of record ceases to exist by reason of the repeal of the statute creating it, and, while existing, rendered a judgment or decree from which an appeal would lie, within the time prescribed by law, an appeal therefrom may be taken on application to the clerk or register of the court to which the unfinished business, or the records of such inferior court, may be transferred, as if such judgment or decree had been rendered in the court having the jurisdiction of such unfinished business, or the custody of such records; and in the event of the reversal of such judg-

ment or decree, the remandment of the cause must be to the latter court.

Clark v. Spencer, 80 Ala. 435.

ARTICLE 2.

MANNER AND TIME OF TAKING APPEALS.

436 (3619) (3949) (3508) (3040). **Limitation of appeals.**—Appeals under this chapter, except in such cases as a different time is prescribed, must be taken within one year from the rendition of the judgment or decree.

Andrews v. Branch Bank, 10 Ala. 375; Pearson v. Darrington, 21 Ala. 169; Cawlfield v. Brown, 45 Ala. 552; Jones v. Wilson, 54 Ala. 50; Alabama Co. v. State, Ib. 36; Waldrop v. Carnes, 62 Ala. 374; Lanier v. Russell, 74 Ala. 364; Kimbrell v. Rogers, 90 Ala. 339; Wadsworth v. Goree, 96 Ala. 227; Foley v. Leva, 101 Ala. 395; Florence Cotton & Iron Co. v. Field, 104 Ala. 471.

437 (3620) (3925). **When appeal returnable.**—Unless otherwise provided, an appeal to the supreme court, if taken in vacation, is returnable to the next ensuing term; but if taken during the term, must be made returnable to the first Monday of the term next after the expiration of twenty days from the date of the appeal.

Shulman v. Brantly, 48 Ala. 193; Rodgers v. Abercrombie, Ib. 466; Winn v. Dillard, 60 Ala. 369; Robinson v. Murphy, 69 Ala. 543; Webb v. Robbins, 77 Ala. 176; Sears v. Kirksey, 81 Ala. 98; Winthrow v. Woodward Iron Co., Ib. 100; Moore v. Spier, 80 Ala. 129; Handley v. Heflin, 84 Ala. 600; Kimbrell v. Rogers, 90 Ala. 339; Capehart v. Granite Mills, 97 Ala. 353; Collier v. Coggins, 103 Ala. 281.

438 (3621). **Return of appeal from order appointing or refusing receiver.**—If an appeal is taken from an order appointing or refusing to appoint a receiver during the term of the supreme court, it must be made returnable to the first Monday succeeding the taking thereof, to which ten days notice of the appeal can be given; otherwise, the appeal must be taken to the next succeeding term of the court.

439 (3622) (3950) (3509) (3041). **Security for costs; when required.**—No appeal can be taken without giving bond to supersede the execution of the judgment or decree, unless the appellant give security for the costs of such appeal, to be approved by the clerk, register, or judge of probate; the names of the surety or sureties to be certified with the record to the appellate court; and execution may issue against such sureties for the costs in such court and the costs of the transcript, if decided against the appellant.

Spencer v. Thompson, 24 Ala. 512; Riddle v. Hanna, 25 Ala. 484; Carey v. McDougald, Ib. 109; Hinson v. Preslor, 27 Ala. 643; Crump v. Wallace, Ib. 277; Williams v. McConico, Ib. 572; Walker v. Hunter, 34 Ala. 204; Barnett v. State, Ib. 260; England v. McLaughlin, 35 Ala. 590; McCollum v. McCollum, 33 Ala. 711; Davis v. McCampbell, 37 Ala. 609; Marshall v. Croom, 50 Ala. 479; Montgomery Gas Light Co. v. Merrick, 61 Ala. 534; Ex parte Hood, 107 Ala. 520.

440 (3623) (3927) (3489) (3019). **Supersedeas bond.**—When the judgment or decree is for the payment of money only, the appeal does not operate as a supersedeas, or to stay or suspend the execu-

tion of such judgment or decree (except in such cases as are otherwise provided), unless bond be given by the appellant, or some other person, in double the amount of the judgment or decree, including costs, payable to the appellee, with sufficient sureties, and with condition to prosecute the appeal to effect, or, if he fails therein, to satisfy such judgment as the supreme court may render in the premises.

Powell v. Central Co., 24 Ala. 441; Moore v. McGuire, 26 Ala. 463; Dumas v. Hunter, 28 Ala. 688; s. c., 30 Ala. 188; Childress v. Taylor, 33 Ala. 185; Burdine v. Mustin, Ib. 634; Espy v. Balkum, 45 Ala. 256; Cullen v. Lee, 50 Ala. 494; Thompson v. Campbell, 52 Ala. 583; Ex parte DuBose, 54 Ala. 278; Hughes v. Hatchett, 55 Ala. 539; State v. City Council, 74 Ala. 226; Ex parte Sibert, 67 Ala. 349; Montgomery Gas Light Co. v. Merrick, 61 Ala. 534; Clark v. Knox, 65 Ala. 401; Drake v. Webb, 63 Ala. 596; Ex parte Hood, 107 Ala. 520.

441 (3624) (3928) (3490) (3020). **Supersedeas bond when judgment or decree for payment of money, and for other acts.**—If the decree or judgment be for the payment of money, and also for the performance of some act or duty, or for the recovery of property, real or personal, or the possession thereof, or for the sale of property, real or personal, and the party appealing wishes to supersede the execution of such judgment or decree, he must, unless otherwise provided, give bond with good and sufficient sureties, payable to the party recovering the judgment or decree, in double the amount of the money, with condition to prosecute to effect the appeal, or, if he fails therein, to pay such judgment as the supreme court may render in the premises, and must also execute bond with good and sufficient sureties, payable to the clerk or register, in such sum as the judge or chancellor may in writing prescribe, with condition to pay all such costs and damages as any party aggrieved may sustain by reason of the wrongful appeal and suspension of the execution of the judgment or decree; or if the party appealing wishes to supersede the judgment or decree as to the payment of the money only, the bond first above mentioned may be executed, suspending the judgment or decree in that respect only; or if the party appealing wishes to supersede the execution of the judgment or decree in the other respect only, the bond secondly above mentioned may be executed, superseding the execution of the judgment or decree in that respect only.

Hughes v. Hatchett, 55 Ala. 539; Montgomery Gas Co. v. Merrick, 61 Ala. 534; Steele v. Tutwiler, 63 Ala. 368; Drake v. Webb, Ib. 596; Clark v. Knox, 65 Ala. 401; Ex parte Sibert, 67 Ala. 349; Cahall v. Citizens' M. B. Asso'n., 74 Ala. 539; Boulden v. Estey Organ Co., 92 Ala. 182; Ex parte Hood, 107 Ala. 520.

As amended Feb. 28, 1889, p. 72.

442 (3625) (3928) (3490) (3020). **Supersedeas bond in other cases.**—If the judgment or decree be only for the performance of some act or duty, or for the recovery of property, real or personal, or the possession thereof, or for the sale of property, real or personal, unless otherwise provided, the party appealing, if he wishes to supersede the execution of the judgment or decree, must execute bond with good and sufficient sureties payable to the clerk or the register in such sum as the judge, chancellor or register may in writing prescribe, with condition that if he fail in the appeal he will

pay such judgment as the supreme court may render in the premises, and all such costs and damages as any party aggrieved may sustain by reason of the wrongful appeal and suspension of the execution of the judgment or decree.

See citations to preceding section.

443 (3626) (3928) (3490) (3020). **Order fixing amount of bond filed and recorded.**—The order of the judge, chancellor or register, fixing the amount of the bonds mentioned in the two preceding sections, must be filed and entered by the clerk or register on the minutes of the court; but the failure to make such order, or if made, to file or to record the same shall not impair the validity or obligation of any bond which is given as a security under the two preceding sections, by which an appeal and a suspension of execution are in fact obtained.

444 (3627) (3934) (3493) (3023). **Bond on appeal by claimant in trial of right of property.**—When an appeal is sued out by the claimant from a judgment against him on a trial of the right of property, and he desires to supersede the judgment, the bond must be taken in double the amount of the plaintiff's judgment, if that, with the interest, is less than the valuation by the jury of the property levied on, and in double the amount of the assessed value, if less than the judgment of the plaintiff.

445 (3628). **Bond or security for costs on appeal from order appointing receiver.**—If an appeal is taken from an order appointing a receiver, and it is intended to supersede such order, the party taking the appeal must enter into bond with good and sufficient sureties, payable to and approved by the register, in such sum as may be prescribed by the chancellor or register, with condition to prosecute such appeal to effect, or, if he fail therein, to pay the costs thereof, and all such damages as any person in interest may sustain from the suspension of such order during the pendency of such appeal; but if it is not intended to supersede such order, or if the appeal is taken from an order refusing the appointment of a receiver, security for the costs only must be taken.

Ex parte Tillman, 93 Ala. 101.

446 (3629) (3930). **When married women relieved from giving bond or security for costs.**—From any judgment of the circuit or city court, or from any order or decree of the court of probate, or from any decree of the court of chancery, subjecting to sale the separate estate of a married woman, or any part thereof, be the same her statutory separate estate, or a separate estate otherwise created, she is entitled to an appeal to the supreme court to revise such judgment, order, or decree, without giving security for costs of appeal, on making affidavit that she is unable to give such security; and such appeal shall operate as a suspension and stay of all proceedings under such judgment, order, or decree, until such appeal shall have been heard and determined by the supreme court.

Coleman v. Smith, 52 Ala. 259; Armstrong v. Nelson, 57 Ala. 556; Ware v. McDonald, 62 Ala. 81; Roberts v. Taylor, 64 Ala. 549; Cahalan v. Monroe, 65

Ala. 254; Guy v. Lee, 80 Ala. 346; Johnson v. Ward, 82 Ala. 486; Ex parte Tower Mfg. Co., 103 Ala. 415.

447 (3630) (3929) (3491) (3021). **Liability for taking insufficient surety on appeal bond.**—For taking insufficient surety, the clerk, register, or judge of probate, is liable to the appellee for the damages thereby sustained, unless the surety was generally reputed good for the amount when he was received; but the clerk, register, or judge of probate, is not required to receive any one as surety, who refuses to answer on oath as to his sufficiency.

448 (3631) (3926) (3488) (3018). **Citation on appeal.**—Upon an appeal being taken, the register, or clerk of the circuit or city court, or the judge of probate, must issue a citation to the adverse party, returnable to the day to which the appeal is returnable, notifying him of the appeal, which must be served on him, or his attorney, or solicitor, at least ten days (unless otherwise provided) before the day to which the appeal is returnable.

Harris v. Harris, 41 Ala. 365; Shulman v. Brantly, 48 Ala. 193; Moore v. Spier, 80 Ala. 129; Kimbrell v. Rogers, 90 Ala. 339; Williams v. Harper, 95 Ala. 610.

449 (3632). **Notice of appeal from order appointing or refusing receiver.**—Notice of an appeal from an order appointing or refusing to appoint a receiver must be given by citation to the adverse party, which must be served on him, or his solicitor of record, ten days at least before the return day thereof.

450 (3633) (3944) (3503) (3035). **Notice to appellee when non-resident.**—When the appellee is a non-resident and has no attorney or agent within the state to receive notice of the appeal, oath in writing being made of the fact, the supreme court may direct notice to be given by publication, which is as effectual as actual notice.

As amended Feb. 18, 1897, p. 1376.

451 (3634) (3933) (3492) (3022). **Appellant to have transcript of record and certificate of appeal and citation.**—The register, clerk, or judge of probate, must, on the application of the appellant or his attorney, make and deliver to him in time to be returned to the supreme court, a full and complete transcript of the record and proceedings in the cause, together with his certificate that the appeal was taken, and the time when, and when returnable, and the citation and a copy of the appeal bond, if any was given, with his certificate that it is a complete transcript of all the proceedings in the cause, and envelope and seal up the whole in a package directed to the clerk of the supreme court, or deliver it to the attorney applying for the same; and no costs shall attend or grow out of the trial and litigation of said cause other than are created and authorized by laws enacted by the general assembly of the State of Alabama.*

*On the 18th of February, 1897 (Pamph. Acts, p. 1414), an act was approved, entitled "An act to prohibit the requiring of abstracts in cases of appeal to the supreme court of Alabama, except in certain cases," which is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That in cases of appeal to the supreme court of Alabama, from the chancery, circuit or other courts, the appellant shall not be required to make, or prepare for such supreme court or opposing counsel, any transcript or abstract of said cause except the transcript now required by law, to be prepared and certified by the

Contents of transcript.—Butler v. State, 22 Ala. 44; Montevallo Co. v. Reynolds, 44 Ala. 252; Brigman v. State, 46 Ala. 72; Barr v. Collier, 54 Ala. 39; Lake v. Security Asso'n, 72 Ala. 207; Pinney v. Werborn, Ib. 58; Life Asso'n v. Neville, Ib. 517; Lipscomb v. McLellan, Ib. 151; Hays v. Woods, Ib. 92; Weaver v. Cooper, 73 Ala. 318; Rosette v. Wynn, Ib. 146; Allred v. Kennedy, 74 Ala. 326; Pruitt v. McWhorter, Ib. 315; Foster v. Napier, Ib. 393; Lehman v. Dozier, 78 Ala. 235. **Certificate.**—Bishop v. State, 30 Ala. 34; Armstrong v. Nelson, 57 Ala. 556; Harris v. Harris, 41 Ala. 365. **Certiorari.**—A. & M. R. R. Co. v. Hungerford, 41 Ala. 388; Townsend v. Jeffries, 24 Ala. 329; Portis v. Newman, 43 Ala 506; Caldwell v. Baldwin, Ib. 617; Morgan v. Jones, 48 Ala. 250; Curry v. Woodward, 50 Ala. 258; Tuskaloosa Co. v. Logan, Ib. 503; Stroud v. State, 55 Ala. 77; Bell v. State, 74 Ala. 420; Ross v. State, Ib. 532.

452 (3035) (3939) (3498) (3030). **When the transcript to be filed.**—If the appeal is returnable to the next ensuing term of the supreme court, the transcript of the record must be filed therein on or before the third day of such term; if the appeal be returnable to a Monday of the term, the transcript must be filed on or before the day to which the appeal is returnable. In either case, the citation or notice of appeal must accompany the transcript.

Owen v. Echols, 28 Ala. 689; Carleton v. Goodwin, 41 Ala. 153; Alexander v. Nelson, 42 Ala. 462.

453 (3036) (3937) (3496) (3028). **Liability of clerk, register, or judge of probate, for delay in furnishing transcript, or for imperfection in record.**—If, by reason of negligence or delay of the clerk, register, or judge of probate, the transcript be not delivered to the appellant or his attorney in time to be filed, or if the transcript be so defective that the supreme court cannot proceed thereon, the clerk, register, or judge of probate forfeits to the party aggrieved the sum of two hundred dollars, and is further liable to him, in an action on the case, for all damages sustained by his neglect or delay.*

454 (3037) (3938) (3497) (3029). **Certificate of appeal given appellee.**—When an appeal is taken, the clerk, register, or judge of probate, must, on the application of the appellee, make and deliver to him a certificate of the judgment or decree upon which the appeal has been taken, specifying particularly the judgment or decree, the amount of the same, if for money, the parties thereto, and when

---

clerk, register or judge of the court from which said appeal is taken, and all laws and rules of the supreme court requiring such abstract are hereby repealed.

"SEC. 2. *Be it further enacted*, That from and after the date of the approval of this act, on appeal to the supreme court of this state from any judgment, order or decree of the chancery, circuit or probate court, or from any city court in civil cases, the parties to the record may, in person or by their attorneys or solicitors, agree in writing upon an abstract of the record in the case; and upon such agreement and abstract being made and filed with the clerk, register or judge, he shall certify such abstract, which abstract shall be in lieu of the transcript required by law on appeal; and the case shall be heard and determined by the supreme court upon such abstract. If there are to the record, parties weo are minors or of unsound mind, their guardian ad litem, or his attorneys or solicitors, may make such agreement for them. That in such abstracts shall be included the security for costs or appeal bond, and the notice of the appeal required by law.

"SEC. 3. *Be it further enacted*, That the clerk, or register or judge shall be entitled to a fee of five dollars for certifying such abstract, which shall be in lieu of fees allowed by law for making and certifying transcripts on appeal; and the clerk of the supreme court shall be entitled to a fee of twenty-five cents for each abstract filed or affidavit made and a fee of one dollar for each abstract or opinion bound and indexed as the final record of the supreme court."

*As amended by joint committee.

rendered, and that an appeal has been taken thereon, with a statement of the obligors in the bond to supersede the judgment or decree, if one has been given, or of the sureties for costs.

Armstrong v. Nelson, 57 Ala. 556.

455 (3638) (3948) (3507) (3039). **Appeals on death of either party after judgment.**—When either party to a judgment or decree dies after judgment or decree rendered, and before appeal taken thereon, an appeal may be prosecuted in the name of, or against the legal representative of the deceased, on producing satisfactory evidence to the clerk, judge of probate, or register, of the death of the party, and grant of letters testamentary or of administration.

Morrow v. Taggart, 45 Ala. 293.

456 (3639) (3952) (3511). **Clerks of inferior courts may issue executions for costs unpaid.**—Clerks of the circuit or city court, registers in chancery, and judges of probate, when cases have been taken from their respective courts to the supreme court by appeal, or other lawful mode, and been there decided, if the costs accruing in such lower courts for transcripts, or otherwise, be not paid by the parties against whom they were adjudged in the supreme court, may issue executions for such costs, returnable into the court in which such costs accrued.

ARTICLE 3.

SPECIAL PROVISIONS AS TO APPEALS FROM PROBATE COURT.

457 (3640) (3957) (2247). **Final decree.**—An appeal lies to the circuit or supreme court from any final decree of the court of probate, or from any final judgment, order, or decree of the judge of probate; and in all cases where it may of right be done, the appellate court shall render such decree, order, or judgment as the court of probate, or the judge thereof, ought to have rendered.

Lehman v. Robertson, 84 Ala. 489; Harrison v. Meadors, 41 Ala. 274; Shows v. Pendry, 93 Ala. 248. See also citations to section 426 (3611).

458 (3641) (3954) (2244) (1888). **Other cases in which an appeal lies.**—Appeals from the decrees of the court of probate, or from the order, judgment, or decree of the judge of probate, may be taken by the party aggrieved to the circuit or supreme court, in the cases and within the time hereinafter specified, under the same rules and regulations which govern other appeals:

1. From the decree or judgment on a contest as to the validity of a will, to be taken within thirty days after the determination of the contest.

2. From the decree or judgment on an application claiming the right to execute a will or administer an estate, to be taken within thirty days after the hearing and decision of such application; unless the application was denied because the applicant was deemed unfit to serve by reason of a conviction of an infamous crime, or by reason of improvidence, intemperance, or want of understanding, in

which case the appeal must be taken within ten days from the denial of the application.

3. Upon any judgment or order removing an executor or administrator, in which case the appeal must be taken within five days after such judgment or order.

4. By a legatee or person entitled to distribution, on the decision of the court, in proceedings instituted to compel the payment of a legacy or distributive share, at any time within six months after such decision.

5. After a final settlement, upon any order, decision, or decree, made on such settlement, or respecting any item or matter thereof, or on any previous settlement, or item, or matter thereof, within six months thereafter.

6. Upon any issue as to the insolvency of an estate, and upon any issue as to an allowance of any claim against insolvent estates, in which cases the appeal must be taken within thirty days after the determination of such issue.

7. On an application for a division or partition of real or personal property, in which case the appeal must be taken within six months, and the decree may be superseded, upon the execution within fifteen days of a supersedeas bond, payable to the appellee, in an amount and upon condition to be prescribed by the judge of probate, such supersedeas to continue until the appeal is decided.

Subdivision 1.—Glover v. Lyon, 57 Ala. 365; Lanier v. Russell, 74 Ala. 364; Truett v. Windham, 98 Ala. 604. **Subdivision 2.**—Mitchell v. Duncan, 94 Ala. 192. **Subdivision 3.**—Holtzclaw v. Ware, 34 Ala. 307. **Subdivision 5.**—Smith v. Smith, 30 Ala. 642; Stewart v. Price, 16 Ala. 40; Howard v. Howard, 26 Ala. 682; Williams v. Gunter, 28 Ala. 681; Thomas v. Dumas, 30 Ala. 83; McAllister v. Thompson, 32 Ala. 497; Bruce v. Strickland, 47 Ala. 192. **Subdivision 6.**—Nooe v. Garner, 70 Ala. 443. **Subdivision 7.**—Hoard v. Hoard, 41 Ala. 590; McDade v. McDade, 56 Ala. 598.

459 (3642) (3963) (2253) (1894). **Appeals from circuit to supreme court.**—An appeal to the supreme court may be taken from the judgment of the circuit court on an appeal brought to such court under the provisions of this article, within thirty days after such judgment.

Truett v. Windham, 98 Ala. 604.

460 (3643) (3958) (2248) (1889). **Appeal to supreme court on change of venue in contest of will.**—Upon the contest of a will removed from the probate court of the county in which it was propounded to the probate court of another county for trial, an appeal lies to the supreme court, and must be taken within thirty days after the judgment.

Seale v. Chambliss, 35 Ala. 19.

461 (3644) (3964) (2254) (1895). **No appeal from order removing executor or administrator without bond.**—No appeal can be taken from any order of the probate court removing an executor or administrator, unless the appellant gives bond with at least two good and sufficient sureties, payable to the judge of probate, and in an amount to be fixed by him, not less than the amount of his bond

as executor or administrator, conditioned to prosecute the appeal to effect, and, until the same is decided, faithfully to discharge his duties as such executor or administrator.

462 (3645) (3965) (2255) (1896). **On affirmance, execution against principal and sureties on bond.**—If such appeal is decided against the appellant, execution for costs may issue against him and the sureties on such bond; their names being certified with the record to the appellate court.

463 (3646) (3966) (2256) (1897). **Bond also security for estate.** Such bond also stands as security for the faithful discharge of his duties as such executor or administrator, from the time the same is approved until the appeal is finally decided.

464 (3647) (3967) (2257) (1898). **Security for costs to be given on appeal.**—In all other cases in which an appeal is taken under the provisions of this article, the appellant, or some one for him, must give security for the costs of such appeal, to be approved by the judge of probate, or the clerk of the circuit court, as the case may be; and the names of such sureties must be certified with the record to the appellate court; and if the appellant fails to prosecute his appeal, or the judgment is not reversed, or is rendered against him for a less amount than the judgment of the court from which the appeal is taken, execution may issue against him and such sureties for the costs of the appeal.

465 (3648) (3959, 3960) (2249, 2250) (1890, 1891). **Bill of exceptions.**—Either party may, by bill of exceptions, reserve any charge, opinion, ruling, or decision of the court, or of the judge, touching the matter of controversy, which would not otherwise appear of record; such bill to be signed by the judge within ten days after the entry of the decree or judgment; and, when signed, becomes part of the record.

Williams v. Gunter, 28 Ala. 681; Reese v. Gresham, 29 Ala. 91; Lovett v. Chisolm, 30 Ala. 88; Harris v. Dillard, 31 Ala. 191; Turner v. Key, Ib. 202; Dunham v. Hatcher, Ib. 484; Bartee v. James, 33 Ala. 34; Seale v. Chambliss, 35 Ala. 19; Jones v. Jones, 42 Ala. 218; Tap v. Cox, 56 Ala. 553; Jaques v. Horton, 76 Ala. 240; Truett v. Windham, 98 Ala. 604. See also citations to section 612 (2758).

466 (3649). **Transcript of record.**—If the error complained of arises only in the matter of the bill of exceptions, the transcript thereof certified to the appellate court need contain only the bill of exceptions and the decree, order or judgment.

467 (3650) (3961) (2251) (1892). **Judgment thereon.**—If it appears from the bill of exceptions that all the evidence in relation to the particular matter is set out, the appellate court may reverse and render such judgment, order or decree, touching such matter, as should have been rendered, or may remand generally, or may remand with directions to enter the proper judgment, order or decree.

468 (3651) (3968) (2258). **Minors; non compos mentis.**—The next friend or general guardian of a minor, or of a person of unsound mind, may, in the name of such minor or person of unsound mind, take and prosecute an appeal from any final decree of the court of

probate, or from any judgment, order or decree of the judge of probate, on giving security for the costs of the appeal; but a guardian ad litem may take and prosecute an appeal without giving any security for costs of the appeal.

Guardian ad litem not taxed with costs.—Brown v. Williams, 87 Ala. 353; Perryman v. Burgster, 6 P. 99. Next friend may be.—Thomason v. Gray, 84 Ala. 559.

469 (3652) (3969) (2259) (1899). **Costs of appeal.**—The costs of an appeal, when paid by an executor, administrator, guardian, or guardian ad litem, or next friend, or an administrator ad litem, may, in the discretion of the judge of probate, be reimbursed from the estate of the testator, or intestate, or infant, or person of unsound mind.

ARTICLE 4.

PROCEEDINGS IN SUPREME COURT ON APPEAL.

470 (3653) (3931). **Amendment of appeal.**—An appeal must not be dismissed because of any error, mistake or irregularity in the taking thereof, or because of any defect in the certificate; but on motion all such amendments as are necessary to perfect it must be allowed.

Harper v. Bibb, 45 Ala. 670; Kidd v. Turner, 52 Ala. 251; Thompson v. Campbell, Ib. 583; Alexander v. Rea, 50 Ala. 64; Vaughan v. Higgins, 68 Ala. 546; Coffey v. Norwood, 81 Ala. 512.

471 (3654) (3932) (4421). **Appeal bonds and bonds for costs amendable.**—No appeal shall be dismissed for the want of a sufficient appeal bond or bond for the costs of the appeal, if the appellant will give a sufficient bond, which bond the supreme court, or any member thereof, may take and approve, or it may be taken and certified to the supreme court by the judge, clerk or register certifying the appeal.

See citations to preceding section.

472 (3655) (3953) (3512). **Discontinuance.**—An appeal must not be deemed or treated as discontinued, or as having otherwise lost its force, unless the appellee shall duly move for a discontinuance after legal cause for discontinuance has occurred.

Rhea v. Rhea, 54 Ala. 68; Carleton v. Goodwin, 41 Ala. 153; Sears v. Kirksey, 81 Ala. 98; Withrow v. Woodward Iron Co., Ib. 100.

473 (3656) (3947) (3506) (3038). **On death of either party, cause revived.**—Upon the death of either party to an appeal being suggested, if the cause cannot proceed without new parties, the cause may be revived either for or against such party, on the production of letters testamentary or of administration; but citation must issue from the appellate court to all who are thus made defendants, unless they appear and waive it.

Clancy v. Stephens, 92 Ala. 577.

474 (3657) (3940) (3499) (3031). **Judgment of affirmance on certificate.**—If an appeal is taken, and the transcript of the record is not

filed within the time prescribed, it is the duty of the court, on the motion of the appellee, to affirm the judgment or decree of the court below, upon the production by him of the certificate of the register, clerk, or judge of probate, that an appeal has been taken to the supreme court. For good cause shown, the court may reinstate the the cause during the term, on payment of costs.

Perryman v. Camp, 24 Ala. 438; Pearsall v. McCartney, 25 Ala. 461; Shulman v. Brantley, 48 Ala. 193; Jones v. Mathews, Ib. 558; Dorsey v. Dumas, 50 Ala. 244; Armstrong v. Nelson, 57 Ala. 556.

475 (3658) (3943) (3502) (3034). **Judgment or decree, if reversed, may be rendered, or cause remanded.**—The supreme court may, upon the reversal of any judgment or decree, remand the same for further proceedings, or render such judgment or decree as the court below should have rendered, when the record enables it to do so.

When cause remanded on reversal.—Wells v. Bransford, 28 Ala. 201; Bondurant v. Sibley, 29 Ala. 570; Latham v. Staples, 46 Ala. 462; Childress v. Harrison, 47 Ala. 556; Wilburn v. McCalley, 63 Ala. 436; Parks v. Parks, 66 Ala. 326; Bradford v. Bradford, Ib. 252; Kendall v. Lassiter, 68 Ala. 181; Jones v. Latham, 70 Ala. 164. **When rendered on appeal.**—Evans v. Bell, 20 Ala. 509; Commissioners v. Tarver, 25 Ala. 480; Jackson v. Shipman, 28 Ala. 489; Pike v. Bright, 29 Ala. 332; Campbell v. May, 31 Ala. 567; Griffin v. Wall, 32 Ala. 150; Jean v. Sandiford, 39 Ala. 317; Manning v. Kohn, 44 Ala. 343; Glidden v. Street, 68 Ala. 600; Lehman v. Levy, 69 Ala. 48; Munchus v. Harris, Ib. 596; Waite v. Ward, 93 Ala. 271. **Judgment by default; when reversed only as to defendant not served with process.**—Lucy v. Beck, 5 P. 166; Windham v. Nat. Fertilizer Co., 99 Ala. 578. **When as to all.**—Faver v. Briggs, 18 Ala. 478; Parker v. Parker, 39 Ala. 347. **Cross appeals from judgment at law;** affirmed or reversed entirely.—A. G. S. R. v. McAlpine, 80 Ala. 73. **Appeal from judgment of trial court on facts without jury.**—Hood v. Pioneer M. & M. Co., 95 Ala. 461; Hunt v. Johnson, 96 Ala. 130; Garner v. Ullman, 99 Ala. 218; Evansville, etc., Co. v. Slater, 101 Ala. 245; Williams v. Woodward Iron Co., 106 Ala. 254; Bridgeport L. Co. v. Ladd, 107 Ala. 244; White v. White, 107 Ala. 417; LeBron v. Morris, 110 Ala. 115; York Mfg. Co. v. Bessemer Ice Mfg. Co., 111 Ala. 332.

476 (3659) (3946) (3505) (3037). **Clerical errors corrected at appellant's cost.**—No cause must be reversed by the supreme court for any miscalculation of interest, or other clerical mistake in entering judgment, but on motion of, and at the cost of the appellant.

Beason v. Riddle, 11 Ala. 743; Windham v. Clarke, 16 Ala. 659; Rambo v. Wyatt, 82 Ala. 363; Smith v. Kennedy, 63 Ala. 334; Brown v. Brown, 81 Ala. 508; McCaskey v. Pollock, 82 Ala. 174; Spigener v. Farquhar, Ib. 569; Atlantic Glass Co. v. Paulk, 83 Ala. 404; Elyton Land Co. v. Morgan, 88 Ala. 434; Simmons v. Titche, 102 Ala. 317.

477 (3660) (3945) (3504) (3036). **Confession of judgment releases errors.**—A confession of judgment is in law a release of errors.

Murphree v. Whitley, 70 Ala. 554; McNeil v. State, 71 Ala. 71; Burke v. State, 74 Ala. 399.

478 (3661, 3662) (3941, 3942) (3500, 3501) (3032, 3033).—**Judgment of affirmance on supersedeas.**—When a judgment or decree is rendered for money, whether debt or damages, and the same has been superseded on appeal by the execution of bond with surety, if the supreme court affirms the judgment of the court below, it must also render judgment against all or any of the obligors in the bond, for the amount of the affirmed judgment, ten per cent. damages thereon, and the costs of the supreme court.

Lawrence v. Jones, 37 Ala. 3.

479 (3663) (3935) (3494) (3024). **Damages when judgment by claimant in trial of right of property is affirmed.**—When an appeal is taken by the claimant on a trial of the right of property, and the judgment superseded, if the appellate court affirms the judgment of the court below, it must also render judgment of ten per cent. on the assessed value of such property, if less than the amount of the execution against the defendant; if such value exceeds such execution, ten per cent. on the amount thereof, against the obligors in the appeal bond.

480 (3664) (3936) (3495) (3027). **Damages on affirmance of judgment in detinue.**—Upon the affirmance of a judgment for the recovery of chattels in specie, which has been superseded, the court must also render judgment for ten per cent. damages upon the assessed value of the chattels, and upon the damages for the detention thereof.

Boulden v. Estey Organ Co., 92 Ala. 182.

ARTICLE 5.

APPEALS FROM JUSTICES OF THE PEACE AND PROCEEDINGS THEREON.

481 (3398) (3654, 3710) (3257, 3313) (2811, 2864). **Appeals from judgments before justices.**—Any party may appeal from any judgment rendered against him before a justice of the peace to the circuit court, or court of like jurisdiction, upon complying with the provisions of this chapter, at any time within five days after the rendition thereof, unless otherwise provided in this Code.

What may be removed by certiorari.—Gilliland v. Ware, 4 Ala. 414; Wyatt v. Judge, 7 P. 37. **What judgment not sufficient to support an appeal.**—Little v. Fitts, 33 Ala. 343; Francis-Chenoweth Hardware Co. v. Bailey, 104 Ala. 566. **No appeal lies from a confessed judgment** in a civil case.— Murphree v. Whitley, 70 Ala. 554. **One of several defendants may appeal** independent of his co-defendants.—Craig v. Atwood, 1 S & P. 86. **Right to remove cause not impaired by issuance of execution** on judgment.—Olmstead v. Brewer, 91 Ala. 124. **Nor by voluntary payment** by the adverse party.—Grantham v. Payne, 77 Ala. 584. **Defects in petition for certiorari** or other proceeding to remove cause **not available to dismiss in circuit court.**—Casey v. Briant, 1 S. & P. 51; Wright v. Gray, 20 Ala. 363; Hatter v. Eastland, 22 Ala. 689; Washington v. Parker, 60 Ala. 448; Grantham v. Payne, 77 Ala. 584; Wright v. Hurt, 92 Ala. 591. But **separate and disconnected cases cannot be united** in one petition and bond.—Davis v. Calhoun, 24 Ala. 439; Croswell v. Com'rs' Court, Ib. 282; Carter v. Com'rs' Court, 80 Ala. 394. **Certiorari is not grantable to determine a question on the payment of an execution.**—Bobo v. Thompson, 3 S. & P. 385. **When certiorari or supersedeas is the appropriate remedy to quash execution** on forthcoming bond illlegally returned forfeited.—Cobb v. Thompson, 87 Ala. 381. **Does not bring in review execution on forfeited claim bond.**—Weedon v. Clark, 94 Ala. 505. **Certiorari not available in criminal cases.**—Deans v. State, 63 Ala. 153. **Certiorari barred in one year.** Grantham v. Payne, 77 Ala. 584. **Common-law certiorari; when available** to quash proceedings for errors of law apparent on the record.—Glaze v. Blake, 56 Ala. 379; A. G. S. R. Co. v. Christian, 82 Ala. 307; M. & C. R. Co. v. Brannum, 96 Ala. 461; McCulley v. Cunningham, Ib. 583; Independent Pub. Co. v. American Press Asso., 102 Ala. 475. **Judge of probate can only grant statutory certiorari.**—Guscott v. Roden, 112 Ala. 632.

482 (3399) (3654) (3257) (2811). **Bond for appeal or certiorari.** Unless otherwise provided, no cause can be carried from a justice's court to the circuit or other court of like jurisdiction by appeal or certiorari, unless the party applying for such appeal or certiorari

first executes bond, with sufficient sureties, payable to the adverse party, with condition to pay such judgment as may be rendered against him by the court to which the cause is sought to be removed.

What covered by appeal bond.—Lykes v. Schwarz, 91 Ala. 461. **When bond insufficient.**—Smith v. Hearne, 2 S. & P. 81; Davis v. Calhoun, 24 Ala. 437; Reynolds v. Cox, 108 Ala. 276. **When bond will not sustain judgment against sureties.**—Quinn v. Adair, 4 Ala. 315; Reynolds v. Cox, 108 Ala. 276. **Bond payable to a party who is dead is void.**—Frierson v. Blakesley, 3 S. 267. **What substantial compliance with statute.**—Lightfoot v. Strahan, 7 Ala. 444; Windham v. Coats, 8 Ala. 285. **Sureties not liable beyond penalty of the bond.**—Quinn v. Adair, 4 Ala. 315; McBarnett v. Kerr, 6 Ala. 476; Windham v. Coats, 8 Ala. 285; Seamans v. White, Ib. 656; Witherington v. Brantley, 18 Ala. 197; Sherry v. Priest, 57 Ala. 410; Waite v. Ward, 93 Ala. 271; Rich v. Lowenthal, 99 Ala. 487. **Insolvency of estate**, pending appeal by administrator, **affords no relief to sureties on appeal bond.**—Mount v. Stewart, 86 Ala. 365. **Appeal should not be dismissed for defect in bond,** unless appellant fails to execute a perfect bond.—Carter v. Pickard, 11 Ala. 673; Henderson v. Plumb, 18 Ala. 74; Appleton v. Turrentine, 19 Ala. 706; McClellan v. Allison, Ib. 671; Davis v. Calhoun, 24 Ala. 455.

483 (3400). **Amount of bond for appeal or certiorari.**—If such appeal or certiorari is applied for by a defendant, claimant, garnishee, or any other party against whom a judgment for the payment of money has been rendered, such bond shall be in double the amount of the judgment rendered against him, including costs; in all other cases, in such amount as may be prescribed, in cases of appeal, by the justice, and, in case of certiorari, by the officer granting the same.

484 (3402) (3655) (3258) (2812). **Papers and statement of the case to be returned to the clerk.**—When an appeal is taken, the justice must return all the original papers of the cause, together with a statement, signed by him, of the case and the judgment rendered by him, to the clerk of the court to which the appeal was taken, within ten days after the taking of the appeal.

Larcher v. Scott, 2 Ala. 40; Wolfe v. Parham, 18 Ala. 441.

485 (3403) (3657) (3260) (2814). **Notice of appeal to be served on appellee.**—The justice must also issue a notice to the appellee that such appeal has been taken, which must be executed by personal service on him, his agent, or attorney, five days before the return term of the appeal, and must be returned by the constable to the clerk of the court to which the appeal was taken, on or before the second day of the term.

Bettis v. Nicholson, 1 Stew. 349; Goss v. Davis, 21 Ala. 479; Martin v. Higgins, 23 Ala. 775; Kane v. Gammell, 50 Ala. 492; McConnell v. Worns, 102 Ala. 587; Murphy v. Wood, 103 Ala. 638.

Feb. 5, 1891, p. 369.

486. How notice served when appellee moves out of the county. If the appellee, after the appeal is taken, moves out of the county, or absconds, or secretes himself so that notice cannot be served on him, it shall be the duty of the constable to execute such notice by leaving a copy at the residence or late residence of the appellee and by posting the same in front of the court-house door of the county in which the justice trying the case resides, and return the facts to the clerk of the court to which the appeal was taken, on or before the second day of the term.

487 (3404) (3654, 3126) (3257, 2777) (2811, 2373). **Defects in**

bond may be cured.—Whenever it is made to appear to the appellate court that the appeal or certiorari is defective, or the security is insufficient, such court may require a new bond, or new or additional sureties, within such time as the court may prescribe; and if not given, the court may dismiss the suit or appeal, or render judgment, as the circumstances may require; but no appeal or certiorari must be dismissed for any defect in such bond, if the party is willing to execute a sufficient bond.

See citations to section 482 (3399).

488 (3405) (3121, 3127) (2772, 2778) (2368, 2374). **When and how cases on appeal shall be tried.**—Cases brought by appeal or certiorari from judgments of justices of the peace must be tried at the first term thereafter, if the five days notice of the appeal or certiorari required by law, has been given to the appellee, his agent, or attorney, unless good cause be shown for a continuance; but if such notice has not been given, the case must be continued until the next term; and all such cases must be tried de novo and according to equity and justice, without regard to any defect in the summons, or other process, or proceedings before the justice.

Trial de novo, etc.—Solomon v. Ross, 49 Ala. 198; Brooks v. Carter, 36 Ala. 682; S. & N. R. R. Co. v. Seale, 59 Ala. 608; W. U. Tel. Co. v. Meyer, 61 Ala. 158; Abraham v. Alford, 64 Ala. 281; Abrams v. Johnson, 65 Ala. 465; Burns v. Howard, 68 Ala. 352; Harsh v. Heflin, 76 Ala. 499; Clough v. Johnson, 9 Ala. 425; Neff v. Edwards, 81 Ala. 246; Chewacla Lime Works v. Dismukes, 87 Ala. 344; Wright v. Hurt, 92 Ala. 591; Weedon v. Clark, 94 Ala. 505; M. & C. R. Co. v. Brannum, 96 Ala. 461; Independent Pub. Co. v. American Press Assn., 102 Ala. 475. **Amendment on appeal.**—Moffet v. Wooldridge, 3 Stew. 322; Taylor v. Acre, 8 Ala. 491; Mooney v. Ivey, Ib. 810; Peck v. Colby, 31 Ala. 252; Couch v. Atkinson, 32 Ala. 633; Davis Ave. R. R. Co. v. Mallon, 57 Ala. 168; Schuessler v. Wilson, 56 Ala. 516; House v. Lassiter, 49 Ala. 307; S. & N. R. Co. v. Small, 70 Ala. 499; Littleton v. Clayton, 77 Ala. 571; Freeman v. Speegle, 83 Ala. 191; So. Ex. Co. v. Perkins, 100 Ala. 275; L. & N. R. Co. v. Barker, 96 Ala. 435. **Pleading and practice on appeal.**—Wilson v. Collins, 9 Ala. 127; Duncan v. Richardson, 34 Ala. 117; Van Aspen v. Townsend, 36 Ala. 582; Noles v. Marables, 50 Ala. 366; Glaze v. Blake, 56 Ala. 379; Heyman v. McBerney, 66 Ala. 511; Elmore v. Simon, 67 Ala. 528; Littleton v. Clayton, 77 Ala. 571; S. & N. R. Co. v. Pilgreen, 62 Ala. 305; Gould v. Meyer, 36 Ala. 565; Case v. Moore, 21 Ala. 758. **Want of jurisdiction of primary court, objection must be taken before justice.**—L. & N. R. Co. v. Barker, 96 Ala. 435; Western Ry. Co. v. Lazarus, 88 Ala. 453; Burns v. Henry, 67 Ala. 209; Glaze v. Blake, 56 Ala. 379. **Objections before justice;** how made.—Knowles v. Steed, 79 Ala. 427. **When judgment on appeal greater than justice's jurisdiction.**—R. & D. R. Co. v. Hutto, 102 Ala. 575; Pruitt v. Stewart, 5 Ala. 112; Vaughan v. Robinson, 20 Ala. 229; Hays v. Myrick, 47 Ala. 335; Drake v. Johnson, 50 Ala. 1. **Trial may be had on original complaint,** or a new complaint. So. Ex. Co. v. Perkins, 100 Ala. 275.

489 (3406) (3693) (3296) (2849). **Attachments; what defects cured by appeal.**—No attachment can be quashed or dismissed in the appellate court for any defect in the affidavit, attachment, or bond, or for want of bond, if the plaintiff will execute a sufficient bond; and no objection can be made in that court to the regularity of the proceedings which was not made before the justice of the peace.

Slaton v. Apperson, 15 Ala. 721; Staggers v. Washington, 56 Ala. 225; Knowles v. Steed, 79 Ala. 427.

490 (3407) (3122) (2773) (2369). **When case tried without a jury.**—When the sum claimed does not exceed twenty dollars, the

cause must be tried by the court without the intervention of a jury; but when it exceeds twenty dollars, an issue must be made up, under the direction of the court, and the cause tried by a jury.

Pike v. Bright, 29 Ala. 332; Abrams v. Johnson, 65 Ala. 470; Dargan v. Harris, 68 Ala. 144; Jones v. Collins, 80 Ala. 108.

491 (3408) (3123) (2774) (2370). **Damages assessed, if appeal taken for delay.**—If it appear that the appeal or certiorari was taken for delay merely, fifteen per cent. damages may be assessed.

Shorter v. Hightower, 48 Ala. 526; Crump v. Battles, 49 Ala. 223.

492 (3409) (3124) (2775) (2371). **Costs; how taxed.**—If the defendant appeals or obtains a writ of certiorari, and the judgment of the appellate court is for less than the judgment of the justice, the court may tax either party with the costs, or with any portion thereof; and if the plaintiff appeals, or obtains a writ of certiorari, and does not recover more than the amount for which the justice rendered judgment, he must be taxed with the costs.

Beason v. Riddle, 11 Ala. 743; Guscott v. Roden, 112 Ala. 632.

493 (3410) (3125) (2776) (2372). **On affirmance, judgment rendered also against sureties.**—When, on appeal or certiorari, the judgment is affirmed, judgment must be rendered by the court against the sureties as well as the principal, which must include the costs of the inferior and appellate courts.

Judgment against sureties for costs of both courts.—Neff v. Edwards, 81 Ala. 246; Mount v. Stewart, 86 Ala. 365. See also citations to section 482 (3399).

494 (3412). **Procedendo when justice vacates office pending appeal.**—When a cause is removed from the court of a justice of the peace, or notary public having like powers, to the circuit or other court of like jurisdiction, by appeal or certiorari, and while the cause is pending in such court, the justice or notary should die, or otherwise vacate his office, leaving no qualified successor, and in the prosecution of the cause, it should become necessary, by a dismissal of the appeal or certiorari, for a writ of procedendo to issue, it shall be the duty of the court, upon motion, to direct such writ to issue to any justice of the peace, or notary public having like powers, in the county.

495 (3413). **How judgment in such case established, when docket has been lost.**—If, in such case, the docket of the justice or notary has been lost or destroyed, the transcript of the same on file in the appellate court, or a certified copy thereof, shall be sufficient evidence upon which to establish the judgment before any justice or notary to whom the appellate court may direct the writ of procedendo to issue.

CHAPTER 9.

APPRENTICES. 496-507.

496 (1474) (1734) (1450) (1215). **Children bound out as apprentices.**—The judge of probate of each county may bind out, as apprentices, the children of any person unable to provide for their support, until the age of twenty-one years, if a boy, and eighteen years, if a girl.

497 (1475) (1737) (1450). **Officers report minors; and probate judge binds out apprentices.**—Sheriffs, justices of the peace, and all other civil officers of the several counties in this state must report to the probate judges of their respective counties, at any time, all minors under the age of eighteen years within their respective counties, precincts, or districts, who are orphans without visible means of support, or whose parents have not the means, or who refuse to provide for and support such minors; and thereupon such probate judge must apprentice them, and all other such minors as may otherwise come to his knowledge, to some suitable and competent person, on such terms as the court may prescribe, having a particular care to the interest of such minor; and such judge of probate must make a record of all the proceedings in such case, for which he shall be entitled to a compensation of one dollar, to be paid by the master.

No form of proceeding necessary, except notice to the parent; judge may proceed on report of officer, or ex proprio motu.—Brinston v. Compton, 68 Ala. 299; Cochran v. State, 46 Ala. 714; Owens v. State, 48 Ala. 328.

498 (1476) (1745) (1464). **Parent or person having control of child notified.**—The judge of probate must notify the minor's father, or his mother if he have no father, or the person having the custody or control of such child if he have no father or mother, when such father, or mother, or person having the control of such child is living in the state, of the proceedings to apprentice such minor, and the father, or mother, or person having control of such minor may, by proof, show his or her ability to support the minor, or that the proposed master is an unsuitable person. As amended Dec. 9, 1890, p. 70.

499 (1477) (1744) (1463). **Probate judge fixes age.**—When the age of the minor cannot be ascertained by record testimony, the judge of probate shall fix the same.

500 (1478) (1738) (1455). **Master appointed on full proof, and gives bond.**—Before an apprentice is bound to any person, there must be full proof of his suitableness to have the charge and care of such minor, and he must give bond, with surety, to be approved and kept by the probate judge, and in such sum as such judge may direct, and conditioned that he shall furnish such minor with sufficient food and clothing, treat him humanely, furnish him medical attention in case of sickness, teach him, or cause him to be taught, to read and write, and will conform to any law that may hereafter be

passed for the regulation of the duties and relation of master and apprentice.

501 (1479) (1735) (1451) (1216). **Duties of master.**—The person to whom such apprentice is bound must provide a sufficiency of good and wholesome provisions, furnish all necessary clothing, washing, and lodging; treat with kindness and humanity, and instruct such apprentice in the trade, business, or occupation which he pursues; have him taught to read and write; and, at the expiration of his term of apprenticeship, furnish him with two complete new suits of clothing.

502 (1480) (1739) (1456). **Master may chastise.**—In the management and control of such apprentice, such master shall have power to inflict such moderate corporeal chastisement as a father or guardian is allowed to inflict on his child or ward at common law; but in no case shall cruel or inhuman punishment be inflicted.

503 (1481) (1740) (1457). **Remedy when apprentice leaves.**—If any apprentice leaves the employment of his master without his consent, such master may pursue and arrest such apprentice and bring him before any justice of the peace of the county, who must remand such apprentice to the service of his master; and if such apprentice refuses to return, such justice must commit him to the jail of such county, on failure to give bond, until the next term of the probate court; and such court must, at the first term thereafter, investigate the case, and if, in the opinion of the court, such apprentice left the employment of his master without good cause, must order him to receive such punishment as may be provided by the vagrant laws which may be then in force in this state, until he shall agree to return to his master; but the court may grant continuances, as in other cases; but if the court believes that such apprentice had good cause to quit the employment of his master, the court must discharge such apprentice from such indenture, and may enter a judgment against the master for not more than one hundred dollars, for the use and benefit of such apprentice, to be collected on execution, as in other cases.

Shows v. Pendry, 93 Ala. 248, 251.

504 (1482) (1741) (1460). **Release of master and re-apprenticing.**—Any master, if he desires, may summon his apprentice before the probate judge, and, on good and satisfactory cause shown to such judge, and on proof that such apprentice will not be injured thereby, shall be released from all liability as master of such apprentice, and his bond canceled; and such judge must forthwith re-apprentice such minor; and if any master of an apprentice dies before the close of the term of service of such apprentice, the judge must give the preference in re-apprenticing such minor to the widow or other member of such master's family; but such widow or other member of such family must be a suitable person for that purpose.

505 (1483) (1742) (1461). **Removal of master to another state.** When any master of an apprentice, bound to him under the provi-

sions of this chapter, is about to remove or has removed to any other state of the United States, by the laws of which such apprentice may be an inhabitant thereof, the probate court of the proper county may authorize the removal of such apprentice to such state, upon the master entering into a bond with surety, in a penalty to be fixed by the judge, conditioned that such master will, upon such removal, comply with the laws of such state in such cases; but such master shall be cited to attend the court at which such order is proposed to be made, and such apprentice shall have the right to resist the same by next friend, or otherwise.

506 (1484) (1736) (1453) (1218). **Indentures; when canceled.** The judge of probate may at any time, for good cause, revoke any letters of apprenticeship, and bind out the apprentice to another.

An appeal does not lie from order revoking letters of apprenticeship. Cox v. Jones, 40 Ala. 297; McKimmey v. McKimmey, 52 Ala. 102.

507 (1485) (1743) (1462). **Parents may apprentice.**—Any parent, having a minor child, may apprentice such child as provided in this chapter.

CHAPTER 10.

ARBITRATION AND AWARD. 508-523.

508 (3221) (3536) (3148) (2709). **Order of reference to arbitration in pending suit; continuance.**—It is the duty of all courts to encourage the settlement of controversies pending before them by a reference thereof to arbitrators, chosen by the parties or their attorneys; and, on motion of the parties, must make such order and continue the cause for award; but such continuance must not extend beyond one term, unless for good cause shown, or by consent.

When suit pending, order of court essential to statutory reference of matters in controversy.—Dudley v. Farris, 79 Ala. 187; Bell v. Sampey, 80 Ala. 372; Lamar v. Nicholson, 7 Port. 158; Davis v. McConnell, 3 Stew. 492; Mendenhall v. Smith, Minor, 380. **In such reference, written statement by parties has no office to perform; pleadings sufficiently show matters in controversy.**—Snodgrass v. Armbrester, 90 Ala. 493. **Unexecuted order of reference no obstacle to trial of cause at a subsequent term.**—Davis v. Badders, 95 Ala. 348; Shelby Iron Co. v. Cobb, 55 Ala. 636. **Attorney in pending suit may submit matters in litigation.**—Wright v. Evans, 53 Ala. 103; Beverly v. Stephens, 17 Ala. 701. **Effect on pending suit, of arbitration by agreement of parties without order of court.**—Henry v. Porter, 29 Ala. 619; Jessie v. Cater, 25 Ala. 351, s. c., 28 Ala. 475; Dudley v. Farris, supra; Bell v. Sampey, supra. **But if award entered up without objection, judgment treated as confessed.** Thompson v. Greene, 85 Ala. 240. **When cause in justice's court arbitrated, award conclusive on appeal, unless impeached for fraud, etc.**—Wright v. Bolton, 8 Ala. 548.

509 (3222) (3537) (3149) (2710). **Submission when no suit pending; award to be entered as a judgment.**—When no suit is pending, the parties to any controversy may refer the determination thereof to the decision of arbitrators, to be chosen by themselves; and the award made pursuant to the provisions of this chapter must

be entered up as the judgment of the proper court, if the award is not performed.

Statement of matters in dispute, signed by the parties, necessary when no suit pending.—Snodgrass v. Armbrester, 90 Ala. 493. **Requisites and sufficiency of statement.**—Lamar v. Nicholson, 7 Port. 158; Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476; King v. Jemison, Ib. 499; Willingham v. Harrell, 36 Ala. 583; Wolff v. Shelton, 51 Ala. 425; Brewer v. Bain, 60 Ala. 153. **And of award.**—Reynolds v. Reynolds, 15 Ala. 398; Jessie v. Cater, 25 Ala. 351, s. c., 28 Ala. 475; Mobile, etc. Co. v. Yeind, 29 Ala. 325; Tuscaloosa Bridge Co. v. Jemison, supra; King v. Jemison, supra; Davis v. Forshee, 34 Ala. 107; Roundtree v. Turner, 36 Ala. 555; McCrary v. Harrison, Ib. 577; Crook v. Chambers, 40 Ala. 239; Elrod v. Simmons, Ib. 274; Horton v. Pool, Ib. 629; Bogan v. Daughdrill, 51 Ala. 312; Wolff v. Shelton, Ib. 425. **Submission must conform to statute, else judgment will not be entered up on award.**—Davis v. McConnell, 3 Stew. 492; Lamar v. Nicholson, supra; Dudley v. Farris, 79 Ala. 187; Bell v. Sampey, 80 Ala. 372. **Award must conform to submission.** Bogan v. Daughdrill, supra; Wolff v. Shelton, supra; Edmunson v. Wilson, 108 Ala. 118; Anderson v. Miller, 108 Ala. 171. **Guardian may submit for ward.** Strong v. Beroujon, 18 Ala. 168. **And executor or administrator for estate.** Jones v. Deyer, 16 Ala. 221; Jones v. Blalock, 31 Ala. 180. **And corporation, by resolution or ordinance.**—Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476, 481. **One partner alone cannot bind partnership to submission.**—Fancher v. Bibb Furnace Co. 80 Ala. 481. **Nor can husband submit controversy involving wife's estate.**—Thomas v. James, 32 Ala. 723; Sampley v. Watson, 43 Ala. 377. **Agent to collect claim has no implied power to arbitrate.**—Huber v. Zimmerman, 21 Ala. 488; Wright v. Evans, 53 Ala. 103; Brewer v. Bain, 60 Ala. 153. **Misconduct of arbitrators as ground of objection to award.**—Graham v. Woodall, 86 Ala. 313; Rosenau v. Legg, 82 Ala. 568; Brewer v. Bain, supra; Burns v. Hendrix, 54 Ala. 78; McCrary v. Harrison, 36 Ala. 577. **Objections must be stated with precision.**—Brewer v. Bain, supra; Willingham v. Harrell, supra. **Mistake of law no ground.**—Goodwin v. Yarbrough, 1 Stew. 152; Byrd v. Odem, 9 Ala. 755; Young v. Leaird, 30 Ala. 371, but see Brewer v. Bain, 60 Ala. 153; Bumpass v. Webb, 4 Port. 65. **Plaintiff cannot take voluntary nonsuit and thus prevent statutory award against him from being entered up as judgment.**—Davis v. Forshee, 34 Ala. 107. **Award may be valid in part and so far enforced.**—Burrus v. Meadors, 90 Ala. 140; Bogan v. Daughdrill, 51 Ala. 312; Reynolds v. Reynolds, 15 Ala. 398. **Must be by majority of arbitrators.**—Horton v. Pool, 40 Ala. 629, and with notice to all, McCrary v. Harrison, 36 Ala. 577. **And must finally dispose of questions submitted.**—McCrary v. Harrison, supra. **Until delivery, award is under control of arbitrators; but once returned is beyond their control.**—Chapman v. Ewing, 78 Ala. 403; Edmunson v. Wilson, 108 Ala. 118; Anderson v. Miller, 108 Ala. 171. **If withdrawn by an arbitrator from court files, mandamus lies to compel its return.**—Ib. **Award construed with great liberality and every reasonable presumption indulged in its support.**—Tankersley v. Richardson, 2 Stew. 130; Price v. Kirby, 1 Ala. 184; Reynolds v. Reynolds, 15 Ala. 398. Wolff v. Shelton, 51 Ala. 425; Burns v. Hendrix, 54 Ala. 78; Edmunson v. Wilson, 108 Ala. 118. **Treated as judgment on collateral attack.**—Brewer v. Bain, 60 Ala. 153; Yeatman v. Mattison, 59 Ala. 382; Chambers v. Crook, 42 Ala. 171. **Agreement to re-submit does away with former finding.**—Payne v. Crawford, 97 Ala. 604, s. c., 102 Ala. 387. **Plea setting up award must set out submission and award.**—Henry v. Porter, 29 Ala. 619. **When award and assailing evidence must be left to jury.**—Burns v. Hendrix, 54 Ala. 78. **Money awarded payable instanter when no time fixed.**—Ehrman v. Stanfield, 80 Ala. 118. **Authority of court to enter up, involves power to set aside award.** Collins v. L. & N. R. Co., 70 Ala. 533. **When submission includes property in two states, award binding everywhere;** arbitrators may sit in either state.—Edmunson v. Wilson, 108 Ala. 118. **When submission limits extent and duration of authority conferred and prescribes mode in which decision shall be evidenced, a substantial compliance is essential to a valid award.** Anderson v. Miller, 108 Ala. 171.

510 (3223) (3538) (3150) (2711). **Submission to be in writing; contents; delivery of to arbitrators.**—The parties must concisely state in writing, signed by them, the matter in dispute between them, and that they desire to leave the determination thereof to certain persons, naming them, as arbitrators; and such submission must be delivered to the arbitrators, or one of them, together with a list of the witnesses either party may desire to examine.

Provision for delivery of list of witnesses directory.—Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476. See citations to preceding sections.

511 (3224) (3539) (3151) (2712). **Proceedings before arbitrators; how award made and delivered.**—Thereupon, it is the duty of the arbitrators to appoint a time and place for hearing the parties and making their award, of which they must give the parties three days notice; and if no cause is shown for a continuance, they must proceed to hear and determine the matters referred to them, and make their award in writing, which must be signed by them, and a copy thereof be delivered to each of the parties, their agents, or attorneys, and the fact and date of such delivery endorsed on the original.

Notice to parties of the hearing, or their actual presence, indispensable. Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476. **Receiving testimony after evidence closed and parties withdrawn, vitiates award.**—Rosenau v. Legg, 82 Ala. 568. **Or shutting out testimony of party in violation of promise to hear at another time.**—Graham v. Woodall, 86 Ala. 313. **Failing to serve copy of award does not affect its validity.**—Mobile, etc., Co. v. Yeind, 29 Ala. 325; Crook v. Chambers, 40 Ala. 239. **Unless the submission stipulates for delivery of copy.**—Anderson v. Miller, 108 Ala. 171. **Delivery of original award,** without objection at the time, substantial compliance with stipulation for copy, Ib.

512 (3225) (3540) (3152) (2713). **Supplying place of arbitrator; award by majority.**—If any of the arbitrators fail to attend at the time and place designated, and the parties appear, they may substitute others in their place; or if the parties cannot agree, the arbitrators present may themselves appoint others in their stead, of which they must make a memorandum on the submission. A majority of the arbitrators may make the award.

Substitution of arbitrator; memorandum thereof.—Snodgrass v. Armbrester, 90 Ala. 493; Dudley v. Farris, 79 Ala. 187; Chapman v. Ewing, 78 Ala. 403. **Award by umpire alone, though signed by all, invalid.**—Horton v. Pool, 40 Ala. 629. **Proceeding to trial without objection, waives failure to substitute.**—Badders v. Britt, 88 Ala. 367.

513 (3226) (3541) (3153) (2714). **Return and effect of award; to what court returned.**—If the award is not performed in ten days after notice and delivery of a copy thereof, the successful party may, if a suit be pending, cause the award and the file of papers in the cause to be returned to the court in which the suit is pending, or, if no suit is pending, cause the submission and award to be returned to the clerk of the circuit court of the county in which the award is made, if for the payment of more than fifty dollars, for the delivery of specific property, or to do or omit to do any particular act; if for fifty dollars, or less, then to a justice of the peace of the county; and, in either case, such award has the force and effect of a judgment at law, upon which execution may issue as in other cases.

Award has force and effect of judgment ten days after notice and delivery of copy.—King v. Jemison, 33 Ala. 499, 508.

514 (3227) (3542) (3154) (2715). **Performance of award; when enforceable by attachment.**—If the award is for the delivery of property, or to do or omit to do any particular act, on notice and motion to the court, performance may be enforced by attachment, or other appropriate writ.

Award not in pursuance of statute must be proceeded upon by regular action.—Davis v. McConnell, 3 Stew. 492; Lamar v. Nicholson, 7 Port. 158. **When court of equity will enforce performance.**—Jones v. Blalock, 31 Ala. 180; Kirksey v. Fike, 27 Ala. 383.

515 (3228) (3543) (3155) (2716). **Oath to be administered to arbitrators.**—Before making their award, the arbitrators must be sworn impartially to determine the matters submitted to them, according to the evidence and the manifest justice and equity of the case, to the best of their judgment, without favor or affection; which oath they may administer to each other, or may be administered to them by any officer authorized to administer oaths.

Taking oath a point of substance.—Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476, 481. **Award failing to show the fact, it may be proved by parol.** Price v. Kirby, 1 Ala. 184; Crook v. Chambers, 40 Ala. 239. **Recital in award, that arbitrators were sworn, or duly sworn, sufficient.**—Price v. Kirby, supra; Mobile, etc., Co. v. Yeind, 29 Ala. 325.

516 (3229) (3544) (3156) (2717). **Witnesses and depositions.** The arbitrators, or either of them, have power to subpœna witnesses, at the request of either of the parties, and to administer all oaths which may be necessary in the progress of the cause; and must, on the application of either party, issue commission to take the deposition of any witness residing out of the county, which must be taken in the same manner as depositions in the circuit court, except that no oath to the materiality of the witness, or of the cause for taking the deposition, is required.

517 (3230) (3545) (3158) (2719). **How subpœnas executed.** Subpœnas for witnesses may be executed by the sheriff, by any constable of the county, or by the parties themselves.

518 (3231) (3546) (3159) (2720). **Defaulting witness; fine and liability.**—Any witness duly summoned, who fails to attend without sufficient excuse, may be fined ten dollars for the use of the county, for the collection of which the arbitrators must issue execution; and such defaulting witness is also liable to the party summoning him for any injury sustained by the loss of his testimony, to be recovered before any court having jurisdiction.

519 (3236) (3550) (3163) (2724). **When witness may refuse to attend, and arbitrators to deliver award; recovery of charges.** Any witness may refuse to testify until his fees are paid by the party summoning him; and the arbitrators may refuse to deliver copies of the award until all charges are paid; but if paid by a party not liable therefor, he may recover the same by action before any court having jurisdiction thereof; and the receipt of the arbitrators is presumptive evidence of the fact of payment, and of the liability of the party therefor.

520 (3235) (3549) (3162) (2723). **Pay of arbitrators, witnesses, and sheriff or constable.**—The arbitrators are, if demanded by them, entitled each to two dollars per day whilst actually engaged in the arbitration; the witnesses to one dollar per day each; and the sheriff or constable to the customary fees for executing subpœnas; all of which must be paid jointly by the parties, unless the arbitrators otherwise determine.

521 (3232) (3547) (3160) (2721). **Award final unless set aside for fraud, partiality, or corruption.**—An award made substantially in compliance with the provisions of this chapter is conclusive between the parties thereto and their privies, as to the matter submitted, and cannot be inquired into, or impeached for want of form or for irregularity, if the award determines the matter or controversy submitted; and such award is final, unless the arbitrators are guilty of fraud, partiality, or corruption in making it.

What substantial compliance.—Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476; King v. Jemison, Ib. 499; Crook v. Chambers, 40 Ala. 239; Horton v. Pool, Ib. 629; Anderson v. Miller, 108 Ala. 171. **Finality and conclusiveness of award.**—Mendenhall v. Smith, Minor, 380; Goodwin v. Yarbrough, 1 Stew. 152; Tankersley v. Richardson, 2 Stew. 130; Bumpass v. Webb, 4 Port. 65; Wright v. Bolton, 8 Ala. 548; Reynolds v. Reynolds, 15 Ala. 398; Jessie v. Cater, 25 Ala. 351, s. c., 28 Ala. 475; Mobile, etc. Co. v. Yeind, 29 Ala. 325; Young v. Leaird, 30 Ala. 371; Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476; King v. Jemison, Ib. 499; Davis v. Forshee, 34 Ala. 107; Roundtree v. Turner, 36 Ala. 555; McCrary v. Harrison, Ib. 577; Crook v. Chambers, 40 Ala. 239; Elrod v. Simmons, Ib. 274; Yeatman v. Mattison, 59 Ala. 382; Brewer v. Bain, 60 Ala. 153; Chapman v. Ewing, 78 Ala. 403; Badders v. Britt, 88 Ala. 367; Thompson v. Green, 85 Ala. 240; Odum v. Rutledge, etc. R. Co., 94 Ala. 488; Edmunson v. Wilson, 108 Ala. 118. **When relief may be had at law.**—Graham v. Woodall, 86 Ala. 313 (contra, Strong v. Beroujon, 18 Ala. 168); Rosenau v. Legg, 82 Ala. 568; Burns v. Hendrix, 54 Ala. 78; Comer v. Thompson, Ib. 265; Horton v. Pool, 40 Ala. 629; Roundtree v. Turner, 36 Ala. 555; McCrary v. Harrison, Ib. 577. **When relief may be had in equity.**—Chambers v. Crook, 42 Ala. 171; Young v. Leaird, 30 Ala. 371; Bumpass v. Webb, 4 Port. 65; Wolff v. Shelton, 51 Ala. 425; Brewer v. Bain, 60 Ala. 153. **Party estopped from assailing award which he has ratified and executed.**—McRae v. Buck, 2 Stew. and Port. 155; Willingham v. Harrell, 36 Ala. 583; Reynolds v. Roebuck, 37 Ala. 408. **Award evidence to support or defend ejectment.**—Moore v. Helms, 74 Ala. 368; Payne v. Crawford, 97 Ala. 604; s. c., 102 Ala. 387. **Awards much favored and liberally construed.**—Price v. Kirby, 1 Ala. 184; Tankersley v. Richardson, 2 Stew. 130; Reynolds v. Reynolds, 15 Ala. 398; Wolff v. Shelton, 51 Ala. 425; Burns v. Hendrix, 54 Ala. 78; Edmunson v. Wilson, 108 Ala. 118. **When participating surety bound by award between co-surety and principal.**—McGehee v. McGehee, 12 Ala. 83. **Award fixing amount of mortgage debt** does not affect validity of mortgage.—Collier v. White, 97 Ala. 615.

522 (3233) (3547). **Appeal to supreme court.**—Either party may, however, within ten days after receiving notice of the award, file in the office of the clerk, register, or judge of the court in which the cause is pending, or, if no suit is pending, in the office of the clerk of the circuit court to which the award is returnable under the provisions of this chapter, a notice of appeal to the supreme court, and may tender to the arbitrators a bill of exceptions setting forth all the evidence in the cause, which, with the conclusions of law of the arbitrators, and their award thereon, shall be certified by them, or a majority of them, and returned with the file of papers, or with the submission, as the case may be, to the court to which the award is returnable; and either in term time or vacation, the clerk, register, or judge of the court may enter it up as the judgment or decree of the court, and it shall stand as the judgment or decree of the court, unless set aside for some of the causes specified in the preceding section, or for the failure or refusal of the arbitrators to certify a correct bill of exceptions as herein provided; and from the judgment or decree so entered up, or from the judgment setting aside the award, an appeal shall lie as in other cases.

Appeal lies only from judgment entering up or setting aside award.—Collins v. L. & N. R. Co., 70 Ala. 533; Dudley v. Farris, 79 Ala. 187; Bell v. Sampey, 80 Ala. 372. **When mandamus will lie** to compel court to enter judgment on award.—Dudley v. Farris, supra. **When not.**—Bell v. Sampey, supra; Dudley v. Farris, supra. **On appeal court will intend everything record will warrant** to sustain award.—Tankersley v. Richardson, 2 Stew. 130; Reynolds v. Reynolds, 15 Ala. 398; Price v. Kirby, 1 Ala. 184.

523 (3234) (3548) (3161) (2722). **Arbitrations at common law not prevented.**—Nothing in this chapter contained shall prevent any person or persons from settling any matters of controversy by a reference to arbitration at common law.

Difference between statutory and common law arbitrations and awards. Tuscaloosa Bridge Co. v. Jemison, 33 Ala. 476; Willingham v. Harrell, 36 Ala. 583; Wolff v. Shelton, 51 Ala. 425; Brewer v. Bain, 60 Ala. 153; Payne v. Crawford, 97 Ala. 604; s. c., 102 Ala. 387; Lamar v. Nicholson, 7 Port. 158; Martin v. Chapman, 1 Ala. 278; Byrd v. Odem, 9 Ala. 755; Strong v. Beroujon, 18 Ala. 168; Davis v. McConnell, 3 Stew. 492.

CHAPTER 11.

ATTACHMENTS.

ARTICLE 1.—ISSUE OF ATTACHMENTS. 524–539.
2.—IN WHAT MANNER AND ON WHAT PROPERTY EXECUTED. 540–554.
3.—REPLEVY OF PROPERTY. 555–557.
4.—ANCILLARY ATTACHMENTS. 558–560.
5.—PLEADINGS, TRIAL, JUDGMENT AND EXECUTION. 561–570.
6.—ATTACHMENTS ISSUED BY JUSTICE OF THE PEACE. 571–578.

ARTICLE 1.

ISSUE OF ATTACHMENTS.

524 (2929) (3252) (2927) (2503). **For what demands issued.** Attachments may issue—

1. To enforce the collection of a debt, whether it be due or not, at the time the attachment is taken out.

2. For any moneyed demand, the amount of which can be certainly ascertained.

3. To recover damages for a breach of contract, when the damages are not certain or liquidated.

4. When the action sounds in damages merely.

Subdivision 1.—U. S. Rolling Stock Co. v. Clark, 95 Ala. 322. **Subdivision 2.** Guy v. Lee, 81 Ala. 163; Tenn. R. T. Co. v. Kavanaugh, 93 Ala. 324; U. S. Rolling Stock Co. v. Clark, 95 Ala. 322; Atkinson v. James, 96 Ala. 214. **Subdivision 3.**—Weaver and Puryear, 11 Ala. 941; Bozeman v. Rose, 40 Ala. 212; Moore v. Dickerson, 44 Ala. 485. **Subdivision 4.**—Hadley v. Bryars, 58 Ala. 139. Covers any civil action under proper conditions, whether ex contractu or ex delicto.—Hadley v. Bryars, 58 Ala. 139; Atkinson v. James, 96 Ala. 214. **May be sued out against partnership in firm name.**—Sims v. Jacobson, 51 Ala. 186. **Suit may be instituted in any county where levy, by garnishment or otherwise, may be made.**—Herndon v. Givins, 16 Ala. 261; Atkinson v. Wig-

gins, 69 Ala. 190; Home Protection Ins. Co. v. Richards, 74 Ala. 466; McPhillips v. Hubbard, 97 Ala. 512. **Lies against foreign corporation.**—Central M. & M. Co. v. Stoven, 45 Ala. 594. **When lies against national bank.**—Bank v. Colby, 46 Ala. 435. (But see Bank v. Colby, 21 Wall. 609.) **Does not lie to enforce liability of foreign corporation to an employee at the place of its domicil,** at the suit of a creditor of the latter.—L. & N. R. Co. v. Dooley, 78 Ala. 524. **When prematurely brought.**—Russell v. Gregory, 62 Ala. 454; Moore v. Dickerson, 44 Ala. 485. **If sued out on a demand for which it does not lie,** objection raised by rule to show cause.—Cain v. Mather, 3 P. 224; Borroughs v. Wright, 3 Ala. 43; Roberts v. Burke, 6 Ala. 348; Jordan v. Hazzard, 10 Ala. 221; s. c., 12 Ala. 180; Ex parte Putnam, 20 Ala. 592; Van Dyke v. State, 24 Ala. 81; Gills v. Downs, 26 Ala. 670; Brown v. Coats, 56 Ala. 439; Dryer v. Abercrombie, 57 Ala. 497; Johnston v. Hannah, 66 Ala. 127; Rich v. Thornton, 69 Ala. 473; Drakford v. Turk, 75 Ala. 339; Adair v. Stone, 81 Ala. 113; Stradham v. Parrish, 93 Ala. 465. **Judgment cannot be rendered until debt is due.**—Jones v. Holland, 47 Ala. 732. **Bill to set aside attachment as collusive or fraudulent.**—Cartwright v. Bamberger, 90 Ala. 405; s. c., 99 Ala. 622; Bamberger v. Voorhees, 99 Ala. 292; Pollak v. Muscogee Mfg. Co., 108 Ala. 467; Barrett v. Pollak Co., 108 Ala. 390.

525 (2930) (3253) (2928) (2504). **Cases in which issued.**—And in the following cases:

1. When the defendant resides out of the state.

2. When the defendant absconds.

3. When the defendant secretes himself so that the ordinary process of law cannot be served on him.

4. When the defendant is about to remove out of the state.

5. When the defendant is about to remove his property out of the state, so that the plaintiff will probably lose his debt, or have to sue for it in another state.

6. When the defendant is about fraudulently to dispose of his property.

7. When the defendant has fraudulently disposed of his property.

8. When the defendant has moneys, property, or effects, liable to satisfy his debts, which he fraudulently withholds.

Subdivision 1.—Graham v. Ruff, 8 Ala. 171. **Subdivision 2.**—Middlebrook v. Ames, 5 S. & P. 158; Pitts v. Burroughs, 6 Ala. 733. **Subdivision 3.**—Pitts v. Burroughs, 6 Ala. 733; Malone v. Handley, 81 Ala. 117. **Subdivision 4.** Baldwin v. Walker, 91 Ala. 428; s. c., 94 Ala. 514. **Subdivision 5.**—Napper v. Noland, 9 P. 218; Stewart v. Coles, 46 Ala. 646. **Subdivision 6.**—Tree v. Hukill, 44 Ala. 197; Hafley v. Patterson, 47 Ala. 271; Smith v. Baker, 80 Ala. 318; Campbell v. Hopkins, 87 Ala. 179; Schloss v. Rovelsky, 107 Ala. 596. **Subdivision 7.**—City National Bank v. Jeffries, 73 Ala. 183; Smith v. Baker, 80 Ala. 318; Baxley v. Segrest, 85 Ala. 183; Schloss v. Rovelsky, 107 Ala. 596. **Subdivision 8.**—Smith v. Baker, 80 Ala. 318.

526 (2931) (3254) (2929) (2505). **By what officers issued.**—In the first and second cases mentioned in the first section of this article, an attachment may be issued by any judge of the circuit court, returnable to any county in the state; or by the clerk of the city or circuit court, judge of probate, or any justice of the peace or a notary public exercising the jurisdiction of a justice of the peace, within their respective counties; in the third and fourth cases, only by a judge of the circuit court, judge of probate, or chancellor, returnable to any county.

Deputy may issue in the name of the clerk.—Minniece v. Jeter, 65 Ala. 222; Joseph v. Cawthorn, 74 Ala. 411. **Justice of the peace or a notary with like powers,** may issue attachment returnable before himself.—Griffin v. Appleby, 69 Ala. 409; Rice v. Watts, 71 Ala. 593; Nordlinger v. Gordon, 72 Ala. 239; Jackson v. Bain, 74 Ala. 328; Carter v. O'Bryan, 105 Ala. 305. **Judge of the city court of Selma may issue.**—Bledsoe v. Gary, 95 Ala. 70. **And of**

Mobile.—Lowenstein v. Martin, 105 Ala. 668. **Clerk may issue to recover damages for breach of contract to purchase personal property.**—Tenn. R. T. Co. v. Kavanaugh, 93 Ala. 324. **And to recover damages for removal of cotton** and destruction of landlord's lien.—Atkinson v. James, 96 Ala. 214. **Clerical mistake does not invalidate.**—Carter v. O'Bryan, 105 Ala. 305. **General appearance waives defects** and irregularities in the writ.—Lampley v. Beavers, 25 Ala. 534; Birmingham Flooring Mills v. Wilder, 85 Ala. 593; Stephens v. Adams, 93 Ala. 117; Rosenburg v. Claflin, 95 Ala. 249; Carter v. O'Bryan, 105 Ala. 305.

527 (2932) (3255) (2930) (2506). **Oath to be made.**—The officer, before issuing the attachment in the first two cases mentioned in the last section, must require the plaintiff, his agent, or attorney, to make oath of the amount of the debt or demand, and that it is justly due, or to become due,* and that one of the causes enumerated in the second section of this article exists; and that the attachment is not sued out for the purpose of vexing or harassing the defendant; and such oath must be reduced to writing and subscribed by the party making it.

Affidavit may be made before any one having authority to take and certify affidavits.—Wright v. Smith, 66 Ala. 545. **Must be made before or at the time writ issues.**—Watts v. Womack, 44 Ala. 605; Wright v. Smith, 66 Ala. 545. **Writ issuing without affidavit can be abated only on plea.**—Jones v. Pope, 6 Ala. 154; Kirkman v. Patton, 19 Ala. 32; Dow v. Whitman, 36 Ala. 604; Hyde v. Adams, 80 Ala. 111; Smith v. Baker, 80 Ala. 318. **Affidavit that defendant is a "non-resident", sufficient.**—Jackson v. Stanley, 2 Ala. 326; Graham v. Ruff, 8 Ala. 171. **Made by agent on information and belief, sufficient.** Mitchell v. Pitts, 61 Ala. 219. **Must set out individual names of plaintiff partners,** or it abates on plea.—Sims v. Jacobson, 51 Ala. 186. **Grounds of attachment cannot be stated disjunctively, but may be stated conjunctively if consistent with each other.**—Johnson v. Hale, 3 S. & P. 331; Cannon v. Logan, 5 P. 77; Watson v. Auerbach, 57 Ala. 353; Smith v. Baker, 80 Ala. 318. **Variance between amount claimed in affidavit and complaint must be claimed on trial.**—McAbee v. Parker, 78 Ala. 573; Fears v. Thompson, 82 Ala. 294; Decatur Imp. Co. v. Crass, 97 Ala. 524. Failure of clerk to certify not a fatal defect.—McCartney v. Bank, 3 Ala. 709; Hyde v. Adams, 80 Ala. 111. **Defects reached by plea in abatement or motion to quash.**—Free v. Howard, 44 Ala. 195; Hall v. Brazleton, 46 Ala. 359; Sims v. Jacobson, 51 Ala. 186; DeBardeleben v. Crosby, 53 Ala. 363; Watson v. Auerbach, 57 Ala. 353; Murphy v. Egger, 59 Ala. 639; Johnston v. Hannah 66 Ala. 127; Hyde v. Adams, 80 Ala. 111. **Amendment.**—See citations to section 564 (2998).

As amended Feb. 18, 1897, p. 1247.

528 (2933) (3256) (2931) (2507). **Bond and surety also required.** Such officer must, when the attachment is sued out otherwise than upon the ground that the defendant is a non-resident, further require the plaintiff, his agent or attorney, to execute a bond in double the amount claimed, with sufficient surety, payable to the defendant, with the condition that the plaintiff will prosecute the attachment to effect, and pay the defendant all such damages as he may sustain by the wrongful or vexatious suing out of such attachment. When the attachment is sued out upon the ground that the defendant is a non-resident, such officer shall issue the writ with or without a bond being given, as the plaintiff may elect. If such attachment is issued without bond, that fact must be indorsed on the writ. Should the defendant, before the return day thereof, in person or through his agent or attorney, make an unqualified appearance in the cause, it is the duty of the clerk to issue notice to the plaintiff or his attorney of the fact of such appearance. Unless within twenty-four hours after the service of such notice the plaintiff make bond

*The words "or to become due" inserted by joint committee.

payable to the defendant in double the amount sued for, such levy shall be discharged.

Bond is properly payable to all of several defendants, although writ is only levied on property of one.—Hadley v. Bryars, 58 Ala. 139. **Effect where penalty is left blank.**—Copeland v. Cunningham, 63 Ala. 394. **Effect where bond is payable to partnership in firm name and levy is on individual property.**—Watts v. Rice, 75 Ala. 289. **If bond is in fact approved the indorsement of approval is unnecessary.**—Hyde v. Adams, 80 Ala. 111.

529 (2934) (3257) (2932) (2508). **When additional affidavit required.**—When an attachment is applied for in the cases provided for in the third and fourth subdivisions of the first section of this article, the judge or chancellor, before issuing it, must require the plaintiff, his agent, or attorney, in addition to the affidavit and bond required in other cases, to make affidavit in writing of the special facts and circumstances, so as to enable him to determine the amount for which a levy must be made; which sum may, at the discretion of the court, be reduced at the return term of the attachment, on affidavit of the defendant, and the levy released to the amount of such reduction.

Definiteness and sufficiency in the discretion of the judge cannot be tested by plea in abatement.—Bozeman v. Rose, 40 Ala. 212; Hadley v. Bryars, 58 Ala. 139. **Special affidavit not necessary for attachment for breach of warranty in sale of chattels.**—Guy v. Lee, 81 Ala. 163. **Nor in attachment for destruction of landlord's lien.**—Atkinson v. James, 96 Ala. 214.

530 (2935) (3258) (2933) (2509). **Attachment by a non-resident against another.**—A non-resident of this state may sue out an attachment against a non-resident for an existing debt or ascertained liability; but the plaintiff, his agent, or attorney, is required, in addition to the oath necessary in other cases, to swear that, according to the best of his knowledge, information, and belief, the defendant has not sufficient property within the state of his residence wherefrom to satisfy the debt; and must also give bond as in other cases, with surety resident in this state.

Affidavit must show that defendant has not sufficient property in the state of his residence to pay the debt in suit.—Cobb v. Force, 6 Ala. 468; Cobb v. Miller, 9 Ala. 499; Jones v. Lawrence, 36 Ala. 618. **Lies for only such demands as ordinary attachment lies to recover.**—Hazard v. Jordan, 12 Ala. 180. **Affidavit on information and belief.**—Mitchell v. Pitts, 61 Ala. 219. **Need not aver residence of defendant.**—Jackson v. Stanley, 2 Ala. 326.

531 (2936) (3259) 2934) (2510). **Notice to non-resident defendant.**—When an attachment is sued out against a non-resident of the state, the writ shall be returned to the clerk of the court as soon as levied upon the property of the defendant, and thereupon the clerk shall cause a notice of the attachment and levy on the defendant's property to be advertised, once a week for three successive weeks, in some newspaper, a copy of which must be sent by mail to the defendant, if his residence is known or can be ascertained; and if such publication is perfected twenty days before the next term of the court, the case shall stand for trial at that term; otherwise, at the succeeding term, or any other term after the perfection of such publication twenty days prior thereto.

Applies whatever the ground of attachment.—Dollins v. Pollock, 89 Ala. 351.

Execution of replevy bond an admission of notice.—Chastain v. Armstrong, 85 Ala. 215. **The fact that a default judgment cannot be rendered against non-appearing defendant without a levy is not changed.**—Byers v. Baker, 104 Ala. 173. **Necessary proof of notice; recitals of judgment entry.**—Walker v. Hallett, 1 Ala. 379; Johnston v. Hainesworth, 6 Ala. 443; Butler v. Butler, 11 Ala. 668; Hartley v. Bloodgood, 16 Ala 233; Hodges v. Wise, 16 Ala. 509; Cullum v. Bank, 23 Ala. 797; Clark v. Gilmer, 28 Ala. 265; Keiffer v. Barney, 31 Ala. 192; Hunt v. Ellison, 32 Ala. 173; Dow v. Whitman, 36 Ala. 604; Brinsfield v. Austin, 39 Ala. 227; Diston v. Hood, 83 Ala. 331; Meyer v. Keith, 99 Ala. 519.

532 (2937) (3260). **Notice of levy when defendant resident of state.**—Notice of the levy of the attachment shall be given in writing by the sheriff, or other person who makes such levy, to the defendant in person, or notice thereof in writing left at his residence, if resident in the county; and if not resident in the county, but a resident of the state, then by posting up a written notice at the courthouse door, and by sending a copy of the same by mail, addressed to the defendant at the post-office nearest his residence.

Oral notice of levy on stock in corporation, sufficient.—Abels v. P. & M. Ins. Co., 92 Ala. 382. **May be given after death of plaintiff and before revivor.**—Rice v. Clements, 57 Ala. 191. **General appearance or execution of replevy bond a waiver.**—Peebles v. Weir, 60 Ala. 413; Betancourt v. Eberlin, 71 Ala. 461; Chastain v. Armstrong, 85 Ala. 215. **Presumptions in favor of verity and correctness of sheriff's return.**—Fears v. Thompson, 82 Ala. 294.

533 (2938) (3261) (2936) (2512). **Corporations may sue out attachments.**—Corporations, either foreign or domestic, are entitled to process of attachment for the recovery of the debts or ascertained demands due them, the president, cashier of the corporation, or an agent or attorney thereof, making the affidavit and executing bond as in other cases.

534 (2939) (3262) (2937). **How security for costs may be given.** When an attachment is sued out in favor of a non-resident, or a foreign corporation, security for the costs of the suit may be taken and approved by the officer issuing the same, or may be indorsed with his approval on the attachment.

See citations to section 1347 (2858).

535 (2940) (3263) (2938) (2513). **Attachments against foreign corporations.**—Process of attachment may issue against foreign corporations, having property in this state, for the recovery of debts, or to recover damages for a breach of contract when the damages are not certain or liquidated, or in cases where the action sounds in damages merely, in the same manner, and subject to the same rules as in case of natural persons residing without this state.

Central M. & M. Co. v. Stoven, 45 Ala. 594; Iron Age Pub. Co. v. W. U. Tel. Co., 83 Ala. 498; Sullivan v. Sullivan T. Co., 103 Ala. 371.

536 (2941) (3264) (2939) (2514). **Form; no objection taken for want of.**—The form of attachment must be in substance as follows, but no objection shall be taken for any defect in form, if the essential matters are set forth:

"The State of Alabama, ——— county. } To any sheriff of the State of Alabama:

Whereas A. B. (or C. D., as the agent or attorney of A. B., as the case may be) hath complained on oath to me, E. F., judge of

the circuit court of said state (or justice of the peace, or judge of the probate court, or clerk of the circuit court of said county, or as the case may be), that G. H. is (or will be, as the case may be) justly indebted to the plaintiff in the sum of —— dollars, and the plaintiff having made affidavit and given bond as required by law in such cases, you are hereby commanded to attach so much of the estate of G. H. as will be of value to satisfy the said debt and costs, according to the complaint; and such estate, unless replevied, so to secure that the same may be liable to further proceedings thereon, to be had at the next term of the circuit court for the county of ———, to be held at the court-house thereof; when and where you must make known how you have executed this writ.

Witness my hand, this, etc. E. F., Clerk."

Need not state term to which returnable.—Blair v. Miller, 42 Ala. 308.
Proper direction of writ.—Blair v. Miller, 42 Ala. 308; Peebles v. Weir, 60 Ala. 413; Herring v. Kelly, 96 Ala. 559; Drewry v. Leinkauff, 94 Ala. 486.
Waiver of exemptions must be indorsed.—Fears v. Thompson, 82 Ala. 294.
Defects taken advantage of by plea in abatement.—Peebles v. Weir, 60 Ala. 413.

537 (2942) (3265) (2940) (2515). **Return of bond and affidavit.** The bond and affidavit must be returned by the officer issuing the attachment to the court to which the attachment is returnable.

538 (2943) (3266) (2941). **When issued and executed on Sunday.** Attachments may issue and be executed on Sunday, if the plaintiff, his agent or attorney, in addition to the oath prescribed for the issue of such process, make affidavit that the defendant is absconding, or is about to abscond, or is about to remove his property from the state, and give the bond required in this article.

539 (2944) (3267) (2942). **Provisions of chapter applicable to private corporations.**—The provisions of this chapter are applicable to all private corporations, and all affidavits or answers, required to be made under any of its provisions, may be made by the president, cashier, secretary, or any other duly authorized agent of such corporation; and such corporations may do and be dealt with under its provisions, in the same manner as if they were natural persons.

ARTICLE 2.

IN WHAT MANNER AND ON WHAT PROPERTY EXECUTED.

540 (2945) (3268) (2943) (2516). **How attachment executed.** Attachments may be levied on real estate, whether a fee simple or any less legal estate, or on personal property of the defendant; or may be executed by summoning any person indebted to the defendant, or liable to him on a contract for the delivery of personal property, or for the payment of money which may be discharged by the delivery of personal property, or on a contract payable in personal property, or a person having in his possession, or under his control, any money or effects belonging to the defendant; and the officer executing the writ must indorse such levy or service thereon, and, if

practicable, take the property into his possession, unless replevied as hereinafter prescribed.

What subject to levy: Lands on which execution has been levied.—Johnson v. Burnett, 12 Ala. 743. **Any property of defendant that has value however small.**—Thornton v. Winter, 9 Ala. 613; Clark v. Cilley, 36 Ala. 652. **Funds in the hands of an attorney which he has been directed to pay to others,** but to which application payees have not assented.—Sterrett v. Miles, 87 Ala. 472; Coleman v. Hatcher, 77 Ala. 217; Trager v. Feibleman, 95 Ala. 60. **Certificate of stock in a corporation.**—Fisher v. Jones, 82 Ala. 117; Berney Nat. Bank v. Pinckard, 87 Ala. 577; Abels v. Planters & Merchants' Ins. Co., 92 Ala. 382. **Rule as to levy on property already attached and replevied.** McRae v. McLean, 3 P. 138; Rives v. Wilborne, 6 Ala. 45; McLemore v. Benbow, 19 Ala. 76; Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570; Powell v. Rankin, 80 Ala. 316; Sackhoff v. Vandegrift, 98 Ala. 192, (distinguishing Dollins v. Lindsey, 89 Ala. 217). **What not subject.**—Thompson v. Thornton, 21 Ala. 808; Read v. Sprague, 34 Ala. 101; Goode v. Longmire, 35 Ala. 668; Central M. & M. Co. v. Stoven, 45 Ala. 594; Starnes v. Allen, 58 Ala. 316. **Mortgagee's interest in land before entry is not subject.** Morris v. Barker, 82 Ala. 272; Martin v. Carter, 90 Ala. 96. **Nor mere right to personal property held adversely.**—Horton v. Smith, 8 Ala. 73. **Nor vested remainder in personal property during continuance of particular estate.** Goode v. Longmire, 35 Ala. 668. **Nor personal property conveyed by deed of trust** but remaining in grantor's hands after default.—Thompson v. Thornton, 21 Ala. 808. **Nor statutory right of redemption.**—Central M. & M. Co. v. Stoven, 45 Ala. 594. **Nor interest of landlord in crop by virtue of his lien.** Starnes v. Allen, 58 Ala. 316. **Nor property in possession of a receiver, pending appeal.**—Stanton v. Heard, 100 Ala. 515. **Nor property obtained from a search of person unlawfully arrested.**—Cunningham v. Baker, 104 Ala. 160. **Service of garnishment a levy.**—Thompson v. Allen, 4 S. & P. 184; Cleaveland v. State, 34 Ala. 254. **Although garnishee not indebted.**—Flournoy v. Lyon, 70 Ala. 308. **But default judgment not sustained without judgment against garnishee.**—Byers v. Baker, 104 Ala. 173. **What demands can be reached by garnishment.**—See citations to section 2191 (2976). **Levy not sufficient if colorable or fictitious.**—Thornton v. Winter, 9 Ala. 613; Grier v. Campbell, 21 Ala. 327. **Or when procured by force, fraud or trespass.**—Ex parte Hurn, 92 Ala. 102. **Officer levying must acquire possession and control of personal property.**—Abrams v. Johnson, 65 Ala. 465; Stanton v. Heard, 100 Ala. 515. **Officer cannot levy by garnishment until the attachment writ is in his hands.**—Donald v. Nelson, 95 Ala. 111. **Officer must indorse description of property on the writ or attach an inventory.**—Green v. Pyne, 1 Ala. 235; Toulmin v. Lesesne, 2 Ala. 359. **May amend indorsement until it is returned.**—Harris v. Russell, 93 Ala. 59. **When against several may be levied on joint property or property of one;** but it only brings in those who have an interest therein.—Hadley v. Bryars, 58 Ala. 139. **Levy on exempt property brings defendant into court.**—Hadley v. Bryars, 58 Ala. 139. **Effect of death and insolvency of defendant.**—McEachin v. Reid, 40 Ala. 410; Seals v. Holloway, 77 Ala. 344. **When return sufficiently shows that property belongs to defendant.**—Bickerstaff v. Patterson, 8 P. 245; Kirksey v. Bates, 1 Ala. 303; Miller v. McMillan, 4 Ala. 527; Fleming v. Burge, 6 Ala. 373; Lucas v. Godwin, 6 Ala. 831. **Junior attaching creditor cannot obtain priority by first obtaining judgment.**—Alexander v. King, 87 Ala. 642. **Sheriff, and not clerk, must issue garnishment whereby attachment is levied.**—Donald v. Nelson, 95 Ala. 111; Warren v. Mathews, 96 Ala. 183. **Proceeding where several attachments are levied by garnishment against fund in court.**—Warren v. Mathews, 96 Ala. 183.

541 (2946) (3269) (2944) (2517). **Garnishee cited to appear and answer.**—When attachment is executed by summoning a person indebted to the defendant, such person is called the garnishee, and the summons must be to answer as garnishees are required to answer, and upon return of an attachment so executed, proceedings may be had as in other cases of garnishment.

See citations to sections 2187 (2974), 2191 (2976).

542 (2947) (3270) (2945) (2518). **Levied on joint or separate property.**—An attachment may be levied on the joint or separate estate of joint obligors, promissors, or partners, whether resident or non-resident.

Levy only operates to bring in those of the defendants who have an interest in the property levied on.—Hadley v. Bryars, 58 Ala. 139. **If against partnership in the firm name, writ can only be levied on partnership property.**—Watts v. Rice, 75 Ala. 289. **A debt due a member of the partnership may be levied on in attachment against the firm.**—Pearce v. Shorter, 50 Ala. 318.

543 (2948) (3271) (2946) (2519). **Executors and administrators.** Executors and administrators may commence a suit by attachment in their representative character.

Lies against an executor in his official capacity to subject a debt due by him as executor to himself personally.—Dudley v. Falkner, 49 Ala. 148. **Administrator garnishee cannot question ownership of original judgment.** Jackson v. Shipman, 28 Ala. 488. **Administrator may be summoned as garnishee before lapse of six months, but no judgment can be rendered against him until twelve months after appointment.**—Moore v. Stainton, 22 Ala. 831. **Answer not admitting assets.**—Corbitt v. Pynes, 45 Ala. 258.

544 (2953) (3277) (2952) (2525). **Attachments executed in any county.**—The attachment may be executed in any county of the state by the sheriff of the county in which the property or garnishee may be found; and the sheriff must take and hold the property attached, unless replevied, subject to the order of the court in which the attachment is pending.

545 (2954) (3278) (2954) (2526). **Branch writs.**—Branch writs of attachment may issue to any county of the state, directed to any sheriff of the State of Alabama, to be executed as in the preceding section.

546 (2955) (3313) (2988) (2560). **Alias writs; new writs of garnishment.**—Alias writs of attachment, or new writs of garnishment, may be issued by the clerk without a renewal of the bond or affidavit, in cases where no property, or an insufficient amount thereof to satisfy the plaintiff's demand, has been found, or when, pending the suit, the plaintiff wishes to garnish other persons.

547 (2956) (3279) (2953). **Levy by constables.**—When an attachment is issued by a justice of the peace, or a notary public exercising the jurisdiction of a justice of the peace, if the amount of the debt does not exceed the penalty of the constable's bond, the justice, or notary, may, by indorsement on the process, direct it to be executed by the constable of the precinct, who shall return the same to the court to which it is returnable.

Indorsement need not be in any particular form or on the back of the writ.—Drewry v. Leinkauff, 94 Ala. 486. **Regular bonded constable must make levy.**—Peebles v. Weir, 60 Ala. 413; Carter v. Ellis, 90 Ala. 138 (explaining Brinsfield v. Austin, 39 Ala. 227). **Constable should deliver property to sheriff.**—Joseph v. Henderson, 95 Ala. 213.

548 (2957) (3280) (2955) (2527). **Lien of attachment.**—The levy of an attachment, or service of a garnishment, creates a lien in favor of the plaintiff.

Lien attaches at time of levy.—McRae v. McLean, 3 P. 138; Cary v. Gregg, 3 S. 433; Pond v. Griffin, 1 Ala. 678; Langdon v. Raiford, 20 Ala. 532; Hardaway v. Semmes, 38 Ala. 657; Woolfolk v. Ingram, 53 Ala. 11; Phillips v. Ash, 63 Ala. 414; Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570; Cartwright v. Bamberger, 90 Ala. 405; Bamberger v. Voorhees, 99 Ala. 292. **Lien is inchoate and does not divest ownership; judgment must be obtained or it is lost.**—Hale v. Cummings, 3 Ala. 398; Fitzpatrick v. Edgar, 5 Ala. 499; Sherrod v. Davis, 17 Ala. 312; Lamar v. Gunter, 39 Ala. 324; McEachin v. Reid, 40 Ala. 410; Phillips v. Ash, 63 Ala. 414; Cordaman v. Malone, 63 Ala.

556; Scarborough v. Malone, 67 Ala. 570; Ware v. Russell, 70 Ala. 174; Berney Nat. Bank v. Pinckard, 87 Ala. 577; Dollins v. Pollock, 89 Ala. 351; Abels v. P. & M. Ins. Co., 92 Ala. 382; Joseph v. Henderson, 95 Ala. 213. **Replevy, nor conveyance after levy, will impair lien.**—Cary v. Gregg, 3 S. 433; Randolph v. Carlton, 8 Ala, 606; Reed v. Perkins, 14 Ala. 231; Baldwin v. Leftwich, 12 Ala. 838; Hardaway v. Semmes, 38 Ala. 657; Phillips v. Ash, 63 Ala. 414; Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570; Striplin v. Cooper, 80 Ala. 256; Abels v. P. & M. Ins. Co., 92 Ala. 382; Kyle v. Swem, 99 Ala. 573. **Nor failure of officer to make a return.**—Reed v. Perkins, 14 Ala. 231. **Nor the subsequent bankruptcy of defendant.**—May v. Courtnay, 47 Ala. 185; Crowe v. Reid, 57 Ala. 281; Martin v. Lile, 63 Ala. 406. **Nor suing out a fi. fa. on the judgment.**—Berney Nat. Bank v. Pinckard, 87 Ala. 577. **Nor by voluntary nonsuit by plaintiff which is immediately set aside and cause reinstated.**—Dollins v. Pollock, 89 Ala. 35. **Nor by death of defendant if on personal property; otherwise on realty.**—McClellan v. Lipscomb, 56 Ala. 255; s. c., 72 Ala. 151; Phillips v. Ash, 63 Ala. 414. **Lien obtained by issuing garnishment against maker of negotiable promissory note is destroyed by transfer to bona fide purchaser without notice before maturity.**—Mayberry v. Morris, 62 Ala. 113. **Lien on personal property is lost if defendant dies before judgment and his estate is declared insolvent.**—McEachin v. Reid, 40 Ala. 410; Woolfolk v. Ingram, 53 Ala. 11; Phillips v. Ash, 63 Ala. 414; Seals v. Holloway, 77 Ala. 344. **Junior attaching creditor cannot obtain priority by first obtaining judgment.**—Alexander v. King, 87 Ala. 642.

549 (2958) (3281) (2956) (2528). **Sale of perishable property under order of court.**—If the property levied on be perishable, it must be sold by order of the court, on motion of either party, and the proceeds of the sale retained by the sheriff to await the decision of the cause, unless the court otherwise direct.

Lease hold is not perishable.—First Nat. Bank v. Consolidated E. L. Co., 97 Ala. 465.

550 (2959) (3282) (2957) (2529). **When sold without order of court.** If the property levied on be of so perishable a nature that it will deteriorate greatly in value, or be destroyed, before the meeting of the court, or if the charge of keeping it be very great, it is the duty of the sheriff, if not replevied, to sell it at public auction, returning a statement of the facts and the money to the court.

Sheriff vested with discretion, gross abuse of which makes him liable as a trespasser.—Griel v. Hunter, 40 Ala. 542.

551 (2960) (3283). **When plaintiff may receive proceeds of sale upon executing refunding bond.**—When property levied on under an attachment has been sold pending the suit, on motion of the plaintiff, the judge of the court to which the attachment is returnable must, at any time after thirty days from the levy, in term time or vacation, make, and cause to be entered upon the minutes of the court, an order directing the officer having in his hands the proceeds of sale, after reserving an amount, to be fixed in the order, to cover the probable costs and charges in the cause, to pay over to the plaintiff, or his attorney, the balance of such proceeds, not exceeding the amount of the plaintiff's demand, to be stated in the order, upon his giving bond in double the amount of the money to be paid over, payable to the defendant, with sufficient surety, to be approved by such officer, and with condition, that if he is cast in the suit, he will pay into court the amount so paid over to him, with interest, or if he recovers in the suit, and the recovery is for a sum less than the amount so paid over to him, he will pay into court the excess, with interest; and upon the execution of such bond, such officers shall pay over to

the plaintiff, or his attorney, the proceeds of sale as directed in the order. Such order shall not, however, be made, if, upon the hearing of the motion, or at any time prior thereto, a claim to the property levied on is interposed by any person not a party to the suit, or the defendant denies under oath the existence of the plaintiff's demand. Notice of such motion, and of the time and place of hearing the same, must be served on the defendant, or his attorney, ten days before the hearing thereof; or if the defendant resides out of the state, and has no attorney resident of the county, such notice must be given by publication in some newspaper published in the county, once a week for three successive weeks.

Leinkauff v. Tuscaloosa S. & A. Co., 105 Ala. 328.

552 (2961) (3283). **Proceedings on forfeiture of such bond; when money to be paid defendant.**—The officer taking such bond shall forthwith return the same to the clerk of the court in which the suit is pending, with his indorsement thereon, showing how he has executed such order, and specifying the amount paid over to the plaintiff, or his attorney, thereunder, and the date of such payment; and if the plaintiff is cast in the suit, or if he recovers, and his recovery is for a less sum than the amount paid him under such order, and he fails for thirty days after the date of the rendition of the judgment to pay into court the money required by the condition of his bond to be paid, the clerk shall indorse the bond forfeited, and issue execution thereon against the obligors for the amount so paid to the plaintiff, or his attorney, as shown by the indorsement of the officer taking the bond, with interest from the date of such payment, if the plaintiff was cast in the suit; or, if the plaintiff recovered, and his recovery was for a less sum than the amount so paid, for the difference between the amount recovered and the amount received by him, with interest from the date of payment. If the plaintiff complies with the condition of the bond by paying the money into court, the same must be paid to the defendant.

553 (2962) (3284) (2958) (2530). **Amount so received by sheriff recovered on one day's notice.**—The sheriff and his sureties, or either of them, may be proceeded against by motion, on one day's notice, at the instance of the plaintiff, or of the defendant if the plaintiff fail in the action, for any money received for the sale of perishable property; and judgment rendered against him or them for the amount, and five per cent. a month from the time of the demand.

Entry of motion on docket sufficient notice.—James v. Moseley, 47 Ala. 299. **Statutory damages need not be specifically claimed.**—McArthur v. Dane, 61 Ala. 539.

554 (2963) (3285) (2959) (2532). **Bond of indemnity.**—When a doubt exists as to the title of the defendant to personal property which the sheriff is required to levy upon, he may demand indemnity from the plaintiff.

Indemnity may be demanded before or after levy.—Screws v. Watson, 48 Ala. 628; Lavretta v. Holcombe, 98 Ala. 503.

ARTICLE 3.

REPLEVY OF PROPERTY.

555 (2964) (3289) (2964) (2536). **Replevy of property levied on.** The defendant in attachment, or, in his absence, a stranger, may replevy the goods or chattels attached, or any part thereof, by executing bond, with sufficient sureties, payable to the plaintiff, in double the value of the property replevied, to be determined by the officer making the levy, with condition that if the defendant fail in the action, the principal in the bond, or his sureties, will return the specific property attached within thirty days after the judgment; which bond must be returned with the other papers of the cause.

Effect of replevy does not impair lien.—Cary v. Gregg, 3 S. 433; McRae v. McLean, 3 P. 138; Rives v. Wilborne, 6 Ala. 45; Langdon v. Brumby, 7 Ala. 53; Woolfolk v. Ingram, 53 Ala. 11; Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570; Striplin v. Cooper, 80 Ala. 256; Powell v. Rankin, 80 Ala. 316; Sackhoff v. Vandegrift, 98 Ala. 192 (distinguishing Dollins v. Lindsey, 89 Ala. 217); Kyle v. Swem, 99 Ala. 573. **Replevy by stranger; duty and liability.**—Sartin v. Weir, 3. S. &. P. 421; Kurney v. Mallory, 3 Ala. 626; Braley v. Clark, 22 Ala. 361; Cooper v. Peck, 22 Ala. 406; Mitchell v. Ingram, 38 Ala. 395; Kirk v. Morris, 40 Ala. 225; Morris v. Hall, 41 Ala. 510; Rhodes v. Smith, 66 Ala. 174. **Form of bond; if insufficient as statutory, may be good as common-law bond.**—Meredith v. Richardson, 10 Ala. 828; Mitchell v. Ingram, 38 Ala. 395; Russell v. Locke, 57 Ala. 420; Adler v. Potter, 57 Ala. 571; Agnew v. Leath, 63 Ala. 345. **Condition is to return the specific property.**—Sartin v. Weir, 3 S. & P. 421; Braley v. Clark, 22 Ala. 361; Cooper v. Peck, 22 Ala. 406; Rhodes v. Smith, 66 Ala. 174; Roswald v. Hobbie, 85 Ala. 73. **Failure to return any part of property subjects obligors to pro tanto liability.**—Dunlap v. Clements, 18 Ala. 778. **But only by action on bond if failure the result of act of plaintiff.**—Dunlap v. Clements, 18 Ala. 778. **Obligor and sureties "in a sense parties to the suit."**—Peebles v. Weir, 60 Ala. 413; Woolfolk v. Ingram, 53 Ala. 11; Rhodes v. Smith, 66 Ala. 174; Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570. **Remedy of surety for wrongful second levy.**—Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570. **Obligors cannot deny that property is subject to levy, despite the levy, or set up title to the property in themselves or a third person, until after its return to sheriff.**—Sartin v. Weir, 3 S. & P. 421; Mead v. Figh, 4 Ala. 279; Meredith v. Richardson, 10 Ala. 828; Easley v. Walker, 10 Ala. 671; Dunlap v. Clements, 18 Ala. 778; Braley v. Clark, 22 Ala. 361; Cooper v. Peck, 22 Ala. 406; Mitchell v. Ingram, 38 Ala. 395; Adler v. Potter, 57 Ala. 571; Rhodes v. Smith, 66 Ala. 174; Brown v. Hamil, 76 Ala. 506; Roswald v. Hobbie, 85 Ala. 73. **When obligors relieved from liability.**—McRae v. McLean, 3 P. 138; Dunlap v. Clements, 18 Ala. 778; Glover v. Taylor, 41 Ala. 124; Cordaman v. Malone, 63 Ala. 556; Scarborough v. Malone, 67 Ala. 570; Bolling v. Vandiver, 91 Ala. 375; Watson v. Simmons, Ib. 567.

556 (2965) (3291) (2966) (2538). **Forfeiture of replevy bond; execution thereon.**—When the property replevied is not delivered in thirty days after judgment against the defendant in attachment, the sheriff shall return the bond forfeited, and execution must be issued thereon against the principal and sureties for the amount of the value of the property replevied, as fixed by the sheriff or other officer making the levy, with interest thereon from the date of the bond, and for the cost of the replevy and of the execution, unless such value is greater than the amount of the judgment against the defendant, in which case the execution shall be for the amount of such judgment and costs.

Execution cannot issue except on statutory bond.—Woolfolk v. Ingram, 53 Ala. 11; Russell v. Locke, 57 Ala. 420; Rhodes v. Smith, 66 Ala. 174. **On failure to return property, and return of bond forfeited, execution issues;** pro tanto only if failure is partial.—Dunlap v. Clements, 18 Ala. 778; Braley v.

Clark, 22 Ala. 361; Cooper v. Peck, 22 Ala. 406; Woolfolk v. Ingram, 53 Ala. 11; Peebles v. Weir, 60 Ala. 413; Rhodes v. Smith, 66 Ala. 174; Roswald v. Hobbie, 85 Ala. 73.

557 (2966) (3292) (2967) (2539). **If property dies, or is destroyed, value received in discharge of bond.**—If any of the property so replevied should die or be destroyed without fault or negligence on the part of the person in possession, before the day for the delivery thereof, the obligors in the bond may tender the value to the plaintiff, his agent, or attorney; and if such tender is refused, such obligors may obtain relief by supersedeas.

Death after day of delivery does not absolve.—Burgess v. Sugg, 2 S. & P. 341. **Death of party replevying does not absolve.**—Woolfolk v. Ingram, 53 Ala. 11. **If destruction is produced by plaintiff, sureties are relieved.**—Dunlap v. Clements, 18 Ala. 778.

ARTICLE 4.

ANCILLARY ATTACHMENTS.

558 (2967) (3319, 3320) (2994, 2995) (2566, 2567). **Attachment in aid of pending suit.**—When a suit has been commenced by the suing out of a summons, whether such summons has been executed or not, the plaintiff, his agent, or attorney, may, at any time before judgment, sue out an attachment in aid of such suit, upon making affidavit and giving bond as is required on the issue of original attachments; and all proceedings on such attachments must be conducted as are proceedings on original attachments; and such attachment may be sued out in any case in which an original attachment may be sued out, and may be issued by the officer having authority to issue original attachments.

559 (2969) (3321) (2996) (2568). **Attachment may issue when resident defendant evades service of summons.**—When a summons has been returned "not found" as to all or any of the defendants, residents of the county, if the plaintiff, his agent, or attorney, make affidavit that the defendant has evaded the service of the process, the court must direct an attachment to issue, returnable to the next term of the court, and the cause must in all respects proceed, as against such defendant, as if originally commenced by attachment.

560 (2970) (3322) (2997) (2569). **Proceedings in such case.** The plaintiff may, notwithstanding such attachment, proceed to judgment against any of the defendants on whom process was served; but a judgment and satisfaction of the debt or claim abate the attachment at the costs of the plaintiff.

ARTICLE 5.

PLEADINGS, TRIAL, JUDGMENT AND EXECUTION.

561 (2995) (3323, 3324) (2998, 2999) (2570, 2571). **Complaint, when to be filed; time of trial.**—The plaintiff must, within the first

three days of the return term of the attachment, file his complaint, and the cause stands for trial at such return term, if the levy is made and notice thereof is given twenty days before the commencement of such term; but if the attachment is issued upon a demand not then due, the cause shall not stand for trial, nor shall the plaintiff be required to file his complaint, until such demand is due and payable.

Requirement as to filing complaint is directory.—Perkerson v. Snodgrass, 85 Ala. 137. **Need not be filed, nor can judgment be rendered, until debt is due.**—Jones v. Holland, 47 Ala. 732. **Default judgment cannot be taken until filed.**—Penn v. Edwards, 42 Ala. 655. **Death of plaintiff does not postpone time.**—Rice v. Clements, 57 Ala. 191. **Purpose of notice and effect of failure to give; executing replevy bond, or general appearance, a waiver; notice.** Peebles v. Weir, 60 Ala. 413; Rosenberg v. Claflin, 95 Ala. 249. **After appearance and plea, suit proceeds as if on ordinary summons and complaint.** Hutchison v. Powell, 92 Ala. 619; Giddens v. Bolling, 93 Ala. 92; Rosenberg v. Claflin, 95 Ala. 249. **Default judgment may be taken without notice given, if replevy bond filed.**—Peebles v. Weir, 60 Ala. 413; Hawkins v. Armour Packing Co. 105 Ala. 545, 548. **Judgment by default against non-resident on proof of statutory notice; what entry must show.**—Meyer v. Keith, 99 Ala. 519. **Judgment nil dicit with waiver of exemptions may be taken if waiver alleged in complaint,** although it was not indorsed on the writ.—Hutchison v. Powell, 92 Ala. 619.

562 (2996) (3325) (3000) (2572). **Practice in such suits.**—If the defendant appears and pleads, the cause proceeds as in suits commenced by summons and complaint; if he fails to appear, or appearing, fails to plead within the time required by law, the plaintiff may take judgment by default or nil dicit, and may execute a writ of inquiry, if necessary.

563 (2997) (3314) (2989) (2561). **When attachment may be abated.**—An attachment issued without affidavit and bond, as prescribed in this chapter, may be abated on plea of the defendant, filed within the first three days of the return term.

Can be abated only on plea of defendant; want of plea is not available on error unless objection is made.—Lowry v. Stowe, 7 P. 483; P. & M. Bank v. Andrews, 8 P. 404; Findlay v. Pruitt, 9 P. 195; Alford v. Johnson, 9 P. 320; Lowe v. Derrick, 9 P. 415; Jackson v. Stanley, 2 Ala. 326; Reynolds v. Bell, 3 Ala. 57; Scott v. Macy, 3 Ala. 250; Banks v. Lewis, 4 Ala. 599; Conklin v. Harris, 5 Ala. 213; Jones v. Pope, 6 Ala. 154; Roberts v. Burke, 6 Ala. 348; Fleming v. Burge, 6 Ala. 373; Burt v. Parish, 9 Ala. 211; Jordan v. Hazard, 10 Ala. 221; s. c., 12 Ala. 180; Kirkman v. Patton, 19 Ala. 32; Ex parte Putnam, 20 Ala. 592; Van Dyke v. State, 24 Ala. 81; Gill v. Downs, 26 Ala. 670; Stetson v. Goldsmith, 30 Ala. 602; Dow v. Whitman, 36 Ala. 604; Hall v. Brazleton, 40 Ala. 406; s. c., 46 Ala. 359; Bank v. Colby, 46 Ala. 435; Free v. Howard, 44 Ala. 195; Sims v. Jacobson, 51 Ala. 186; Debardeleben v. Crosby, 53 Ala. 363; Brown v. Coats, 56 Ala. 439; Watson v. Auerbach, 57 Ala. 353; Johnson v. Hannah, 66 Ala. 127; Fourney v. Gamble, 66 Ala. 469; Wright v. Smith, 66 Ala. 545; Busbin v. Ware, 69 Ala. 279; Fitzsimmons v. Howard, 69 Ala. 590; Rich v. Thornton, 69 Ala. 473; Hyde v. Adams, 80 Ala. 111.

564 (2998) (3315) (2990) (2562). **Attachment law; how construed; when attachment cannot be abated.**—The attachment law must be liberally construed to advance the manifest intent of the law; and the plaintiff, before or during the trial, must be permitted to amend any defect of form or of substance in the affidavit, bond, or attachment; and no attachment must be dismissed for any defect in the affidavit, if the plaintiff, his agent, or attorney, will make a sufficient affidavit, or for any defect in the bond, or for want of a bond, if the plaintiff, his agent, or attorney, is willing to give or substitute a sufficient bond.

Before the Code of 1886, defects of form only were amendable; defects of substance were fatal.—Hall v. Brazleton, 40 Ala. 406; Sims v. Jacobson, 51 Ala. 186; Shield v. Dothard, 59 Ala. 595; Peebles v. Weir, 60 Ala. 413; Flexner v. Dickerson, 65 Ala. 129; Knowles v. Steed, 79 Ala. 427; Robinson v. Holt, 85 Ala. 596; Richards v. Bestor, 90 Ala. 352. **There cannot be an entire change of parties.**—Sims v. Jacobson, 51 Ala. 186; Rosenberg v. Claflin, 95 Ala. 249; Ex parte Nicrosi, 103 Ala. 104. **Affidavit may be amended so as to show that affiant is an agent or attorney of another.**—Paulhaus v. Leber, 54 Ala. 91. **Amendment by adding signature.**—Watts v. Womack, 44 Ala. 605. **The defendant was about to "abscond himself and his property,"** amendable. Ware v. Todd, 1 Ala. 199. **May be amended to show corporate character of plaintiff.**—Rosenberg v. Claflin, 95 Ala. 249. **And that defendant, described as a corporation, is an individual.**—Ex parte Nicrosi, 103 Ala. 104. **Failure of clerk to certify to affidavit, amendable.**—Hyde v. Adams, 80 Ala. 111. **Whether bond is void or only defective a new bond may be substituted.** Jackson v. Stanley, 2 Ala. 326. **New bond may be required; if not given suit abates.**—Lowery v. Stowe, 7 P. 483; P. & M. Bank v. Andrews, 8 P. 404; Lowe v. Derrick, 9 P. 415; Scott v. Macy, 3 Ala. 250; Sims v. Jacobson, 51 Ala. 186; Mohr v. Chaffe, 75 Ala. 387; Hyde v. Adams, 80 Ala. 111; Ex parte Damon, 103 Ala. 477; Ex parte McKissack, 107 Ala. 493. **Clerk need not actually indorse his approval on bond if it was in fact approved.**—Pearson v. Gayle, 11 Ala. 278; Dothard v. Sheid, 69 Ala. 135; Hyde v. Adams, 80 Ala. 111. **A writ returnable to the circuit court may be amended so as to make it returnable to city court.**—Blair v. Miller, 42 Ala. 308; Mohr v. Chaffe, 75 Ala. 387. **If writ is erroneously addressed but is executed by the proper officer, the court "will hesitate to interfere."**—Ware v. Todd, 1 Ala. 199; Blair v. Miller, 42 Ala. 308. **Clerical error in writing in the teste of writ,** the words "clerk of said circuit court" instead of "city court," **is amendable.**—Free v. Howard, 44 Ala. 195; Carter v. O'Bryan, 105 Ala. 305. **Writ directed to "sheriff or any constable of said county," may be amended** and properly addressed.—Herring v. Kelly, 96 Ala. 559. **Clerk cannot afterwards contradict his indorsement of the filing and approval of bond.**—Pearson v. Gayle, 11 Ala. 278. **Attachment by partnership in firm name may be amended so as to show individual names.** Sims v. Jacobson, 51 Ala. 186. **Statute applies to garnishment proceedings.** White v. Simpson, 107 Ala. 386.

565 (2999) (3317, 3318) (2992, 2993) (2564, 2565). **Grounds of issue not traversable; suit on bond, when brought, and what damages recoverable.**—The defendant must not deny or put in issue the cause for which the attachment issued; but, at any time within three years of the suing out of the attachment, before or after the suit is determined, he may commence suit on the attachment bond, and may recover such damages as he has actually sustained, if the attachment was wrongfully sued out; and, if sued out maliciously as well as wrongfully, the jury may, in addition, give vindictive damages.

The "cause" which defendant may not put in issue is the existence of a ground for attachment, not the relation between the parties nor the existence of a debt.—Tucker v. Adams, 52 Ala. 254; Smith v. Baker, 80 Ala. 318; Brown v. Master, 104 Ala. 451. **Action, whether on bond or in case, may be instituted after the termination of the attachment suit whether it is original or ancillary.**—Kirksey v. Jones, 7 Ala. 622; Donnell v. Jones, 13 Ala. 490; Forrest v. Collier, 20 Ala. 175; Seay v. Greenwood, 21 Ala. 491; Swanner v. Swanner, 50 Ala. 66; Brown v. Master, 104 Ala. 451. **Although levy was made on the property of one of the obligors, action on bond should be brought jointly.** Boyd v. Martin, 10 Ala. 700; Masterson v. Phinizy, 56 Ala. 336; Weedon v. Jones, 106 Ala. 336. **No action can be maintained on a bond with blank penalty.**—Copeland v. Cunningham, 63 Ala. 394. **Action lies by one non-resident against another.**—Jones v. Lawrence, 36 Ala. 618. **Does not lie on bond for vexatious abuse of process if attachment was not wrongfully sued out.** City Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97; Marx v. Leinkauff, 93 Ala. 453; Brown v. Master, 104 Ala. 451. **If there was no debt attachment wrongful and action on bond lies.**—Lockhart v. Woods, 38 Ala. 631; Tucker v. Adams, 52 Ala. 254; Durr v. Jackson, 59 Ala. 203; City Nat. Bank v. Jeffries, 73 Ala. 183; McLane v. McTighe, 89 Ala. 411. **If none of the statutory grounds exist, attachment is wrongful and action lies.**—Sharpe v. Hunter, 16 Ala. 765; Gabel v. Hammerwell, 44 Ala. 336; Stewart v. Cole, 46 Ala. 646; Tucker v. Adams, 52 Ala. 254; Durr v. Jackson, 59 Ala. 203; City

Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97. **Attachment cannot be pro tanto rightful or wrongful;** if for excessive amount no action lies as for a wrongful attachment.—Marx v. Leinkauff, 93 Ala. 453. **Debt may be just and debtor insolvent, yet attachment be wrongful and vexatious.** Floyd v. Hamilton, 33 Ala. 235; Lockhart v. Woods, 38 Ala. 631; Durr v. Jackson, 59 Ala. 203. **Prior to the Code case lay for the mere wrongful suing out of an attachment.**—Wilson v. Outlaw, Min. 367; Kirksey v. Jones, 7 Ala. 622; Alexander v. Hutchinson, 9 Ala. 825; Donnell v. Jones, 13 Ala. 490; Seay v. Greenwood, 21 Ala. 491. **But this was not analogous to the common-law action for malicious prosecution.**—Kirksey v. Jones, 7 Ala. 622; McCullough v. Walton, 11 Ala. 492. **Action on the case is now more closely analagous to the common-law action** of malicious prosecution.—O'Grady v. Julian, 34 Ala. 88; Durr v. Jackson, 59 Ala. 203; City Nat. Bank v. Jeffries, 73 Ala. 183; Brown v. Master, 104 Ala. 451. **And lies only where the attachment is sued out wrongfully, maliciously and without probable cause.**—McKellar v. Couch, 34 Ala. 336; Benson v. McCoy, 36 Ala. 710; Tucker v. Adams, 52 Ala. 254; Copeland v. Cunningham, 63 Ala. 394; Brown v. Master, 104 Ala. 451. **Pleading.**—Hill v. Rushing 4 Ala. 212; Herndon v. Forney, 4 Ala. 243; Kirksey v. Jones, 7 Ala. 622; Flanagan v. Gilchrist, 8 Ala. 620; McCullough v. Walton, 11 Ala. 492; Pearson v. Gayle, 11 Ala. 278; Donnell v. Jones, 13 Ala. 490; Marshall v. Betner, 17 Ala. 832; Forrest v. Collier, 20 Ala. 175; Tiller v. Shearer, 20 Ala. 527; Dickson v. Bachelder, 21 Ala. 699; Lewis v. Paul, 42 Ala. 136; Gabel v. Hammerwell, 44 Ala. 336; Durr v. Jackson, 59 Ala. 203; Copeland v. Cunningham, 63 Ala. 394; Dothard v. Sheid, 69 Ala. 135; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183; Smith v. Baker, 80 Ala. 318; McLane v. McTighe, 89 Ala. 411; Marx v. Leinkauff, 93 Ala. 453; Brown v. Master, 104 Ala. 451; Weedon v. Jones, 106 Ala. 336; Schloss v. Rovelsky, 107 Ala. 596. **Complaint if exemplary damages are sought must aver falsity of facts stated in affidavit and that there was not probable cause.**—Tillis v. Shearer, 20 Ala. 527; Dickson v. Bachelder, 21 Ala. 699; Durr v. Jackson, 59 Ala. 203; City Nat. Bank v. Jeffries, 73 Ala. 183; Smith v. Baker, 80 Ala. 318; McLane v. McTighe, 89 Ala. 411; Crofford v. Vassar, 95 Ala. 548; Brown v. Master, 104 Ala. 451; Schloss v. Rovelsky, 107 Ala. 596. **In action on the bond and in case the principles of evidence and measure of damages are the same.**—City Nat. Bank v. Jeffries, 73 Ala. 183. **Plaintiff may introduce the record of the attachment suit in evidence.**—Donnell v. Jones, 17 Ala. 689; Adams v. Olive, 48 Ala. 551; Pounds v. Hammer, 57 Ala. 342; Dothard v. Sheid, 69 Ala. 135; Ala. State Land Co. v. Reed, 99 Ala. 19. **May show loss of profit to aid the jury in determining the injury sustained but not to measure damages.**—Donnell v. Jones, 17 Ala. 689. **May prove loss of credit and character by reputation.**—Donnell v. Jones, 13 Ala. 490; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183; Marx v. Leinkauff, 93 Ala. 453; Ala. State Land Co. v. Reed, 99 Ala. 19. **The fact that a second attachment was levied within a week by defendant relevant to show malice.** Ryall v. Marx, 50 Ala. 31. **Pecuniary condition of defendant in attachment is only admissible when it supports some proposition which has become material.**—Donnell v. Jones, 13 Ala. 490; Floyd v. Hamilton, 33 Ala. 235; Jones v. Lawrence, 36 Ala. 618; Lockhart v. Woods, 38 Ala. 631; Pollock v. Gantt, 69 Ala. 373; Jackson v. Smith, 75 Ala. 97; Adams v. Thornton, 82 Ala. 260; Marx v. Leinkauff, 93 Ala. 453. **Defendant may show in mitigation that plaintiff absconded from another state to escape paying him a debt owing there.** Melton v. Frautman, 15 Ala. 535. **And that a prior attachment had issued or been levied of which he had notice.**—Yarbrough v. Hudson, 19 Ala. 653; Goldsmith v. Picard, 27 Ala. 142; Lockhart v. Woods, 38 Ala. 631; Pollock v. Gantt, 69 Ala. 373. **And that the attachment was issued in good faith.** White v. Wyley, 17 Ala. 167. **Plaintiff may show that defendant was especially active in levying attachment.**—Goldsmith v. Picard, 27 Ala. 142. **That he persisted in accusations of fraud without reason therefor.**—Flournoy v. Lyon, 70 Ala. 308. **Evidence of plaintiff's general good character is inadmissible unless his character is assailed.**—Goldsmith v. Picard, 27 Ala. 142. **Judgment for plaintiff in attachment is conclusive of the validity of the debt.** Jones v. Kirksey, 10 Ala. 839; Durr v. Jackson, 59 Ala. 203. **But judgment for defendant is not conclusive that it was wrongful.**—Marshall v. Betner, 17 Ala. 832; Sackett v. McCord, 23 Ala. 851. **Declarations of defendant at issuance of attachment, giving reasons for doing so, are admissible as res gestæ.** Pitts v. Borroughs, 6 Ala. 733; Dearing v. Moore, 26 Ala. 586; Sanford v. Howard, 29 Ala. 684; Wood v. Barker, 37 Ala. 60; Masterson v. Phinizy, 56 Ala. 336; Jackson v. Smith, 75 Ala. 97. **But uncommunicated intentions or declarations of the plaintiff prior to attachment, or reports concerning him, are not generally admissible.**—Pitts v. Borroughs, 6 Ala. 733; Havis v. Taylor, 13 Ala. 324; Jackson v. Smith, 75 Ala. 97; Baldwin v. Walker, 91 Ala. 428; s. c., 94 Ala. 514. **Profits of particular establishments cannot be shown.** O'Grady v. Julian, 34 Ala. 88; Steele v. Townsend, 37 Ala. 247. **Grounds of at-**

tachment, occurring after levy, unless previously contemplated, cannot be shown.—Donnell v. Jones, 17 Ala. 689. **The law infers malice when an act is done in a rude, insulting and aggravating manner.**—Kirksey v. Jones, 7 Ala. 622; Roberts v. Heim, 27 Ala. 678; Durr v. Jackson, 59 Ala. 203; Jackson v. Smith, 75 Ala. 97. **Burden is on the plaintiff to show falsity of the affidavit.** Tiller v. Shearer, 20 Ala. 527; O'Grady v. Julian, 34 Ala. 88; Durr v. Jackson, 59 Ala. 203; Flournoy v. Lyon, 70 Ala. 308; City Nat. Bank v. Jeffries, 73 Ala. 183; Smith v. Baker, 80 Ala. 318; Calhoun v. Hannan, 87 Ala. 277; Brown v. Master, 104 Ala. 451. **Actual damages may be recovered in an action on the bond for the mere wrongful suing out of the attachment.**—Kirksey v. Jones, 7 Ala. 622; Donnell v. Jones, 13 Ala. 490; Alexander v. Hutchison, 9 Ala. 825; Sharpe v. Hunter, 16 Ala. 765; Hudson v. Howlett, 32 Ala. 478; Floyd v. Hamilton, 33 Ala. 235; Lockhart v. Woods, 38 Ala. 631; Metcalf v. Young, 43 Ala. 643; Stewart v. Cole, 46 Ala. 646; Tucker v. Adams, 52 Ala. 254; Durr v. Jackson, 59 Ala. 203; Dothard v. Sheid, 69 Ala. 135; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97; McLane v. McTighe, 89 Ala. 411; Brown v. Master, 104 Ala. 451. **Actual damages must be the natural, proximate, legal consequence of the attachment.**—Donnell v. Jones, 13 Ala. 490; Marshall v. Betner, 17 Ala. 832; Goldsmith v. Picard, 27 Ala. 142; Metcalf v. Young, 43 Ala. 643; White v. Wyley, 17 Ala. 167; Higgins v. Mansfield, 62 Ala. 267; Copeland v. Cunningham, 63 Ala. 394; Pollock v. Gantt, 69 Ala. 373; Flournoy v. Lyon, 70 Ala. 308; City Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97; McLane v. McTighe, 89 Ala. 411; Marx v. Leinkauff, 93 Ala. 453. **Reasonable, necessary counsel fees, paid or promised, in trial or supreme court, are recoverable as actual damages, but must be specially claimed.**—Marshall v. Betner, 17 Ala. 832; Seay v. Greenwood, 21 Ala. 491; Higgins v. Mansfield, 62 Ala. 267; Copeland v. Cunningham, 63 Ala. 394 (overruling Burton v. Smith, 49 Ala. 293); Dothard v. Sheid, 69 Ala. 135; Bolling v. Tate, 65 Ala. 417; Flournoy v. Lyon, 70 Ala. 308; Boggan v. Bennett, 102 Ala. 400. **But not if levy was never made.**—Flournoy v. Lyon, 70 Ala. 308. **Nor if no defense was made, although some service was rendered.**—Baldwin v. Walker, 94 Ala. 514. **Nor for defending garnishee if levy by garnishment.**—Flournoy v. Lyon, 70 Ala. 308. **Injury to credit and business as a merchant may be recovered for as actual damages.**—Donnell v. Jones, 13 Ala. 490; Goldsmith v. Picard, 27 Ala. 142; Durr v. Jackson, 59 Ala. 203; Pollock v. Gantt, 69 Ala. 373; Flournoy v. Lyon, 70 Ala. 308; City Nat. Bank v. Jeffries, 73 Ala. 183; Adams v. Thornton, 82 Ala. 260; Ala. State Land Co. v. Reed, 99 Ala. 19. **If attachment sued out with probable cause, although ground did not exist, actual damages only recoverable.**—Pounds v. Hammer, 57 Ala. 342; Jackson v. Smith, 75 Ala. 97; Baldwin v. Walker, 91 Ala. 428; s. c., 94 Ala. 514; Ala. State Land Co. v. Reed, 99 Ala. 19. **Wounded feelings are not an element of actual damages; but if attachment vexatious, may be recovered for.**—Floyd v. Hamilton, 33 Ala. 235; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183. **Principal is liable only for actual damages arising from the unauthorized act of his agent or attorney; but if he authorized, sanctioned or ratified the act the malice or vexatiousness of the agent is imputed to him.**—Kirksey v. Jones, 7 Ala. 622; Gilmer v. Wier, 8 Ala. 72; McCullough v. Walton, 11 Ala. 492; Forrest v. Collier, 20 Ala. 175; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97; Baldwin v. Walker, 91 Ala. 428; s. c., 94 Ala. 514; Ala. State Land Co. v. Reed, 99 Ala. 19. **Vindictive damages are recoverable only when the attachment is both wrongful and malicious; if not wrongful no action lies on bond.**—McCullough v. Walton, 11 Ala. 492; Kirksey v. Jones, 7 Ala. 622; Seay v. Greenwood, 21 Ala. 491; Floyd v. Hamilton, 33 Ala. 235; Stewart v. Cole, 46 Ala. 646; Dothard v. Sheid, 69 Ala. 135; City Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97; Calhoun v. Hannan, 87 Ala. 277; Baldwin v. Walker, 91 Ala. 428; s. c., 94 Ala. 514; Brown v. Master, 104 Ala. 451. **Malice against a person who is not a party to the suit,** does not authorize vindictive damages.—Wood v. Barker, 37 Ala. 60. **Costs of claim suit by third person or of original suit,** if attachment ancillary cannot be recovered from the sureties.—White v. Wiley, 17 Ala. 167; Thompson v. Gates, 18 Ala. 32. **Probable profits cannot be recovered.**—Donnell v. Jones, 17 Ala. 689; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183. **Damage need not be first ascertained by action on the case before suit on bond.**—Herndon v. Forney, 4 Ala. 243. **Loss of time and expenses attending trial are too remote to be recovered.**—Jackson v. Smith, 75 Ala. 97. **What are special damages; must be specially claimed to be recovered.**—Donnell v. Jones, 13 Ala. 490; Lewis v. Paull, 42 Ala. 136; Durr v. Jackson, 59 Ala. 203; Dothard v. Sheid, 69 Ala. 135; Pollock v. Gantt, 69 Ala. 373; Flournoy v. Lyon, 70 Ala. 308; City Nat. Bank v. Jeffries, 73 Ala. 183; Marx v. Leinkauff, 93 Ala. 453; Ala. State Land Co. v. Reed, 99 Ala. 19; Boggan v. Bennett, 102 Ala. 400. **What may be recovered under general averments of damage; loss of character, credit, etc.**—Donnell v. Jones, 13 Ala.

490; Durr v. Jackson, 59 Ala. 203; Pollock v. Gantt, 69 Ala. 373; City Nat. Bank v. Jeffries, 73 Ala. 183; Jackson v. Smith, 75 Ala. 97. **Special damages may be recovered although attachment was never levied.**—Flournoy v. Lyon, 70 Ala. 308. Damages accruing up to the time of trial may be recovered.—Metcalf v. Young, 43 Ala. 643; Burton v. Smith, 49 Ala. 293. **To defend on advice of counsel, it must be shown that creditor exercised diligence to ascertain the facts and that counsel was fully informed of them.**—Baldwin v. Walker, 94 Ala. 514. **Suit may be defeated by proof of the existence of any one of the statutory grounds of attachment.**—Kirksey v. Jones, 7 Ala. 622; Lockhart v. Woods, 38 Ala. 631; Gabel v. Hammerwell, 44 Ala. 336; Stewart v. Cole, 46 Ala. 646; City Nat. Bank v. Jeffries, 73 Ala. 183; Smith v. Baker, 80 Ala. 318; Baxley v. Segrest, 85 Ala. 183; Calhoun v. Hannan, 87 Ala. 277; Brown v. Master, 104 Ala. 451. **But when bond was given for general attachment he cannot defeat action by showing ground for special attachment as for rent.**—Baxley v. Segrest, 85 Ala. 183.

Dec. 13, 1892, p. 141.

566. Venue of suits on bond.—The defendant in any attachment may bring suit on the attachment bond in the county where the attachment is levied, or in the county where the plaintiff in attachment, or any one of his sureties, resides.

567 (3000) (3311) (2986) (2558). **Judgment in attachment suspended until trial of collateral issues.**—No judgment can be rendered against the defendant in attachment, when a claim has been interposed to try the right of property, or when the answer of the garnishee is contested, or a contest has arisen about the title to, or interest in the debt or demand, money or effects garnished, until these questions are settled; unless other property or effects of the defendant be attached or garnished, about which no contest has arisen.

Suit stands in abeyance as to goods claimed, but may proceed as to goods levied on and not claimed.—Abraham v. Nicrosi, 87 Ala. 173; Richards v. Bestor, 90 Ala. 352.

568 (3001) (3312) (2987) (2559). **When property restored to claimant.**—If the plaintiff do not obtain judgment against the defendant in attachment, all property condemned, where a claim for the trial of the right of property had been interposed, must be restored to the claimant at the costs of the plaintiff.

569 (3002) (3274) (2949) (2522). **Judgments against personal representatives.**—No judgment can be rendered against an executor or administrator upon his answer in attachment or garnishment, until twelve months after the grant of letters testamentary, or of administration.

570 (3003) (3326) (3001) (2773). **Process for satisfaction of judgment.**—If the judgment of the plaintiff be not satisfied by the property attached, or by the garnishee, execution must issue thereon, which may be levied on, and satisfied by any property of the defendant; and the plaintiff may proceed to a sale of the property attached by a venditioni exponas, or by an ordinary writ of execution.

Does not apply when judgment rendered against a non-resident without personal appearance.—Exchange National Bank of Spokane v. Clement, 109 Ala. 270.

ARTICLE 6.

ATTACHMENTS ISSUED BY JUSTICES OF THE PEACE.

571 (3334) (3682) (3285) (2838). **Attachments returnable be-**

fore justices.—Justices of the peace have power to issue attachments, returnable before themselves, where the amount claimed does not exceed one hundred dollars, for the enforcement of the debts or demands, and in the cases mentioned in sections 524 (2929) and 525 (2930) of this Code.

Notary public who is ex officio justice of the peace, has like powers as justice.—Griffin v. Appleby, 69 Ala. 409. **Date of bond not conclusive as to time.**—Johnson v. Hale, 3 S. & P. 331. **Objection that justice is not so in fact must be made by plea in abatement.**—Lowry v. Stowe, 7 P. 483. **Lien dates from levy.**—Langdon v. Raiford, 20 Ala. 532. **Rule as to priorities where several attachments levied on the same property.**—Cook v. Walthall, 20 Ala. 334.

572 (3335) (3683) (3286) (2839). **What provisions applicable.** The provisions of this Code regulating the issue and levy of attachments, original or ancillary, and of garnishments, and the trial of, and proceedings in suits commenced by attachments, or in aid of which attachments or garnishments are issued in the circuit court, not contrary to the provisions of this article, and so far as applicable, shall apply to, and govern in like cases triable before justices of the peace.

573. (3336) (3684) (3287) (2840). **Form of attachment.**—The form of such attachment must be, in substance, as follows:

"State of Alabama, ——— county. } To any lawful officer of said county:

Whereas ——— ——— (or ——— ———, as the authorized agent or attorney of ——— ———), hath complained on oath to me, ——— ———, a justice of the peace for the county aforesaid, that ——— ——— is (or will be) justly indebted to him in the sum of —— dollars, and has made affidavit and given bond as required by law: You are hereby commanded to attach so much of the estate of ——— ——— as will be of value sufficient to satisfy the complaint and costs, and such estate, unless replevied, so to secure that the same may be liable to further proceedings thereon, to be had before me on the —— day of ———, 18—, at ———, when and where you must make return how you have executed this writ. Witness my hand this —— day of ———, 18—.

——— ———, Justice of the Peace."

Seal is not necessary.—Lowry v. Stowe, 7 P. 483.

574 (3337) (3685) (3288) (2841). **Notice of levy on real estate.** When such attachment is levied on real estate, notice must be given as provided for by section 1948 (3360) and the papers, after judgment against the defendant, must be returned to the clerk of the circuit court by the justice for an order of sale, as in other cases of levy on lands by constables.

575 (3338) (3686) (3289) (2842). **What cannot be attached.** Neither money in the hands of a sheriff, or other executive officer of the court, nor a debt or demand in any court of record, can be attached under an attachment or other process issued by, and returnable before a justice of the peace.

Sharpe v. Wharton, 85 Ala. 225.

576 (3339) (3687) (3290) (2843). **Sale of property attached before judgment.**—Property which is perishable, or such that the expense of keeping it will materially impair its value, must be sold by order of the justice, when the debt upon which the attachment is sued out is not due, or when the defendant is a non-resident, or when from any cause the judgment or sale is postponed, so that the property attached will materially deteriorate in value, unless the same is replevied; and the proceeds of such sale must be retained in the hands of the justice to abide the judgment.

577 (3341) (3689) (3292) (2845). **When property replevied to be delivered; execution on forfeited bond.**—Property replevied must be delivered to the constable within ten days after judgment against the defendant, unless an appeal is prosecuted from the judgment; and, on failure thereof, the constable must indorse the bond forfeited, upon which execution must issue against the obligors therein.

Replevy by stranger.—Cummins v. Gray, 4 S. & P. 397. **Bond conditioned to deliver property in twenty days is defective and no execution can issue; may be good as a common-law bond.**—Cobb v. Thompson, 87 Ala. 381; Olmstead v. Thompson, 91 Ala. 127.

578 (3343) (3691) (3294) (2847). **Execution for balance of judgment unsatisfied.**—When the property attached, or in the hands of the garnishee, is not sufficient to satisfy the judgment, execution may issue for the residue, and be levied on any other property of the defendant subject to levy and sale.

See citation to section 570 (3003).

CHAPTER 12.

ATTORNEYS AT LAW, 579–611.

579 (853) (780) (861) (729). **Who may practice as attorneys.** Only such persons as are regularly licensed have authority to practice law.

580 (854) (781) (862) (730). **Extent of license.**—Those who have been regularly licensed can practice only in such courts as their license may authorize; those admitted to the supreme court may practice in all the courts in this state; and those admitted by any chancery, city, or circuit court may practice in any court in the state except the supreme court.

When right enforced by mandamus.—Withers v. State, 36 Ala. 252. **Legislature may impose license tax on lawyers.**—Cousins v. State, 50 Ala. 113; Goldthwaite v. State, Ib. 486. **And may delegate such power to a municipal corporation.**—Goldthwaite v. State, supra; Ex parte city council in re Knox, 64 Ala. 463.

581 (855) (782) (863) (731). **Who may be licensed.**—Any man of the age of twenty-one years, of good moral character, and who

possesses the requisite qualifications of learning and ability, is entitled to admission to practice in any or all the courts of this state.*

*The act approved February 18, 1897 (Pamph. Acts, p. 1482), "To prescribe the duties and qualifications of attorneys and counsellors at law and regulate their admission to practice in the courts of the state," which takes effect January 1, 1898, is as follows:

"SECTION 1. *Be it enacted by the General Assembly of Alabama*, That any person, being a citizen of the United States, a resident of this state, above the age of twenty-one years and of good moral character, who shall desire to be admitted to practice as an attorney and counsellor at law may make application in writing to the chancery, circuit or city court of the county of his residence, making known his wish. The court shall thereupon inquire into the moral character and qualifications, other than legal learning, of the applicant and to that end may examine witnesses; and if the applicant be found possessed of all the necessary qualifications, except legal learning, the court shall so adjudge and enter an order upon the minutes to that effect, but if the applicant be found not to be so qualified his application shall be dismissed at his costs.

"SEC. 2. *Be it further enacted*, That the applicant being found to be otherwise qualified, the judge or chancellor in open court, shall propound in writing to said applicant, a sufficient number of questions to thoroughly test his learning, upon the following subjects, namely:

"1st. Of the law of real property.
"2d. Of the law of personal property.
"3d. Of the law of pleading and evidence.
"4th. Of the commercial law.
"5th. Of the criminal law.
"6th. Of chancery and chancery pleading.
"7th. Of the statute law of the state.
"8th. Of the constitution of the United States and of the state of Alabama, which questions the applicant shall in open court, or in the presence of the judge or chancellor, answer in writing without aid from any person, or from examination of books.

"SEC. 3. *Be it further enacted*, That when the written examination shall be completed, the judge or chancellor shall certify thereon that it was taken before him and in his presence, in conformity to the last section, and he shall forward the same, both questions and answers, to a judge of the supreme court.

"SEC. 4. *Be it further enacted*, That the judge of the supreme court who receives the written examination, shall read and consider the same and cause at least two other judges of the supreme court to examine the same; and at least three of said judges shall within ten days, if practicable, indorse on or at the end of such writing their judgment and conclusion as to the sufficiency or insufficiency of the legal learning of the applicant to be licensed as an attorney and counsellor at law; and they shall within said time transmit said writing, with the certificate thereon, to the chancellor from whom it was received.

"SEC. 5. *Be it further enacted*, That upon the receipt of the written examination with the certificate of the supreme court judges by the judge or chancellor, he shall, if the certificate of two of said judges be that the applicant possesses sufficient legal learning, grant the application and cause to be entered on the minutes of the court, in term time or vacation, an order granting to the applicant license to practice law in all the courts, both of law and equity, in this state, upon the taking by the applicant of the oath prescribed by law; if the certificate of three of said judges be that the applicant does not possess sufficient legal learning, the chancellor or judge shall enter an order dismissing the application; and in either case, the applicant shall pay the costs.

"SEC. 6. *Be it further enacted*, That the dismissal of an application for license to practice law shall not bar another application by the same person after the expiration of six months from the order of dismissal.

"SEC. 7. *Be it further enacted*, That if the applicant present to the chancery court with his written application a diploma granted him by the University of Alabama conferring the degree of bachelor of laws, the judge or chancellor shall inquire into his moral character and other qualifications, but need not examine him on law, and may if he be otherwise qualified, grant him a license without a certificate from the supreme judges.

"SEC. 8. *Be it further enacted*, That every attorney and counsellor at law, before he shall be permitted to practice, shall produce his license in some court of record where he intends to practice, and in the presence of such court, shall take the following oath or affirmation, to wit:

"'I do solemnly swear (or affirm) that I will demean myself as an attorney and counsellor of this court, according to the best of my learning and ability and with all good fidelity, as well to the court as to the client; that I will use

582 (856) (783) (864) (732). **Application for license.**—For the purpose of admission, he must apply to the supreme court, the court of chancery, or the circuit, or city court, and must show—

1. That he is of the age twenty-one years, which proof may be made by his own affidavit.

2. That he is of good moral character, which may be proved by certificate, or other evidence satisfactory to the court.

583 (857) (784) (865) (733). **Examination of applicant.**—The applicant must be examined in open court touching his knowledge—

1. Of the law of real property.
2. Of the law of personal property.
3. Of the law of pleading and evidence.
4. Of the commercial law.
5. Of the criminal law.
6. Of chancery and chancery pleading.
7. Of the statute laws of the state.

584 (858) (785) (866) (734). **Order of admission.**—If, on examination, the applicant is found duly qualified in all the branches specified in the preceding section, the court must direct an order to be entered, that the applicant is of the age of twenty-one years, of good moral character, and possesses the requisite qualifications of learning and ability to practice in the several courts of this state, in which his license entitles him; and upon the entry of such order, obtaining his license, and taking the oath hereinafter prescribed, he is entitled to practice accordingly.

---

no falsehood or delay any person's cause for lucre or malice, and that I will support the constitution of the State of Alabama so long as I continue a citizen thereof, so help me God.'

"SEC. 9. *Be it further enacted*, That the court of chancery may license minors in the same manner as adults, if possessing the maturity, character and attainments requisite, but the minors so licensed shall be precluded from pleading infancy in any civil proceedings against them.

"SEC. 10. *Be it further enacted*, That if any attorney commences practice before taking the oath as prescribed by the preceding section, he forfeits the sum of two hundred dollars, one half to the use of the person suing for the same and the other to the state.

"SEC. 11. *Be it further enacted*, That this act shall not be construed so as to prevent any person from conducting and managing his own cause in any court in this state.

"SEC. 12. *Be it further enacted*, That it is the duty of attorneys—

"1st. To support the constitution and laws of this state and of the United States.

"2d. To maintain the due respect to courts of justice and judicial officers.

"3d. To employ, for the purpose of maintaining the causes confided to them, such means only as are consistent with truth; and never seek to mislead the judges by any artifice, or false statement of the law.

"4th. To maintain inviolate the confidence, and, at every peril to themselves, to preserve the secrets of their clients.

"5th. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.

"6th. To encourage neither the commencement nor continuance of any action or proceeding from any motive of passion or interest.

"7th. To never reject, for any consideration personal to themselves, the cause of the defenseless or oppressed.

"SEC. 13. *Be it further enacted*, That all laws and parts of laws in conflict with the provisions of this act be, and the same are, hereby repealed.

"SEC. 14. *Be it further enacted*, That this act shall not go into effect until January 1st, 1898."

585 (859) (786) (867). **Minors may be licensed.**—The court of chancery, or the circuit or city court may license minors, if possessing the maturity, character and attainments requisite; but the minors so licensed shall be precluded from pleading infancy in any civil proceeding against them.

586 (860) (787) (868). **Supreme court may appoint committee.** The supreme court may, at its discretion, appoint a committee of three members of its bar to examine an applicant for license, either privately or in open court, and must grant or refuse license according to the report of such committee.

587 (861) (788) (869) (735). **Oath of attorney.**—Every attorney, before commencing practice, must take an oath to support the constitution of this state, and of the United States, and not to violate the duties enjoined on him by law; which oath must be filed in the office of the clerk or register of the court by which he is licensed.

An attorney is not an officer, and is not required to take the dueling oath. Ex parte Dorsey, 7 P. 293.

588 (862) (789) (870) (736). **Penalty for practicing before oath.** If any attorney commences practice before taking and filing the oath prescribed by the preceding section, he forfeits the sum of two hundred dollars; one half to the use of the person suing for the same, and the other to the use of the state.

589 (863) (790) (871) (737). **Party may manage his own cause.** Any person may, however, conduct and manage his own case in any court in this state.

A constitutional right.—May v. Williams, 17 Ala. 23.

590 (864) (791) (872) (738). **Duties of attorneys.**—It is the duty of attorneys—

1. To support the constitution and laws of this state, and of the United States.

2. To maintain the respect due to courts of justice and judicial officers.

3. To employ, for the purpose of maintaining the causes confided to them, such means only as are consistent with truth; and never to seek to mislead the judges by any artifice, or false statement of the law.

4. To maintain inviolate the confidence, and, at every peril to themselves, to preserve the secrets of their clients.

5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party, or a witness, unless required by the justice of the cause with which they are charged.

6. To encourage neither the commencement nor continuance of an action or proceeding from any motives of passion or interest.

7. Never to reject, for any consideration personal to themselves, the cause of the defenseless or oppressed.

Employment a personal trust, incapable of delegation without client's consent.—Hitchcock v. McGehee, 7 P. 556; Johnson v. Cunningham, 1 Ala. 249; Wright v. Evans, 53 Ala. 103. **Knowledge and silence give consent.** King v. Pope, 28 Ala. 601. **Authority continues after judgment; may di-**

rect and control process thereon.—McClure v. Colclough, 5 Ala. 65; Albertson v. Goldsby, 28 Ala. 711; Fabel v. Boykin, 55 Ala. 383; Frazier v. Parks, 56 Ala. 363; Smith v. Gayle, 58 Ala. 600. **But cannot, without special authority, assign a judgment.**—Gardner v. M. & N. R. Co., 102 Ala. 635. **Special agent, without authority to compromise, release or assign client's demand.**—Gullett v. Lewis, 3 S. 23; Kirk v. Glover, 5 S. & P. 340; Craig v. Ely, Ib. 354; Cost v. Genette, 1 P. 212; Boren v. McGehee, 6 P. 432; Cook v. Bloodgood, 7 Ala. 683; Leach v. Williams, 8 Ala. 759; West v. Ball, 12 Ala. 340; Chapman v. Cowles, 41 Ala. 103; Robinson v. Murphy, 69 Ala. 543; Hall Safe & Lock Co. v. Harwell, 88 Ala. 441; Senn v. Joseph, 106 Ala. 454. **Liability for negligence and want of skill.**—Mardis v. Shackelford, 4 Ala. 493; Goodman v. Walker, 30 Ala. 482; Teague v. Corbitt, 57 Ala. 529; Jackson v. Clopton, 66 Ala. 29; Pinkston v. Arrington, 98 Ala. 489. **Privileged communications; when attorney may testify.**—Crawford v. McKissack, 1 P. 433; State v. Marshall, 8 Ala. 302; Brazier v. Fortune, 10 Ala. 516; McGehee v. Hansel, 13 Ala. 17; Morrow v. Parkman, 14 Ala. 769; Quarles v. Waldron, 20 Ala. 217; Parish v. Gates, 29 Ala. 254; Blunt v. Strong, 60 Ala. 572; M. & M. Ry. Co. v. Yeates, 67 Ala. 164; Chapman v. Peebles, 84 Ala. 283; White v. State, 86 Ala. 69; Hawes v. State, 88 Ala. 37; State v. Tally, 102 Ala. 25. **Fees of attorneys;** before relation begins, any lawful contract may be made; after relation commenced, agreement for compensation must be fair and just.—Lecatt v. Sallee, 3 P. 115; Dickinson v. Bradford, 59 Ala. 581; White v. Tolliver, 110 Ala. 300. **Attorney has lien** on judgment or decree recovered and on moneys collected for his client; no lien on lands.—Warfield v. Campbell, 38 Ala. 527; Ex parte Lehman, 59 Ala. 631; Hinson v. Gamble, 65 Ala. 605; Jackson v. Clopton, 66 Ala. 29; Lee v. Winston, 68 Ala. 402; McWilliams v. Jenkins, 72 Ala. 480; Moseley v. Norman, 74 Ala. 422; Higley v. White, 102 Ala. 604. **Argument;** court may reasonably limit.—Yeldell v. State, 100 Ala. 26; Shrimpton v. Brice, 102 Ala. 655; Anderson v. State, 104 Ala. 83; Florence C. & I. Co. v. Field, Ib. 471; Peagler v. State, 110 Ala. 11. **Improper remarks;** exception; duty of court; rulings on appeal.—McAdory v. State, 62 Ala. 154; Cross v. State, 68 Ala. 476; Wolffe v. Minnis, 74 Ala. 386; E. T. V. & G. R. Co. v. Bayliss, 75 Ala. 466; Com. Fire Ins. Co. v. Allen, 80 Ala. 571; Lane v. State, 85 Ala. 11; Young v. Pollak, 85 Ala. 439; Childress v. State 86 Ala. 77; Coleman v. State, 87 Ala. 14; White v. State, Ib. 24; Cotton v. State, Ib. 103; Griffin v. State, 90 Ala. 596; L. & N. R. Co. v. Orr, 91 Ala. 548; A. G. S. R. Co. v. Hill, 93 Ala. 514; A. G. S. R. Co. v. Frazier, Ib. 45; Jackson v. Robinson, Ib. 157; Lunsford v. Dietrich, Ib. 565; Springfield v. State, 96 Ala. 81; Nelson v. Shelby M. & I. Co., Ib. 515; Billingsley v. State, Ib. 126; Birmingham M. R. Co. v. Harris, 98 Ala. 326; Dollar v. State, 99 Ala. 236; Moody v. A. G. S. R. Co., Ib. 553; L. & N. R. Co. v. Hurt, 101 Ala. 34; McNeill v. State, 102 Ala. 121; McQueen v. State, 103 Ala. 12; Anderson v. State, 104 Ala. 83; Florence C. & I. Co. v. Field, Ib. 471; Stone v. State, 105 Ala. 60; Grimes v. State, Ib. 86; Nuckols v. State, 109 Ala. 2; Hundley v. Chadick, Ib. 575; Scott v. State, 110 Ala. 48; Miller v. State, Ib. 69. Jefferson v. State, Ib. 89. **Amicus curæ;** office of.—Birmingham L. & A. Co. v. First Nat. Bank, 100 Ala. 249.

591 (865) (792, 794) (873) (739). **Officers and deputies disqualified from practicing.**—The sheriff, or deputy of the sheriff, must not practice law; the clerk of the circuit or city court, or the deputy of the clerk, must not practice in the court of which he is clerk or deputy; the register in chancery, or his partner, or the deputy of the register, must not practice in the court of which he is register or deputy; the clerk of the judge of probate must not practice in the court of which his principal is the judge.*

592 (866) (796) (877) (743). **Authority of attorneys in cause.** An attorney has authority to bind his client, in any action or proceeding, by any agreement in relation to such cause, made in writing, or by an entry to be made on the minutes of the court.

Starke v. Kenan, 11 Ala. 818; Holman v. Bank, 12 Ala. 369; Montgomery v. Givhan, 24 Ala. 568; Harvey v. Thorpe, 28 Ala. 250; Rosenbaum v. State, 33 Ala. 354; Saltmarsh v. Bower, 34 Ala. 613; Charles v. Miller, 36 Ala. 141; Collier v. Falk, 66 Ala. 223; Norman v. Burns, 67 Ala. 248; Robinson v. Murphy, 69 Ala. 543; Ex parte Hayes, 92 Ala. 120.

593 (867) (797) (878) (744). **Proceedings on appearance with-**

*The words "or his partner" inserted by joint committee.

out authority.—If it be alleged by a party for whom an attorney appears, that he does so without authority, the court may, at any stage of the proceedings, upon proof of the allegation, relieve the party for whom the attorney has assumed to appear from the consequences of his acts.

594 (868) (798) (880) (746). **Proof of authority; when required; how made.**—The court or judge may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for one of the several adverse parties, to produce or prove the authority under which he appears; and, until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear; but the oath of the attorney is presumptive evidence of his authority.

Brewer v. Watson, 71 Ala. 299; Daughdrill v. Daughdrill, 108 Ala. 321.

595 (869) (799) (881) (747). **Causes of removal of attorney.**—An attorney must be removed for the following causes by the circuit court:

1. Upon his being convicted of a felony other than manslaughter, or of a misdemeanor involving moral turpitude; in either of which cases the record of his conviction is conclusive evidence.

2. When any judgment is rendered against him, for money collected by him as an attorney, upon which judgment an execution has issued, and been returned no property; in which case the record of the judgment and execution is conclusive evidence.

596 (870) (800) (882) (748). **Other causes of removal or suspension.**—For the following causes he may be removed or suspended:

1. Upon its being shown, to the satisfaction of the court, that he has been guilty of any deceit or willful misconduct in his profession.

2. For a willful disobedience or violation of the order of a court, requiring him to do or forbear an act connected with, or in the course of his profession.

3. For a willful violation of any of the provisions of section 590 (864).

Withers v. State, 36 Ala. 252; Thomas v. State, 58 Ala. 365.

597 (871) (801) (883) (749). **At whose instance.**—The proceedings to remove or suspend an attorney, as provided for in the last two sections, may be taken by the court of its own motion, or upon the motion of any third party.

598 (872). **State Bar Association may institute proceedings.** The Alabama State Bar Association has authority to institute and prosecute, in its own name, the proceedings herein prescribed for the removal or suspension of an attorney.

599 (873) (802) (884) (750). **Charge to be in writing.**—The accusation must be in writing, and when the proceeding is taken by the court, it may be drawn up by the solicitor, or the clerk, under the direction of the court.

600 (874) (803) (885) (751). **Charge to be sworn to.**—If the proceedings are upon the information of another, the accusation must

be verified by the oath of the person making it, or some other person, and presented to the court.

601 (875) (804) (886) (752). **Attorney cited to answer.**—The court must then, if of opinion that the accusation would, if true, be grounds of removal or suspension, make an order requiring the accused to appear and answer the same, at a specified day during that, or the next term; and must cause a copy of the order and accusation to be served on the accused, within a prescribed time before the day appointed in the order.

602 (876) (805) (887) (753). **In default of appearance, charge examined, etc.**—The accused must appear at the time appointed in the order, and answer the accusation, unless, for sufficient cause, the court assigns another day for that purpose; if he does not appear, the court may proceed and determine the accusation in his absence.

603 (877) (806) (888) (754). **Answer.**—The accused may answer, either by objecting to the sufficiency of the accusation or by denying its truth, either of which must be entered on the minutes.

604 (878) (807) (889) (755). **Answer after demurrer overruled.** If the objection to the sufficiency of the accusation be not sustained, the accused must answer it forthwith.

605 (879) (808) (890) (756). **How tried; accused may demand jury.**—If he pleads guilty, or refuses to answer the accusation, the court must proceed to judgment of removal or suspension; if he deny the accusation, the court must immediately, or at such time as it may appoint, proceed to try the same, the accused having a right to demand a trial by jury.

606 (881) (810) (892) (758). **In whose name conducted.**—The proceedings, when instituted by the court of its own motion, are conducted in the name of the state, the solicitor appearing to sustain the accusation; and when on the information of another, in the name of the state, on the information of such person.

607 (882) (811) (893) (759). **Testimony, how taken; security for costs.**—Either party has a right to subpœnas and other process to compel the attendance of witnesses; and testimony may be taken by deposition in such cases, and in the same manner as in actions at law; and the court may, in its discretion, require the informant to give security for costs; and, failing so to do within the time prescribed, the proceedings must be dismissed at the cost of the informant.

608 (883) (812) (894) (760). **Judgment for costs.**—When proceedings under this chapter are begun on the information of another, if the accusation is not sustained, judgment must be rendered for costs against the informant and his sureties, if surety has been given; but if the accusation is sustained, judgment for costs must be rendered against the accused, whether the proceedings were begun on the information of another or upon the motion of the court.

609 (884) (813) (895) (761). **Proceedings on death of informant.** Upon the death of the informant, if there be but one, the proceedings abate, unless some other person is substituted in his place,

which may be done on application to the court. If there be more than one informant, the proceedings continue on the information of the survivor.

610 (880) (809) (891) (757). **Appeal taken to supreme court.** A judgment of acquittal is final, but from a judgment of removal or suspension the accused may appeal to the supreme court, at any time within thirty days after judgment.

611 (885) (814) (896) (762). **When attorneys of other states may practice.**—Attorneys at law residing in other states, having a license to practice law therein, may practice in any of the courts of this state, when by law the attorneys of this state are permitted to practice law in such state; and such attorneys, when practicing in the courts of this state, are subject to all the rules and regulations prescribed in this chapter.

CHAPTER 13.

BILLS OF EXCEPTIONS. 612-622.

612 (2758) (3107) (2754) (2353). **Bill of exceptions taken during trial.**—Either of the parties in any civil case, during the trial of the cause, may reserve by bill of exceptions any charge, opinion, or decision of the court touching the cause of action, which would not otherwise appear of record.

Bills of exceptions are of statutory origin and unknown to the common law. Ned v. State, 7 P. 187; Bourne v. State, 8 P. 458; Rolater v. Rolater, 52 Ala. 111; Petty v. Dill, 53 Ala. 641; Pearce v. Clements, 73 Ala. 256; Camp v. Marion Co., 91 Ala. 240. **Office of bill of exceptions.**—Petty v. Dill, 53 Ala. 641; Young v. O'Neal, 57 Ala. 566; Weems v. Weems, 69 Ala. 104; Bright v. State, 76 Ala. 96; Diggs v. State, 77 Ala. 68; Baker v. Keith, Ib. 544; Ex parte Cameron, 81 Ala. 87; Markland v. Albes, Ib. 433; Efurd v. Loeb, 82 Ala. 429; Steele v. Savage, 85 Ala. 230; Powell v. Henry, 96 Ala. 412; Ex parte Knight, 61 Ala. 482. **Rulings which are part of record proper, not revisable** when shown only by bill of exceptions.—Young v. O'Neal, 57 Ala. 566; Hunter v. Wood, 54 Ala. 71; Diggs v. State, 77 Ala. 68; Baker v. Keith, Ib. 544; Gray v. State, 63 Ala. 67; Ex parte Knight, 61 Ala. 482; Steernau v. Marx, 58 Ala. 608; Morgan v. Wing, Ib. 301; Sivoly v. Scott, 56 Ala. 555; Buckley v. Wilson, Ib. 393; Petty v. Dill, 53 Ala. 641; Carter v. Wilson, 61 Ala. 434; Efurd v. Loeb, 82 Ala. 429; Powell v. State, 89 Ala. 172; Steele v. Savage, 85 Ala. 230; Powell v. Henry, 96 Ala. 412; Peters v. State, 100 Ala. 10; N., C. & St. L. Ry. Co. v. Hammond, 104 Ala. 191, 198; Beck v. West, 91 Ala. 312; Steed v. Knowles, 97 Ala. 573: Simpson v. State, 111 Ala. 6. **Pleadings and the action of the court thereon must appear in the record proper.**—N., C. &. St. L. Ry. Co. v. Hammond, 104 Ala. 191, 198, and other cases last above cited. **Entire transcript made up in form of bill of exceptions;** when disregarded entirely.—Weems v. Weems, 69 Ala. 104; Efurd v. Loeb, 82 Ala. 429. **"Judgments on demurrers need no exception,** and are not raised by exception."—Efurd v. Loeb, 82 Ala. 429; Rolater v. Rolater, 52 Ala. 111; Petty v. Dill, 53 Ala. 641. Tyree v. Parham, 66 Ala. 424; Smith v. State, 68 Ala. 424; Buckley v. Wilson, 56 Ala. 393; Powers v. Mayor, 54 Ala. 214. **Frame of bill; signature of judge.**—Tyree v. Parham, 66 Ala. 424; Smith v. State, 68 Ala. 424; Weems v. Weems, 69 Ala. 104; Posey v. Beale, Ib. 32; Efurd v. Loeb, 82 Ala. 429; Morris v. Brannen, 103 Ala. 602; Alford v. Eubank, 44 Ala. 276; Haden v. Brown, 22 Ala. 572; So. Ex. Co. v. Black, 54 Ala. 177; Rolater v. Rolater, 52 Ala. 111; Kerley v. Vann, Ib. 7; Small v. McCalley, 51 Ala. 527; Kirby v. Vann, Ib. 221; Ex parte Nelson, 62 Ala. 376; Pearce v. Clements, 73 Ala. 256. **When should be signed.**—Blake v. Harlan,

75 Ala. 205; Ex parte Mayfield, 63 Ala. 203; Ex parte Nelson, 62 Ala. 376; Ledbetter v. Vinton, 108 Ala. 644; Rosson v. State, 92 Ala. 76; Beal v. State, 99 Ala. 234; Powell v. Sturdevant, 85 Ala. 243; Gaston v. State, 88 Ala. 450. **Must affirmatively appear to have been signed in term time or within time allowed** by order of court or agreement of counsel.—Morris v. Brannen, 103 Ala. 602; Kitchen v. Moye, 17 Ala. 143; Haden v. Brown, 22 Ala. 572; Union India Rubber Co. v. Mitchell, 37 Ala. 314; Maddox v. Broyles, 42 Ala. 436; Bryant v. State, 36 Ala. 270; Alford v. Eubank, 44 Ala. 276; Markland v. Albes, 81 Ala. 433. **Presiding judge must sign; may sign anywhere in the state.** Ex parte Nelson, 62 Ala. 376. **Extrinsic evidence cannot be received** in aid of bill.—Pearce v. Clements, 73 Ala. 256. **Nor to impugn.**—Hollingsworth v. Chapman, 50 Ala. 23; Ex parte Nelson, 62 Ala. 376; Ryan v. Kilpatrick, 66 Ala. 332; Fonville v. State, 91 Ala. 39; Chapman v. Holding, 54 Ala. 61. **Agreement of counsel cannot dispense with** bill or signature.—So. Ex. Co. v. Black, 54 Ala. 177; Kirby v. Vann, 51 Ala. 221; Clark v. McCrary, 80 Ala. 110; Pearce v. Clements, 73 Ala. 256; Kerley v. Vann, 52 Ala. 7. **Power of court over bill after adjournment.**—Chapman v. Holding, 54 Ala. 61; Dudley v. Chilton Co., 66 Ala. 593; Posey v. Beale, 69 Ala. 32; Ladd v. State, 92 Ala. 58; Rosson v. State, Ib. 76; Beal v. State, 99 Ala. 234; Morris v. Brannen, 103 Ala. 602. **Agreement or order further extending time** must be made within the time previously fixed.—Bass Furnace Co. v. Glasscock, 86 Ala. 244; Ladd v. State, 92 Ala. 58; Rosson v. State, Ib. 76; M. & B. R. Co. v. Worthington, 95 Ala. 598; Beal v. State, 99 Ala. 234; Morris v. Brannen, 103 Ala. 602. **After adjournment of term at which bill signed, court powerless** to alter, modify or explain.—Chapman v. Holding, 54 Ala. 61; Branch Bank v. Kinsey, 5 Ala. 9; Weir v. Hoss, 6 Ala. 881; Posey v. Beale, 69 Ala. 32; Pearce v. Clements, 73 Ala. 256; Kitchen v. Moye, 17 Ala. 394; Dudley v. Chilton Co., 66 Ala. 593. **Exceptions must be reserved to rulings which would not otherwise appear of record**—which are not "intrinsic to the cause."—Tuscaloosa Wharf Co. v. Mayor and Aldermen of Tuscaloosa, 38 Ala. 514; Blair v. Miller, 42 Ala. 308; Eslava v. Ames Plow Co., 45 Ala. 384; Hyde v. Adams, 80 Ala. 111. **Must be reserved during the progress of the trial.**—Craft v. Terrell, 21 Ala. 351; Bynum v. S. Pump and Pipe Co., 63 Ala. 462; Reynolds v. State, 68 Ala. 502; Hayes v. Solomon, 90 Ala. 520. **When bill necessary: To review amendment of judgment nunc pro tunc.**—Burdeshaw v. Comer, 108 Ala. 617. To review **ruling on motion to set aside judgment.**—R. & D. R. Co. v. Jones, 102 Ala. 212; Ex parte Highland Ave. & B. R. Co., 105 Ala. 221. To review **proceedings shown by motion-docket.**—Lienkauff v. Tuscaloosa, etc., Co., 99 Ala. 619; David v. David, 66 Ala. 139; Waring v. Gilbert, 25 Ala. 295. To review **ruling on motion for new trial.**—Cobb v. Malone, 92 Ala. 630. **Refusing change of venue.**—Jones v. State, 77 Ala. 98. **Allowing or refusing to allow amendments to pleadings.**—Powell v. Asten, 36 Ala. 140; Jarman v. McMahon, 37 Ala. 431; Blair v. Miller, 42 Ala. 308; Ex parte Knight, 61 Ala. 482; Bright v. State, 76 Ala. 96. **Refusal to allow third persons to intervene** in attachment suit.—McAbee v. Parker, 78 Ala. 573. **Improper remarks of counsel;** exception must be reserved to the action of the court thereon.—Cross v. State, 68 Ala. 476; E. T., V. & G. R. Co. v. Bayliss, 75 Ala. 466; Com. Fire Ins. Co. v. Allen, 80 Ala. 571; Nelson v. Shelby Mfg. & I. Co., 96 Ala. 555; Stone v. State, 105 Ala. 60; King v. State, 100 Ala. 85; Nuckols v. State, 109 Ala. 2. **Improper remarks of presiding judge.**—Furhman v. Huntsville, 54 Ala. 263; Singer Mfg. Co. v. Greenleaf, 100 Ala. 272; Grimes v. State, 105 Ala. 86. **To review judgment on answer of garnishee.**—Jones v. Manier, 102 Ala. 676. **To decision on facts.**—Smith v. King, 22 Ala. 558; Williams v. Gunter, 28 Ala. 681; Tapp v. Cox, 56 Ala. 553; Jaques v. Horton, 76 Ala. 238. Bill of exceptions **necessary in voluntary nonsuit.**—Palmer v. Rice, 28 Ala. 430; Vincent v. Rogers, 30 Ala 471; Paulling v. Marshall, 47 Ala. 270; Darden v. James, 48 Ala. 33; Wyatt v. Evins, 52 Ala. 285; Mathews v. Oates, 57 Ala. 112; Hurst v. Bell, 72 Ala. 336; Perry v. Danner, 74 Ala. 485; Steele v. Savage, 85 Ala. 230. **Presumption when all the evidence not set out.**—Dow v. Godwin, 30 Ala. 242; Fleming v. Ussery, Ib. 282; Gresham v. Bryan, 103 Ala. 629; Elliot v. Round Mountain C. & I. Co., 108 Ala. 640; Hood v. Pioneer M. & M. Co., 95 Ala. 461; Hunt v. Johnson, 96 Ala. 130; Garner v. Ullman, 99 Ala. 218; Evansville P. & T. R. P. Co. v. Slater, 101 Ala. 245; Wadsworth v. Williams, 101 Ala. 264; Ayers v. Roper, 111 Ala. 651. **Exceptions to rulings on evidence, how shown on appeal.**—Milliken v. Maund, 110 Ala. 332; Nelson v. Shelby Mfg. & I. Co., 96 Ala. 515; Marks v. State, 87 Ala. 99; Fonville v. State, 91 Ala. 39; Bynum v. S. Pump & Pipe Co. 63 Ala. 462; Boswell v. State, Ib. 307; Lewis v. Paull, 42 Ala. 136; Chamberlain v. Masterson, 29 Ala. 299; Newton v. Jackson, 23 Ala. 335; Furlow v. Merrell, Ib. 705; Sackett v. McCord, Ib. 851; Donnell v. Jones, 13 Ala. 490; Gardener v. State, 96 Ala. 12; Ladd v. State, 92 Ala. 58; K. C. M. & B. R. Co. v. Smith, 90 Ala. 25; Taliaferro v. Lee, 97 Ala. 91; Tobias v. Treist, 103 Ala. 664. Exception **cannot be based on ruling induced by excepting party.**—Leonard v. State, 66 Ala. 461; Shelton v. State, 73 Ala. 5; Allen v.

State, 74 Ala. 557; Cotton v. State, 87 Ala. 75; Ex parte Winston, 52 Ala. 419; Lowery v. Rowland, 104 Ala. 420, 427; DeArman v. State, 77 Ala. 10; Barnewall v. Murrell, 108 Ala. 366. **Conflict between bill of exceptions and record proper;** bill controls as to matters of which it should speak, record as to other matters.—Nat. Bank of Augusta v. Baker Hill I. Co., 108 Ala. 635; McDonald v. Jacobs, 77 Ala. 524; Hurst v. Bell, 72 Ala. 336; Brinson v. Edwards, 94 Ala. 447; Courie v. Goodwin, 89 Ala. 569. **Making documents parts of bill by reference.**—Looney v. Bush, Minor, 413; Farmer v. Wilson, 34 Ala. 75; Garlington v. Jones, 37 Ala. 240; Strawbridge v. State, 48 Ala. 308; Tuscaloosa Co. v. Logan, 50 Ala. 503; Parsons v. Woodward, 73 Ala. 348; Pearce v. Clements, Ib. 256; Moore v. Helms, 77 Ala. 379; Stapp v. Wilkinson, 80 Ala. 47; Moore v. Penn, 95 Ala. 200; Kyle v. Gadsden L. & I. Co., 96 Ala. 376; A. G. S. R. Co. v. Dobbs, 101 Ala. 219; Cobb v. Daniel, 105 Ala. 335; Elliot v. Round Mountain C. & I. Co., 108 Ala. 640. **Depositions.**—Danforth v. T. &. C. R. Co., 99 Ala. 331; Union Central Life Ins. Co. v. Gardener, 110 Ala. 655. **Addenda** made at time of signing, construed as part of bill.—L. & N. R. Co. v. Barker, 96 Ala. 435. **Bill construed most strongly against excepting party.**—Mallory v. Strodder, 6 Ala. 801; Patton v. Hayter, 15 Ala. 18; Donnell v. Jones, 17 Ala. 689; Perminter v. Kelly, 18 Ala. 716; Andress v. Broughton, 21 Ala. 200; Harris v. Rowland, 23 Ala. 644; Lewis v. Paull, 42 Ala. 136; McGehee v. State, 52 Ala. 224; Shelton v. St. Clair, 64 Ala. 565; Dudley v. Chilton Co., 66 Ala. 593; Massey v. Smith, 73 Ala. 173; Milliken v. Maund, 110 Ala. 332. **Bill sent up on certiorari regarded as correct,** though different from record.—A. G. S. R. Co. v. Dobbs, 101 Ala. 219, 229; Pearce v. Clements, 73 Ala. 256. **Charges construed with reference to the evidence.**—Berry v. Hardman, 12 Ala. 604; Waters v. Spencer, 22 Ala. 460; Kirkland v. Oates, 25 Ala. 465; Ivey v. Owens, 28 Ala. 641; Miller v. Jones, 29 Ala. 174; Fulton v. Goodman, 32 Ala. 108. **Sufficiency of exceptions to charges.**—McGehee v. State, 52 Ala. 224; Jacobson v. State, 55 Ala. 151; Lehman v. Bibb, Ib. 411; Stroud v. State, Ib. 77; Caldwell v. Parmer, 56 Ala. 405; S. & N. R. Co. v. Jones, Ib. 507; Mayberry v. Leach, 58 Ala. 339; Beavers v. Hardie, 59 Ala. 570; S. & N. R. Co. v. Sullivan, Ib. 272; Howe Mfg. Co. v. Ashley, 60 Ala. 496; Chapman v. Holding, Ib. 522; Bernstein v. Humes, Ib. 582; Hardin v. State, 63 Ala. 39; Mayor v. Rumsey, Ib. 352; Gray v. State, Ib. 66; Kilpatrick v. Pickens Co., 66 Ala. 422; Williams v. State, 68 Ala. 551; Dickey v. State, Ib. 508; Smith v. Sweeney, 69 Ala. 524; Farley v. State, 72 Ala. 170; Stoval v. Fowler, Ib. 77; Sparp v. Robertson, 76 Ala. 343; Woods v. State, Ib. 35; Bedwell v. Bedwell, 77 Ala. 587; Johnson v. Allen, 78 Ala. 387; Bernstein v. Humes, Ib. 134; Rice v. Schloss, 90 Ala. 416; Jones v. State, 96 Ala. 102; Bonner v. State, 107 Ala. 97; Barnewall v. Murrell, 108 Ala. 366; McDonald v. Montgomery St. Ry., 110 Ala. 161. **How exception reserved to instructions given in the absence of counsel** after jury retired.—Kuhl v. Long, 102 Ala. 563. The statute (next section) **dispenses with exceptions to rulings on charges requested, only when such rulings are assigned as error.**—Wesson v. State, 109 Ala. 61. **When so assigned, an exception is presumed.**—Whitaker v. State, 106 Ala. 30. **Party excepting to refusal of charges must set out sufficient of the evidence to show that they are not abstract.**—Peden v. Moore, 1 S. & P. 71; Brewer v. Strong, 10 Ala. 961; Tharp v. State, 15 Ala. 749; Greene v. Tims, 16 Ala. 541; Dent v. Portwood, 17 Ala. 242; Brazier v. Burt, 18 Ala. 201; Leverett v. Carlisle, 19 Ala. 80; Morris v. State, 25 Ala. 57; Turbeville v. State, 40 Ala. 715; Hill v. State, 43 Ala. 335; Tracey v. Warren, 45 Ala. 408; Lyman v. State, 47 Ala. 686; Ex parte Huckabee, 71 Ala. 427. **Motion to suppress or strike from the record.**—Weir v. Hoss, 6 Ala. 881; Ryan v. Kilpatrick, 66 Ala. 332; Bass Furnace Co. v. Glasscock, 86 Ala. 244; Ladd v. State, 92 Ala. 58; Rosson v. State, Ib. 76; M. & B. R. Co. v. Worthington, 95 Ala. 598; Beal v. State, 99 Ala. 234; Morris v. Brannen, 103 Ala. 602; Nat. Bank of Augusta v. Baker Hill I. Co., 108 Ala. 635. **When mandamus will not lie to compel insertion of clause in bill.**—Ex parte Huckabee, 71 Ala. 427.

613. Exception to giving or refusing special charge in writing presumed on appeal.—It is not necessary for a party to except to the ruling of the court in giving or refusing a charge requested in writing, nor need the bill of exceptions state that exception was reserved thereto; if the charge is refused, an exception by the party asking it is presumed, and if the charge is given, an exception by the other party is presumed; and such charge, and the ruling of the court thereon, may be, by the party in whose favor such exception is presumed, assigned as error on appeal, and when so assigned, the appellate court must review and consider the same in all respects

Dec. 17, 1894, p. 126.

as if exception had been expressly reserved upon the trial of the cause.

Exception presumed only when ruling assigned as error.—Whitaker v. State, 106 Ala. 30; Wesson v. State, 109 Ala. 61.

614 (2759) (3112) (2759) (2357). **Plaintiff suffering nonsuit may take bill of exceptions.**—When, from any decision of the court on the trial of a cause, it may become necessary for the plaintiff to suffer a nonsuit, the facts, point, or decision may be reserved for the decision of the supreme court by bill of exceptions, as in other cases.

Applies only when nonsuit suffered in consequence of rulings properly shown by bill of exceptions; not to rulings on demurrer or other pleadings. Blackburn v. Minter, 22 Ala. 613; Douglass v. M. & W. P. R. Co., 37 Ala. 638; Paulling v. Marshall, 47 Ala. 270; Darden v. James, 48 Ala. 33; Welch v. Mayor, Ib. 291; Hubbard v. Baker, Ib. 491; Amerson v. M. & M. R. Co., 50 Ala. 497; Rogers v. Jones, 51 Ala. 353; Wyatt v. Evins, 52 Ala. 285; Mathis v. Oates, 57 Ala. 112; Hurst v. Bell, 72 Ala. 336; Perry v. Danner, 74 Ala. 485; Levinshon v. Edwards, 79 Ala. 293; Steele v. Savage, 85 Ala. 230; Ernst v. Hollis, 89 Ala. 640; Terry v. Forbes, 94 Ala. 135; Dundee Mtg. Co. v. Nixon, 95 Ala. 318; Cofer v. Schening, 98 Ala. 338; Nat. Bk. of Augusta v. Baker Hill Iron Co., 108 Ala. 635; Prichard v. Sweeney, 109 Ala. 651. **Only such rulings as are properly reserved by bill of exceptions are revisable.**—Palmer v. Bice, 28 Ala. 430; Vincent v. Rogers, 30 Ala. 471; Wyatt v. Evins, 52 Ala. 285. **Record must show that the nonsuit was the result of adverse ruling; when sufficiently shown.**—Shields v. Byrd, 15 Ala. 818; Tate v. McCrary, 21 Ala. 499; Downs v. Minchew, 30 Ala. 86; Douglass v. M. & W. P. R. Co., 37 Ala. 638; Wood v. Coman, 56 Ala. 283. **When not sufficiently shown.**—Tate v. McCrary, 21 Ala. 499.

615 (2760) (3108) (2755) (2354). **Bill to state point excepted to; if correct must be signed.**—The bill must be tendered by the party supposing himself aggrieved, stating the point, charge, opinion, or decision, wherein the court is supposed to err, with such a statement of the facts as is necessary to make it intelligible; and if correctly stated, it is the duty of the presiding judge to sign the same, which thereby becomes a part of the record.

See citations to section 612 (2758).

616 (2761) (3113) (2760) (2358). **When bill signed.**—No bill of exceptions can be signed after the adjournment of the court during which the exception was taken, unless by consent or agreement of counsel in writing, except in such cases as is otherwise provided.

Must affirmatively appear that the bill was signed in term time, or within the time fixed by order of court or agreement of counsel.—Kitchen v. Moye, 17 Ala. 143; Haden v. Brown, 22 Ala. 572; Bryant v. State, 36 Ala. 270; Union India Rubber Co. v. Maddox, 37 Ala. 314; Maddox v. Broyles, 42 Ala. 436; Alford v. Eubank, 44 Ala. 276; Markland v. Albes, 81 Ala. 433; Morris v. Brannen, 103 Ala. 602. **When sufficiently shown by judge's orders copied into transcript.**—M. & B. R. Co. v. Worthington, 95 Ala. 598.

Feb. 22, 1887, p. 126. **617. When signed in vacation by order of court.**—The court may, in term time, fix a time in which the bill of exceptions may be signed, and the judge may, in vacation, extend such time.

Order or agreement extending time must be made within time previously fixed.—Bass Furnace Co. v. Glasscock, 86 Ala. 244; Rosson v. State, 92 Ala. 76; Ladd v. State, Ib. 58; M. & B. R. Co. v. Worthington, 95 Ala. 598; Beal v. State, 99 Ala. 234; Morris v. Brannen, 103 Ala. 602. **Power not abridged by statute making city court judgment final in ten days.**—Johnson v. Washburn, 98 Ala. 258; Danforth v. T. & C. R. Co., 99 Ala. 331.

Ib. **618. When signed in vacation by agreement.**—The parties, or their counsel, may, by agreement in writing entered into in term

time, fix a time in which the bill of exceptions may be signed, and may, in like manner, in vacation, extend such time.

See citations to preceding sections.

619. Further extensions.—The time fixed by the court or judge may be extended by agreement of the parties or their counsel, and the time fixed by agreement may be extended by the judge, in vacation. Ib.

See citations to second preceding section.

620. Extensions not to exceed six months.—The time allowed for signing a bill of exceptions must not be extended beyond six months from the adjournment of the court. Ib.

621 (2762) (3111) (2758) (2356). **Refusal to sign bill; establishment of in supreme court.**—If the judge fail or refuse to sign a bill of exceptions, the point or decision and the facts being truly stated, he is guilty of a high misdemeanor in office; and the supreme court must receive such evidence of the facts as may be deemed by it satisfactory, and proceed to hear the cause as if the bill had been signed by the judge.

Application to establish bill in supreme court must show that a correct bill was presented in proper time and that the judge failed or refused to sign.—Haden v. Brown, 22 Ala. 572; Stein v. McArdle, 25 Ala. 561; Garlington v. Jones, 37 Ala. 240; Strawbridge v. State, 48 Ala. 308; Judge v. State, 58 Ala. 402; Posey v. Beale, 69 Ala. 32; Blake v. Harlan, 75 Ala. 205; Hale v. Goodbar, 81 Ala. 108; Turner v. White, 97 Ala. 545; Beal v. State, 99 Ala. 234. **Judge may properly refuse to sign an incorrect or incomplete bill.**—Strawbridge v. State, 48 Ala. 308; Ex parte Mayfield, 63 Ala. 203; Blake v. Harlan, 75 Ala. 205. **Motion to establish bill; practice.**—Garlington v. Jones, 37 Ala. 240; Strawbridge v. State, 48 Ala. 308; Ex parte Mayfield, 63 Ala. 203; Blake v. Harlan, 75 Ala. 205; Turner v. White, 97 Ala. 545; Beal v. State, 99 Ala. 234.

622. Vacancy or expiration of office; when bill established in supreme court.—If the judge dies, resigns, or is impeached, or if the term of his office expires, or if from other good cause he does not sign a bill of exceptions duly presented to him within the proper time, the bill of exceptions may be established in the supreme court as provided in the preceding section.* Feb. 22, 1887, p. 126

See citations to preceding section.

CHAPTER 14.

BOUNDARIES OF THE STATE.

623 (12) (12) (16) (15). **Boundaries.**—The boundaries of this state are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line, to the southern boundary line of the State of Tennessee; thence west along the southern boundary line of the State of Tennessee, crossing the Tennessee

*As amended by joint committee.

river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line, to the northwest corner of Washington county in this State as originally formed; thence southerly along the line of the state of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence up the said river to the beginning.

624 (13) (13) (17) (16). **Boundary between Alabama and Georgia.**—The boundary line between Alabama and Georgia commences on the west side of the Chattahoochee river, at the point where it enters the State of Florida; from thence up the river, along the western bank thereof, to the point on Miller's Bend, next above the place where the Uchee creek empties into such river; thence in a direct line to the Nickajack.

In Howard v. Ingersoll, 17 Ala. 780, the boundary of the state, it was held, commenced at *low-water mark*, on the west side of the Chattahoochee river, from the point where it enters the present State of Florida, to the "great bend" next above the place where the Uchee creek empties into the said river. In other words, *low-water mark* on the west side of the Chattahoochee river was the line which separated the jurisdiction of the State of Alabama from the State of Georgia. On writ of error to the supreme court of the United States, the decision was reversed, a majority of the court holding that the boundary line between the two states was not low-water mark on the west side of the Chattahoochee river, but a line running up the river on and along its western bank, and that the jurisdiction of Georgia extended to the line which is washed by the water wherever it covers the bed of the river within its banks. The permanent fast land bank governs the line. From the lower edge of that bank the bed of the river commences, and the jurisdiction of Georgia extends to the lower edge of the bank on the west side of the river. *Nelson* and *Grier, JJ., dissenting, held*, that the true boundary line between the states of Georgia and Alabama was not a line drawn on the bank or bluff of the river, at high-water mark, but the line marked by the permanent bed of the river, by the flow of the water at its usual and accustomed stage, and where the water will be found at all times in the season, except when diminished by drouth or swollen by freshet.—Howard v. Ingersoll, 13 Howard, 381.

The boundary line between the states of Georgia and Alabama depends upon the construction of the following words of the contract of cession between the United States and Georgia, describing the boundary of the latter, namely: "West of a line beginning on the western bank of the Chattahoochee river, where the same crosses the boundary between the United States and Spain, running up the said river, and along the western bank thereof." State of Alabama v. State of Georgia, 23 Howard, U. S. 505.

"It is the opinion of this court that the language implies that there is ownership of soil and jurisdiction in Georgia, in the bed of the river Chattahoochee, and that the bed of the river is that portion of its soil which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of the winter or spring, or the extreme drouth of summer or autumn."—Ib.

The western line of the cession on the Chattahoochee river must be traced on the water-line of the acclivity of the western bank, and along that bank where that is defined; and in such places on the river where the western bank is not defined, it must be continued up the river on the line of its bed, as that is made by the average and mean stage of the water, as that is expressed in the conclusion of the above recited paragraph."—Ib.

By the contract of cession, the navigation of the river is free to both parties.—Ib.

625 (14) (14) (18) (17). **Boundary between Alabama and Florida.**—The boundary line between Alabama and Florida is the line commonly known as the "mound line," or "Ellicott's line," as distinguished from a blazed line, known as the "upper" or "Coffee line," commencing at a point on the Chattahoochee river, near a

place known as "Irwin's Mills;" and from thence to the Perdido river, marked the whole distance by blazes on the trees and by mounds of earth, at distances of about one mile.

CHAPTER 15.

CESSIONS TO THE UNITED STATES. 626–629.

626 (19) (19) (22) (24). **The United States may acquire lands.** As amended Feb. 18, 1891, p. 1336. The United States may acquire and hold lands within the limits of this state, as sites for forts, magazines, arsenals, dockyards, and other needful buildings, or either of them, as contemplated and provided by the Constitution of the United States, which purchase may be by contract with the owners, or as hereinafter provided for. In like manner the United States may acquire and hold lands, rights of way, and material needed in maintaining, operating, or prosecuting works for the improvement of rivers and harbors within this state.

627 (20) (20) (23) (22). **Value of the land, how determined.** Ib. If the agent of the United States and the owner of such lands or right of way cannot agree as to the sale and purchase thereof, the probate court of the county in which the lands lie may, on the application of such agent, ascertain the value of such lands or right of way, and decree a conveyance thereof as follows:

1. Reasonable notice of such application must be given to the owner of the land by personal service upon him of a copy of the application.

2. The value of the land or right of way must be ascertained by a jury summoned for that purpose, under the direction of the probate judge, or by any three persons agreed on by the parties, which jury or persons must be sworn by the probate judge faithfully and impartially to determine such value.

3. Upon the ascertainment of the value of the land or right of way upon evidence or inspection of the same, or both, by the jury, or by the persons agreed upon, under the direction of the probate judge, the said probate court must, on the payment of the value thereof to the owner, or into court for his use, and the payment of the costs and expenses of the proceeding, decree and direct a conveyance of the land or right of way within a time to be specified in the decree, to the United States, for such purpose, and on failure to execute such conveyance within the time specified in the decree, the decree shall operate as a conveyance.

628 (21) (21) (24) (23). **Governor to cede jurisdiction; restrictions.**—The governor, upon application made to him in writing on behalf of the United States for that purpose, accompanied by the proper evidence of the purchase, describing the lands sought to be

ceded, is authorized on the part of the state to cede to the United States jurisdiction over such lands, to hold, to use, and occupy the same for the purposes of the cession, and none other. The jurisdiction thus ceded does not prevent the execution on such lands of any process, civil or criminal, under the authority of this state, nor prevent the laws of this state from operating over such lands; saving to the United States security to their property within the limits of the jurisdiction ceded, and exemption of the same and of such lands from taxation under the authority of this state during the jurisdiction ceded.

As amended Feb. 26, 1889, p. 50.

629 (22) (22). **Cession of submarine sites.**—Whenever the United States desire to acquire title to land belonging to this state, and covered by the navigable waters of the United States, and within the limits of this state, for the site of a lighthouse, beacon, or other aid to navigation, and application is made therefor by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the United States jurisdiction over the same; and upon like application the governor is authorized and empowered to convey to the United States the title to any land belonging to this state and covered by the navigable waters of the United States upon which any lighthouse or other aid to navigation has heretofore been erected, and to cede to the United States jurisdiction over the same; but no single tract shall contain more than ten acres, and this state shall retain jurisdiction concurrent with the United States, so far that all process, civil and criminal, issuing under the authority of this state, may be executed by the proper officers thereof upon any person amenable to the same within the limits of land so ceded.

CHAPTER 16.

CHANCERY COURTS.

ARTICLE 1.—CHANCERY DIVISIONS AND DISTRICTS; TIMES AND PLACES OF HOLDING COURTS; SPECIAL TERMS. 630–637.

2.—JURISDICTION OF COURTS OF CHANCERY; POWERS OF CHANCELLORS; SALARY; PENALTY FOR FAILING TO HOLD COURTS; SPECIAL CHANCELLORS AND THEIR COMPENSATION. 638–652.

3.—REGISTERS OF THE CHANCERY COURT; THEIR QUALIFICATIONS, DUTIES AND POWERS. 653–668.

4.—CASES OF WHICH CHANCERY COURTS TAKE COGNIZANCE; PLEADINGS; PROCESS; LIMITATION; VENUE. 669–703.

5.—AMENDMENTS; EXCEPTIONS; FILING PAPERS; SERVING NOTICES; EXAMINATION OF PARTIES; MAKING ANSWER A CROSS-BILL; REVIVOR OF SUIT BY A DEFENDANT. 704–722.

6.—EVIDENCE IN CHANCERY; HOW TAKEN; COMMISSIONERS; WITNESSES. 723–740.

7.—REFERENCES TO THE REGISTER; EXCEPTIONS. 741–745.

8.—DECREES PRO CONFESSO AND FINAL DECREES WITHOUT PERSONAL SERVICE. 746–759.

9.—BILLS OF REVIEW, NE EXEAT, EQUITABLE ATTACHMENTS, GARNISHMENTS AND WRITS OF SEIZURE. 760–783.

10.—INJUNCTIONS. 784–798.

11.—RECEIVERS. 799–804.

12.—BILLS TO CORRECT ERRORS IN SETTLEMENTS IN THE PROBATE COURT. 805–808.

13.—BILLS TO COMPEL THE DETERMINATION OF CLAIMS TO LANDS, AND TO QUIET TITLE. 809–813.

14.—CREDITORS' BILLS. 814–823.

15.—ISSUES OUT OF CHANCERY. 824–828.

16.—RELIEVING INFANTS OF DISABILITIES OF NON-AGE. 829–835.

17.—PROTECTION OF ESTATES OF INTEMPERATE PERSONS. 836–843.

18.—CALL OF THE DOCKET; HEARING OF CAUSES; RENDITION, LIEN, EFFECT, AND ENFORCEMENT OF DECREES; COSTS. 844–863.

19.—RULES OF PRACTICE ADOPTED BY THE SUPREME COURT, AND BY CHANCELLORS, RECOGNIZED. 864, 865.

ARTICLE 1.

CHANCERY DIVISIONS AND DISTRICTS; TIMES AND PLACES OF HOLDING COURTS; SPECIAL TERMS.

630 (713). **State divided into five chancery divisions.**—The state is divided into five chancery divisions, to be named and composed of counties as follows:

The Northern division, to be composed of the counties of Colbert, Cullman, DeKalb, Franklin, Jackson, Lauderdale, Lamar, Limestone, Lawrence, Madison, Marion, Marshall and Morgan.

The Northeastern division, to be composed of the counties of Autauga, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Coosa, Elmore, Etowah, Lee, Randolph, Shelby, St. Clair, Talladega and Tallapoosa.

The Northwestern division, to be composed of the counties of Blount, Fayette, Jefferson, Tuscaloosa, Walker and Winston.

The Southeastern division, to be composed of the counties of Barbour, Bullock, Butler, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Lowndes, Macon, Montgomery, Pike and Russell.

The Southwestern division, to be composed of the counties of Baldwin, Bibb, Choctaw, Clarke, Dallas, Greene, Hale, Marengo, Mobile, Monroe, Perry, Pickens, Sumter, Washington and Wilcox.

Feb. 14, 1895, p. 564.

631. Northern division; times and places of holding courts. The chancery courts in the northern chancery division shall be held at the following times and places:

In the first district, composed of the county of Franklin, at Russellville, on Thursday after the first Monday in February and August, and may continue three days.

In the second district, composed of the county of Colbert, at Tuscumbia, on the second Monday in February and August, and may continue one week.

In the third district, composed of the county of Lauderdale, at Florence, on the third Monday in February and August, and may continue one week.

In the fourth district, composed of the county of Lawrence, at Moulton, on the fourth Monday in February and August, and may continue three days.

In the fifth district, composed of the county of Limestone, at Athens, on the first Monday after the fourth Monday in February and August, and may continue three days.

In the seventh district, composed of the county of Cullman, at Cullman, on Thursday after the first Monday after the fourth Monday in February and August, and may continue three days.

In the sixth district, composed of the county of Morgan, at Decatur, on the second Monday after the fourth Monday in February and August, and on the first Monday in June, and may continue one week.

In the eighth district, composed of the county of Madison, at Huntsville, on the third Monday after the fourth Monday in February and August, and may continue two weeks.

In the eleventh district, composed of the county of Lamar, at Vernon, on the third Monday in April and October, and may continue three days.

In the twelfth district, composed of the county of Marion, at Hamilton, on Thursday after the third Monday in April and October, and may continue three days.

In the ninth district, composed of the county of Jackson, at Scottsboro, on the first Monday in May and November, and may continue one week.

In the thirteenth district, composed of the county of DeKalb, at Ft. Payne, on the second Monday in May and November, and may continue three days.

In the tenth district, composed of the county of Marshall, at Gun-

tersville, on Thursday after the second Monday in May and November, and may continue three days.

632. Northeastern division; times and places of holding courts. Dec. 9, 1896. p. 146.

The chancery courts in the northeastern chancery division shall be held in each year at the following times and places:

In the first district, composed of the county of Chambers, at LaFayette, on the first Thursday after the first Monday in June and December, and continue three days.

In the second district, composed of the county of Lee, at Opelika, on the second Monday in June and December, and continue one week.

In the third district, composed of the county of Tallapoosa, at Dadeville, on the third Monday in June and December, and continue three days.

In the fourth district, composed of the county of Coosa, at Rockford, on the first Thursday after the third Monday in June and December, and continue three days.

In the fifth district, composed of the county of Talladega, at Talladega, on the fourth Monday in March and September, and continue one week.

In the sixth district, composed of the county of Shelby, at Columbiana, on the first Thursday after the second Monday in March and September, and continue three days.

In the seventh district, composed of the county of Chilton, at Clanton, on the second Monday in March and September, and continue three days.

In the eighth district, composed of the county of Elmore, at Wetumpka, on the first Thursday after the first Monday in March and September, and continue three days.

In the ninth district, composed of the county of Calhoun, at Jacksonville, on the fourth Monday in May and November, and continue one week.

In the tenth district, composed of the county of Cleburne, at Edwardsville, on the first Thursday after the third Monday in March and September, and continue three days.

In the eleventh district, composed of the county of Randolph, at Wedowee, on the first Monday in June and December, and continue three days.

In the twelfth district, composed of the county of Clay, at Ashland, on the third Monday in March and September, and continue three days.

In the fourteenth district, composed of the county of St. Clair, at Ashville, on the third Monday in February and August, and continue three days.

In the fifteenth district, composed of the county of Etowah, at Gadsden, on the fourth Monday in February and August, and continue one week.

In the seventeenth district, composed of the county of Cherokee,

at Centre, on the first Thursday after the third Monday in February and August, and continue three days.

In the eighteenth district, composed of the county of Autauga, at Prattville, on the first Monday in March and September, and continue three days.

Dec. 3, 1896, p. 46.

633. Northwestern division; times and places of holding courts. The chancery courts in the northwestern chancery division shall be held in each year at the following times and places:

In the first district, composed of the county of Blount, at Oneonta, on the first Monday in March and September, and may continue four days.

In the second district, composed of the counties of Walker and Winston, at Jasper, on the first Monday in April and the third Monday in October, and may continue one week.

In the third district, composed of the county of Fayette, at the court-house thereof, on the second Monday in February and the first Monday in October, and may continue one week.

In the fourth district, composed of the county of Tuscaloosa, at Tuscaloosa, on the fourth Monday in February, the first Monday in May, and the fourth Monday in October, and may continue one week.

Feb. 18, 1895, p. 884.

In the fifth district composed of the county of Jefferson, at Birmingham, the court shall be open the whole year, but the whole docket shall be regularly called, beginning on the first Monday in February, May and October, and at any other time the chancellor may direct.

634. Southeastern division; times and places of holding courts. The chancery courts in the southeastern chancery division shall be held in each year, at the following times and places:

Feb. 23, 1889, p. 563.

In the sixteenth district, composed of the county of Covington, at Andalusia, on Friday before the first Monday in January and July, and may continue two days.

Feb. 7, 1889, p. 31.

In the first district, composed of the county of Escambia, at Brewton, on the first Monday in January and July, and may continue three days.

In the second district, composed of the county of Conecuh, at Evergreen, on Thursday after the first Monday in January and July, and may continue three days.

In the third district, composed of the county of Butler, at Greenville, on the second Monday in January and July, and may continue one week.

In the seventh district, composed of the county of Macon, at Tuskegee, on the third Monday in January and July, and may continue three days.

In the fourth district composed of the county of Crenshaw, at Luverne, on Thursday after the third Monday in January and July, and may continue three days.

In the fifth district, composed of the county of Lowndes, at Hayneville, on the fourth Monday in January and July, and may continue one week.

In the tenth district, composed of the county of Pike, at Troy, on the first Monday in February and August, and may continue four days. Feb. 18, 1895, p. 625.

In the eleventh district, composed of the county of Coffee, at Elba, on Friday after the first Monday in February and August, and may continue two days.

In the eighth district, composed of the county of Russell, at Seale, on the second Monday in March and September, and may continue three days. Feb. 7, 1889, p. 31.

In the ninth district, composed of the county of Bullock, at Union Springs, on Thursday after the second Monday in March and September, and may continue three days.

In the fourteenth district, composed of the county of Barbour, at Eufaula, on the third Monday in March and September, and may continue one week.

In the thirteenth district, composed of the county of Henry, at Abbeville, on the fourth Monday in March and September, and may continue three days.

In the sixth district, composed of the county of Montgomery, at Montgomery, on the first Monday in April and October, and may continue three weeks.

In the fifteenth district, composed of the county of Geneva, at Geneva, on the fourth Monday in April and October, and may continue two days. Feb. 18, 1895, p. 625.

In the twelfth district, composed of the county of Dale, at Ozark, on Thursday after the fourth Monday in April and October, and may continue three days. Feb. 8, 1889, p. 31.

635. Southwestern division; times and places of holding courts. Feb. 4, 1891, p. 336. The chancery courts in the southwestern chancery division shall be held in each year at the following times and places:

In the first district, composed of the county of Clarke, at Grove Hill, on the last Monday in February and August, and may continue three days.

In the third district, composed of the county of Wilcox, at Camden, on the first Monday in March and September, and may continue three days.

In the fourth district, composed of the county of Bibb, at Centreville, on Thursday after the first Monday in March and September, and may continue three days.

In the fifth district, composed of the county of Dallas, at Selma, on the second Monday in March and September, and may continue six days.

In the seventh district, composed of the county of Hale, at Greensboro, on Thursday after the third Monday in March and September, and may continue three days.

In the eighth district, composed of the county of Greene, at Eutaw, on the fourth Monday in March and September, and may continue three days.

In the ninth district, composed of the county of Pickens, at Car-

rollton, on Thursday after the fourth Monday in March and September, and may continue three days.

In the tenth district, composed of the county of Sumter, at Livingston, on the first Monday after the fourth Monday in March and September, and may continue three days.

In the eleventh district, composed of the county of Choctaw, at Butler, on Thursday after the first Monday after the fourth Monday in March and September, and may continue three days.

In the twelfth district, composed of the county of Marengo, at Linden, on the second Monday after the fourth Monday in March and September, and may continue six days.

In the thirteenth district, composed of the counties of Mobile, Baldwin and Washington, at Mobile, on the third Monday after the fourth Monday in March and September, and may continue four weeks.

Feb. 9, 1895, p. 487. In the second district, composed of the county of Monroe, at Monroeville, on the seventh Monday after the fourth Monday in March and September, and may continue three days.

In the sixth district, composed of the county of Perry, at Marion, on the last Monday in May and November, and may continue three days.

636 (718) (613) (715) (613). **Special terms.**—Special terms of any chancery court may be held, at the place of holding the regular term, when any regular term is not held, or when the business is not disposed of at any regular term.

637 (719) (614) (716) (614). **Notice of such terms.**—Thirty days' notice of the time of holding such special terms must be given by advertisement in some newspaper published in the county, or if none is published therein, in the one published nearest to the county in which such special term is to be held.

ARTICLE 2.

JURISDICTION OF COURTS OF CHANCERY; POWERS OF CHANCELLORS; SALARY; PENALTY FOR FAILING TO HOLD COURTS; SPECIAL CHANCELLORS AND THEIR COMPENSATION.

638 (720) (616) (698) (602). **Jurisdiction of chancery court.** The powers and jurisdiction of courts of chancery extend—

1. To all civil causes in which a plain and adequate remedy is not provided in the other judicial tribunals.

2. To all cases founded on a gambling consideration, so far as to sustain a bill of discovery and grant relief.

Paulling v. Watson, 26 Ala. 205.

3. To subject an equitable title or claim to real estate to the payment of debts.

4. To such other cases as may be provided by law.

Scope of the four subdivisions defined.—Waldron v. Simmons, 28 Ala. 629.

639 (721) (617) (699) (603). **Extraordinary jurisdiction of chancellors.**— Chancellors may exercise the extraordinary jurisdiction granted to such officer by the common law, in cases of necessity, when adequate provision has not been made for its exercise by some other officer, or in other courts, and with the exceptions, limitations and additions imposed by the laws of this state.

640 (722) (620) (702). **Powers to enforce execution of process.** Courts of chancery have all the powers of enforcing the execution of process which appertain to chancery courts; and chancellors may, when necessary, appoint a special officer to execute process against any sheriff or coroner, or to perform any other special service.

641 (723) (618) (700) (604). **Power to punish for contempts.** The court of chancery may punish for contempts by fine, not exceeding fifty dollars, and by imprisonment, not exceeding five days; one or both.

642 (724) (619) (701) (605). **Power to administer oaths.**—Chancellors may administer oaths and take affidavits in all cases in which oaths and affidavits are required by law.

643 (725) (615) (697) (601). **Residence and salary of chancellors.**—Each chancellor shall, at the time of his election or appointment, and during his continuance in office, reside in the division for which he is elected or appointed; and his salary shall be twenty-five hundred dollars per annum. Feb. 22, 1887, p. 134.

644 (726) (621) (703) (606). **Chancellor's jurisdiction; courts, where held.**—Each chancellor has jurisdiction co-extensive with the state; but he must hold the courts in his division, or provide for their being held by some other chancellor.

645 (727) (622) (704). **When court to be opened.**—When the period for any term of the chancery court is three or more days, if the chancellor is absent, the sheriff must adjourn the court from day to day until three o'clock in the afternoon of the third day; and at any time before that hour the chancellor may open the court.

646 (728) (623) (705). **Penalty for failure to attend, or absence.** Any chancellor who fails to attend any court at the appointed time, unless the same is held by another chancellor, or who, after attending, absents himself before the term closes, or the completion of the business of the court, forfeits, for each day's absence or failure to attend, twenty-five dollars, to be deducted from his salary, unless such failure or absence was necessary on account of the sickness of himself or family, or unless there has been a failure to hold court, or an adjournment of the same, on account of an epidemic or contagious disease, or well-grounded apprehension thereof; either of which facts may be proved by his own affidavit, to be produced to the auditor and filed in his office.

647 (729) (624) (706). **Sheriff certifies such failure or absence.** The sheriff of the county from the court of which the chancellor may be absent, or which he fails to attend, as described in the preceding section, must, immediately after the end of the term, certify

the number of days of such absence or failure to attend to the auditor.*

As amended Jan. 24, 1893, p. 190.

648 (730) (625) (707). **Penalty for sheriff's failure to certify; when not required to certify.**—Any sheriff, failing for thirty days to certify, as required in the preceding section, incurs a penalty to the state of one hundred and fifty dollars, to be recovered after two days' notice, on motion, in the name of the state, by the solicitor, in the circuit court of the county in which such sheriff resides; but the chancellor incurs no forfeiture, and the sheriff must not certify to the auditor, in case of absence for a day at the commencement of a term, if there was not time, after the adjournment of the preceding court, to reach the place of holding court on the first day of the term, or if the chancellor was prevented from reaching the place of holding the court on the first day by high water, or if he could only have reached such place at such time by traveling on Sunday, or if his absence was not attributable to a willful neglect of duty. Nor must the sheriff certify to the auditor if he is satisfied that the absence at the term of the court was caused by the sickness of the chancellor, or any member of his family, or when there is no business on the docket to be disposed of and the chancellor has been informed of that fact by the certificate of the register.*

649 (731) (627) (713) (612). **Compensation to solicitor acting as special chancellor when chancellor incompetent.**—Any solicitor acting as special chancellor on the hearing and trial of any cause, which the chancellor is incompetent to try, shall receive for his compensation an amount to be agreed upon, and to be paid as may be determined by the solicitors in the cause.

Feb. 18, 1895, p. 1135, §1.

650. Special chancellor appointed by governor when chancellor absent or impeached.—Whenever it shall be made known to the governor that any regular term or terms of the chancery court will not be held by any regular chancellor, by reason of the failure of the chancellor to attend such term or terms, or when impeachment proceedings are pending against him, the governor may appoint and commission a person possessing the qualifications of chancellors, as special chancellor to hold such regular term or terms of such court; and such special chancellor shall qualify by taking the oath of office prescribed by the Constitution, and shall proceed to hold such court for the term or terms thereof which he is appointed to hold; and during the time of such appointment, such special chancellor shall have and exercise all the powers and jurisdiction of chancellors; but his term of office shall cease and determine upon the adjournment of the term or terms of the court which he is appointed to hold, or sooner if the regular chancellor shall appear and assume the duty of holding such court. No fee shall be charged for the commission herein authorized to be issued.

Ib. §2.

651. Compensation of such special chancellor.—Such special chancellor shall receive as compensation for his services, the sum of ten dollars per day for each day he is actually engaged in holding

*As amended by joint committee.

such court, and his actual and necessary expenses incurred therein, to be paid out of the state treasury on the approval of the governor and warrant drawn by the auditor.

652. **Chancellor reduced to half pay while place filled by special chancellor.**—For each day a special chancellor is paid under the preceding section, the auditor must, under such rules and regulations as he may prescribe, cause to be deducted from the salary of the chancellor, and retained for the benefit of the state, the sum of three dollars and forty-seven cents, so that the chancellor shall receive but one-half his usual salary for the time his place is filled by the special chancellor. But when the penalty prescribed by section 646 (728) of this Code is enforced, the deduction herein provided for shall not be made. Nor does this section apply when the chancellor was, during such time, engaged in holding court elsewhere.

ARTICLE 3.

REGISTERS OF THE CHANCERY COURT, THEIR QUALIFICATION, DUTIES AND POWERS.

653 (732) (629) (720) (616). **Appointment, term and removal of register.**—A register in chancery for each district is appointed by the chancellor of the division in which such district is situate, who holds the office during the term of the chancellor making the appointment; but the chancellor may, in term time or vacation, remove any such register for ineligibility or disqualification, whether existing at the the time of the appointment or thereafter occurring, or for misbehavior, negligence, or malpractice; and, in case of any removal, the reasons therefor must be entered upon the minutes at the term at which the removal is made, or, if in vacation, at the first term thereafter; and women are eligible to fill such office.*

Register's ministerial duties may be performed by a deputy or assistant. Merlette v. State, 100 Ala. 42.

654 (733) (630) (721) (617). **Official bond of register.**—The register, before entering upon the discharge of the duties of his office, must give bond in such sum as may be required by the chancellor, or by the judge of probate of the county in which the court is held, not less than five thousand dollars, to be approved by the chancellor, or such judge of probate; and such bond must be filed and recorded in the office of the judge of probate of the county in which the court of which he is register is held.

655 (734) (631, 632) (722, 723) (618, 619). **Additional bond.** The chancellor, whenever the public interests demand, must require of such register an additional bond; and, on failure to give the same within the time fixed by the chancellor therefor, the chancellor must remove him from office. Such additional bond must be approved, filed and recorded as the first official bond.

656 (735) (633) (724) (620). **Place of office.**—The register must

*As amended by joint committee.

keep his office at the place at which the court of which he is register is held.

657 (736) (634) (725) (621). **Duties of register.**—It is the duty of the registers within their respective districts—

1. To administer oaths in chancery cases, and to issue all process from such courts; to make orders of publication for defendants; to grant decree pro confesso for the want of answers; to hear exceptions to bills, answers and reports; to issue attachments and process of sequestration; to perform the duties of master, unless otherwise ordered by the chancellor; and to make all interlocutory decrees and orders in vacation, not affecting the decision of the controversy between the parties, subject at all times to the control, direction and supervision of the chancellor.

Powell v. Central Co., 24 Ala. 441.

2. To keep a docket, in which must be entered the names of plaintiffs and defendants, the names of the solicitors of the several parties, a minute of the time when process issued and was returned; the return thereon, and a note of all the orders and proceedings.

Pinkston v. Arrington, 98 Ala. 489.

3. To keep an execution-docket as required of clerks of the circuit court; and in such docket, as well as on the execution, to enter the name of the solicitor of the party entitled to the execution.

4. To keep a subpœna-docket, in which must be entered the cases in which subpœnas for witnesses examined orally in open court, or before him on references, or otherwise, are issued, the names of the witnesses, the time of the issue, and the return of the sheriff.

5. To keep a commission-docket, in which shall be entered the date of filing interrogatories, direct, cross and rebutting, the names of the witnesses for the examination of whom the commission issues, for what party the witnesses are examined, the date of the issue and return of the commission, the names of the commissioners, the residences of witnesses and commissioners, and the fees for copying interrogatories, issuing notices and commissions, and the fees of the witnesses and of the commissioners.

Merlette v. State, 100 Ala. 42.

6. To enter, in well-bound books, all orders and interlocutory decrees made by him in vacation, and all decrees and orders made by the chancellor.

7. To record, in well-bound books, within six months after the final determination of any cause, all the proceedings in relation to the same, except those previously recorded under section 2644 (653) and except as otherwise provided by this Code or ordered by the chancellor.*

Pinkston v. Arrington, 98 Ala. 489.

8. To issue, within five days after the adjournment of each term of the court, all process necessary for the enforcement of any order or decree made during the term.

*As amended by joint committee.

9. To keep all papers, books, dockets and records belonging to his office with care and security; the papers filed, arranged, numbered and labeled so as to be of easy reference; the books, dockets and records properly labeled; and to allow parties to inspect the same free of charge.

10. On application, and the payment of the legal fees therefor, to make out and deliver to any person a correct transcript, properly certified, of any paper or record in his office.

11. To give the plaintiff, his agent, or solicitor, if resident in the county, personal notice of the collection of money within ten days thereafter; if not resident in the county, and he knows the residence of either of them, he must send such notice by mail.

12. To administer oaths and take affidavits in all cases in which the authority to administer such oath or take such affidavit is not confined to some other officer.

13. To perform such other duties as are or may be required of him by law.

Some of the foregoing duties are judicial and some ministerial.—Merlette v. State, 100 Ala. 42.

658 (737) (637) (728). **Depositions, etc., not recorded; transcript for supreme court.**—In no case must the register make any record of any commission issued to take the deposition of any witness, or the direct, cross, or rebutting interrogatories, or the exhibits thereto, or the answers to such interrogatories; but the register must mark, file and carefully preserve all papers relating to any case decided in chancery; and whenever a case is carried to the supreme court the register must make out a transcript from the complete record and the papers on file in his court relating to the case.

When register's certificate to transcript sufficient.—Cargile v. Ragan, 65 Ala. 287; Cofer v. Schening, 98 Ala. 338.

659 (738) (641) (732) (622). **Injunctions.**—The register has no authority to grant or dissolve injunctions.

660 (739) (642) (733) (623). **Special register.**—The chancellor may appoint a special register when necessary.

661 (741) (644) (735). **Books and stationery.**—The courts of county commissioners must allow to the registers in chancery the amounts properly expended by them for books and stationery, for the use of their offices.

Stationery includes blanks for official use. Commissioners' Court v. Goldthwaite, 35 Ala. 704.

662 (742) (645) (736). **How such expenses paid, when more than one county in district.**—When a district is composed of more than one county, the amounts expended for such books and stationery shall be borne by each county in the proportion that its population bears to the aggregate population of the counties composing the district, as shown by the last decennial census of the United States; and the chancellor must, once a year during the sitting of the court, ascertain the share each county in such district is liable to contribute, and certify the same to the court of county commissioners

of such county; and such court must provide for the payment of the same according to the certificate of the chancellor.

663 (743) (646) (738). **General direct and reverse indexes.** Registers in chancery must keep general direct and reverse indexes of all record books in their offices, which must always be in good, and substantial, and well-bound books; but they are not required to prepare any new indexes, if those already in their offices are sufficient.

Pinkston v. Arrington, 98 Ala. 489.

664 (744) (647) (740). **Recopy of books.**—The register, deeming it necessary to recopy any books in his office, in order to secure their contents from damage or loss, must submit the same to the examination of the court of county commissioners, and such court, if they deem such recopy necessary, must, upon the minutes of the court, order the same to be made; and the register must make the same in good and substantial books, for which such court must allow him a reasonable compensation; and if more than one county are embraced in the district, the expenses therefor must be borne and paid by such counties as the expenses for books and stationery are borne and paid.

665 (745) (648) (741). **Records free for examination.**—The records of the register's office must be free for the examination of all persons when not in use by him.

666 (746) (649). **Register pays money to successor.**—The register, having in his hands at the expiration of his official term, any money held by him subject to the further order, decree, or judgment of any court, shall, on demand of his successor in office, pay the same to him, and, upon such payment, shall be discharged from further liability therefor.

667 (747). **Register, his deputy or partner not allowed to practice in his court.**—It is unlawful for any register or his deputy or partner, to practice law in the court of which he is register, or to be interested, as solicitor, in any cause pending in such court, while he is in office.*

Feb. 7, 1887, p. 124.

668. Register may punish for contempt.—The register, when holding a reference by order of the chancery court, or sitting at rules in any matter which by law may come before him, may punish for contempt, by fine not exceeding ten dollars and by imprisonment not exceeding two days.

ARTICLE 4.

CASES OF WHICH CHANCERY COURTS TAKE COGNIZANCE; PLEADINGS; PROCESS; LIMITATION; VENUE.

669 (3414) (3753) (3321) (2872). **Cases of which chancery courts take cognizance.**—Courts of chancery must take cognizance of cases in equity—

*As amended by joint committee.

1. When the defendants reside in this state.

2. Against non-residents, when the object of the suit concerns an estate of, lien or charge upon lands, or the disposition thereof, or any interest in, title to, or incumbrance on personal property within this state, or where the cause of action arose, or the act on which the suit is founded, was to have been performed in this state.

3. In such other cases as such courts are by law required to take jurisdiction.

Court having jurisdiction of parties may grant relief, although subject-matter of litigation is in another state.—Allen v. Buchanan, 97 Ala. 399; Rose v. Gibson, 71 Ala. 35; Lide v. Parker, 60 Ala. 165. **When court has jurisdiction of non-residents.**—Pearce v. Jennings, 94 Ala. 524. **When not.**—Holman v. Bank, 12 Ala. 369; Glover v. Glover, 16 Ala. 440; Iron Age Pub. Co. v. W. U. Telegraph Co., 83 Ala. 498. **Jurisdiction of non-residents limited** and statute strictly construed.—Sayre v. Elyton Land Co., 73 Ala. 85. **Original jurisdiction not affected by legislative enactments.**—Waldron v. Simmons, 28 Ala. 629.

670 (3415) (3754) (3322) (2873). **Joint demand may be prosecuted against one defendant.**—When the plaintiff has a joint demand, he may proceed against one or more of the parties thereto, without joining the others.

Rule prior to statute stated.—Moore v. Armstrong, 9 Port. 697; Watts v. Gayle, 20 Ala. 817. **Sureties may be sued without principal.**—Fulgham v. Herstein, 77 Ala. 496. **Not necessary to proceed against all** the sureties on official bonds.—Teague v. Corbitt, 57 Ala. 529; Hailey v. Boyd, 64 Ala. 399; Lott v. Mobile County, 79 Ala. 69.

671 (3416) (3755) (3323). **State may bring suit in chancery.** The state may sue in chancery, and the suit is governed by the same rules as suits between individuals. The solicitor of the circuit in which the suit is pending must attend to the same on the part of the state, and the governor may employ assistant counsel, if he deem it necessary, and the chancellor may determine the amount of compensation; and if unsuccessful, the state is liable for costs as individual suitors are. The direction of the executive of the state in writing is sufficient authority to the attorney for bringing such suit.

672 (3417) (3756) (3324). **How persons of unsound mind may sue.**—Persons of unsound mind may sue by next friend, and guardians may be substituted; and upon restoration to sanity, the suit may proceed in their own names.

Suit should be in name of lunatic by next friend or guardian.—West v. West, 90 Ala. 458.

673 (3418) (3757) (3325) (2874). **Suits; how commenced.**—The mode of commencing the suit in chancery is by bill, addressed to the chancellor of the division in which the same is filed.

When filing of bill is complete.—State v. Stow, 51 Ala. 69.

674 (3419) (3758) (3381) (2928). **Limitation.**—The provisions of this Code, prescribing the time within which civil suits must be commenced after the cause of action has accrued, apply to suits commenced by bill in chancery.

Statute declaratory of law as previously settled by judicial decision. Molton v. Henderson, 62 Ala. 426; Thompson v. Parker, 68 Ala. 387; Morrison v. Stevenson, 69 Ala. 448. **Chancery courts give effect to limitations obtaining at law** and to exceptions and qualifications thereto.—Crocker v. Clements, 23 Ala. 296, 305; Carter v. Carter, 53 Ala. 365; Jones v. Jones, 55 Ala. 525, 532;

Gonner v. Smith, 88 Ala. 300. **Statute as applicable to equitable as to legal titles and demands.**—Coyle v. Wilkins, 57 Ala. 108. **Defense of statute must be asserted by proper pleading.**—Parker v. Jones, 67 Ala. 234; Thompson v. Parker, 68 Ala. 387; Sands v. Hammell, 108 Ala. 624. **May be asserted by plea or answer, or, if bill shows claim barred, by demurrer.**—Ragland v. Morton, 41 Ala. 344; Shorter v. Smith, 56 Ala. 208; Bercy v. Lavretta, 63 Ala. 374; Underhill v. Mobile Ins. Co., 67 Ala. 45; Thompson v. Parker, 68 Ala. 387; Espy v. Comer, 76 Ala. 501; Scruggs v. Decatur M. & L. Co., 86 Ala. 173; Lovelace v. Hutchinson, 106 Ala. 417. **What sufficient plea of statute in equity.** Love v. Love, 65 Ala. 554. **When bill makes case prima facie barred, facts avoiding bar must be pleaded.**—Ragland v. Morton, 41 Ala. 344; Philippi v. Philippi, 61 Ala. 41; Scruggs v. Decatur M. & L. Co., 86 Ala. 173. **Or if reason for excepting case from statute exists,** the matter of exception should be introduced by amendment of bill.—Ragland v. Morton, 41 Ala. 344; Parker v. Jones, 67 Ala. 234; Thompson v. Parker, 68 Ala. 387.

675 (3420) (3759) (3382) (2929). **Filing of bill commencement of suit.**—The filing of the bill is the commencement of the suit, if prosecuted, whether the defendant is brought into court by personal service or by publication.

Merely cited arguendo.—Thompson v. Parker, 68 Ala. 387. **Order appointing receiver before bill filed, void.**—Crowder v. Moone, 52 Ala. 220; Harwell v. Potts, 80 Ala. 70. **Order granting injunction before bill filed a mere irregularity.**—Ex parte Sayre, 95 Ala. 288; Henry v. Watson, 109 Ala. 335.

676 (3421) (3760) (3326) (2875). **In what district filed.**—The bill must be filed in the district in which the defendants, or a material defendant resides; and if to enjoin proceedings on judgments in other courts, it may be filed in the district in which such proceedings are pending, or judgment rendered; and in case of non-residents, in the district where the subject of the suit, or any portion of the same, is, when the cause of action arose, or the act on which the suit is founded was to be performed; or if real estate be the subject-matter of the suit, whether it be the exclusive subject-matter of the suit or not, then in the district where the same, or a material portion thereof, is situated.

Bill disclosing want of jurisdiction is subject to demurrer or motion to dismiss; otherwise, plea in nature of plea in abatement proper mode of presenting objection.—Shrader v. Walker, 8 Ala. 244; Porter v. Worthington, 14 Ala. 584; Lewis v. Elrod, 38 Ala. 17; Campbell v. Crawford, 63 Ala. 392; Harwell v. Lehman, 72 Ala. 344. **Objection to local jurisdiction may be waived** by conduct of parties, or failure to seasonably insist upon it.—Freeman v. McBroom, 11 Ala. 943; Bank v. Rutledge, 13 Ala. 196; Gay v. Brierfield C. & I. Co., 94 Ala. 303; s. c., 106 Ala. 615. **Otherwise, where the defendants are infants.**—Johnston v. Shaw, 31 Ala. 592. **It is only a defendant to the original, not an amended, bill who may complain of suit out of his jurisdiction.**—Gay v. Brierfield C. & I. Co., 106 Ala. 615. **If no material defendant resides in state,** bill may be filed in district of any proper defendant.—Waddell v. Lanier, 54 Ala. 440. **Provision "in case of non-residents" means when all defendants are non-residents.**—Johnston v. Shaw, 31 Ala. 592. **Suit against residents,** not relating to real estate or injunction of proceedings in other courts, **must be brought in district of a material defendant.**—Johnston v. Shaw, 31 Ala. 592; Milner v. Ramsey, 48 Ala. 287; Alabama Gold Life Ins. Co. v. Cobb, 57 Ala. 547; Campbell v. Crawford, 63 Ala. 392; Harwell v. Lehman, 72 Ala. 344; Street v. Selig, 88 Ala. 533. **When real estate subject-matter of suit, complainant has election** to sue in district where land situated or material defendant resides.—Tindal v. Drake, 51 Ala. 574; Ashurst v. Gibson, 57 Ala. 584, 586; Harwell v. Lehman, 72 Ala. 344; Reeves v. Brown, 103 Ala. 537; explaining Bolling v. Munchus, 65 Ala. 558. **A material defendant is a necessary, not a merely proper, party.**—Shrader v. Walker, 8 Ala. 244; Lewis v. Elrod, 38 Ala. 47; Milner v. Ramsey, 48 Ala. 287; Waddell v. Lanier, 54 Ala. 440; Harwell v. Lehman, 72 Ala. 344; Gay v. Brierfield C. & I. Co., 106 Ala. 615.

677 (3422) (3761) (3327) (2876). **Frame of bill.**—The bill must contain a clear and orderly statement of the facts on which the suit is founded, without prolixity or repetition, and conclude with a

prayer for the appropriate relief, without averring any combination or confederacy between the defendants, or others, the insufficiency of the remedy at law, or charging pretenses by the defendants; and it is the duty of the courts to discountenance prolix statements and unnecessary and false allegations in all chancery pleadings.

Degree of certainty and precision required.—Spence v. Duren, 3 Ala. 251; Read v. Walker, 18 Ala. 323; Cockrell v. Gurley, 26 Ala. 405; Jones v. Cowles, 26 Ala. 612; Charles v. DuBose, 29 Ala. 367; Bogan v. Camp, 30 Ala. 276; Bliss v. Anderson, 31 Ala. 612; Bailey v. Jordan, 32 Ala. 50; Lucas v. Oliver, 34 Ala. 626; Duckworth v. Duckworth, 35 Ala. 70; Willingham v. Harrell, 36 Ala. 583; Magruder v. Campbell, 40 Ala. 611; McKenzie v. Baldridge, 49 Ala. 564; Wolff v. Shelton, 51 Ala. 425; Perry v. N. O. M. & C. Railroad Co., 55 Ala. 413; S. & M. Railroad Co. v. Lancaster, 62 Ala. 555; Goldsby v. Goldsby, 67 Ala. 560; Walker v. Allen, 72 Ala. 456; Seals v. Robinson, 75 Ala. 363; Paige v. Broadfoot, 100 Ala. 610. **Illegality not presumed.**—Nelms v. Mortgage Co., 92 Ala. 157; McCurry v. Gibson, 108 Ala. 451. **Only necessary to allege facts, not evidence.**—Bishop v. Bishop, 13 Ala. 475; McDonald v. Life Ins. Co., 56 Ala. 468. **Nor conclusions.**—Cameron v. Abbott, 30 Ala. 416; Walker v. Allen, 72 Ala. 456; Chandler v. Hanna, 73 Ala. 390; Coal City Co. v. Powder Co., 108 Ala. 218. **Bills sustainable on facts alleged, not facts inferred.**—Danforth v. Herbert, 33 Ala. 497; Seals v. Robinson, 75 Ala. 363; Williams v. Spraggins, 102 Ala. 424. **No objection that bill states more than necessary.**—Caple v. McCollum, 27 Ala. 461; Noble v. Moses, 81 Ala. 530. **General charge of fraud, without facts, insufficient.**—Flewellen v. Crane, 58 Ala. 627; Pickett v. Pipkin, 64 Ala. 520; Morgan v. Morgan, 68 Ala. 80; Chamberlain v. Dorrance, 69 Ala. 40; Lipscomb v. McClellan, 72 Ala. 151; Meadows v. Meadows, 73 Ala. 356; Ins. Co. v. Moog, 78 Ala. 284; Burford v. Steele, 80 Ala. 147; Perry v. Mill Co., 93 Ala. 364; Ft. Payne Fur. Co. v. Iron Co., 96 Ala. 472; Loucheim v. Bank, 98 Ala. 521; Scholze v. Steiner, 100 Ala. 148; Reynolds v. Coal Co., 100 Ala. 296; Williams v. Spraggins, 102 Ala. 424; Steiner v. Parsons, 103 Ala. 215. **Argumentative allegations and expressions of opinion objectionable.**—Lake v. Loan Association, 72 Ala. 207. **Allegations on information and belief.**—Read v. Walker, 18 Ala. 323; Jones v. Cowles, 26 Ala. 612; Lucas v. Oliver, 34 Ala. 626; Nix v. Winter, 35 Ala. 309; Ex parte Reid, 50 Ala. 439. **Land must be described with reasonable certainty.**—Long v. Pace, 42 Ala. 495; Williams v. Roe, 59 Ala. 629; Gilchrist v. Shackelford, 72 Ala. 7; Paige v. Broadfoot, 100 Ala. 610; Wharton v. Hannon, 101 Ala. 554; Clement v. Draper, 108 Ala. 211. **Bill construed against pleader;** facts not averred deemed not to exist.—Cockrell v. Gurley, 26 Ala. 405; Lucas v. Oliver, 34 Ala. 626; Reed v. Overall, 39 Ala. 138; Bercy v. Lavretta, 63 Ala. 374; Rapier v. Gulf City Paper Co., 64 Ala. 330; Underhill v. Ins. Co., 67 Ala. 45; Jones v. Latham, 70 Ala. 164; Elevator Co. v. Land Co. 93 Ala. 549. **Facts occurring after filing of bill cannot be basis of relief.**—Hill v. Hill, 10 Ala. 527; Land v. Cowan, 19 Ala. 297; Vaughan v. Vaughan, 30 Ala. 329; Rives v. Walthall, 38 Ala. 329; Ins. Co. v. Bank, 63 Ala. 585; Rice v. Less, 105 Ala. 298. Bills with double aspect.—Andrews v. McCoy, 8 Ala. 920; Strange v. Watson, 11 Ala. 325; Stern v. Robertson, 30 Ala. 286; Lucas v. Oliver, 34 Ala. 626; Walthall v. Rives, 34 Ala. 91; Rives v. Walthall, 38 Ala. 329; David v. Shepard, 40 Ala. 587; Micou v. Ashurst, 55 Ala. 607; Eufaula v. McNab, 67 Ala. 588; Rapier v. Gulf City Paper Co., 69 Ala. 476; Shipman v. Furniss, 69 Ala. 555; Adams v. Sayre, 70 Ala. 318; Heyer v. Bromberg, 74 Ala. 524; Seals v. Robinson, 75 Ala. 363; Caldwell v. King, 76 Ala. 149; Tatum v. Walker, 77 Ala. 563; Watts v. Fraser, 80 Ala. 186; Bank v. Burke, 94 Ala. 125; Mountain v. Whitman, 103 Ala. 630; Pollak Co. v. Muscogee Mfg. Co., 108 Ala. 467. **The prayer an essential part of bill.**—Driver v. Fortner, 5 Port. 9. **Relief under prayer for general relief.**—Driver v. Fortner, 5 Port. 9; Thomason v. Smithson, 7 Port. 144; Strange v. Watson, 11 Ala. 324; Kelly v. Payne, 18 Ala. 371; May v. Lewis, 22 Ala. 646; Wiley v. Knight, 27 Ala. 336; Simmons v. Williams, 27 Ala. 507; Kirksey v. Means, 42 Ala. 426; Micou v. Ashurst, 55 Ala. 607; Machine Co. v. Zeigler, 58 Ala. 221; Shipman v. Furniss, 69 Ala. 555; Munford v. Pearce, 70 Ala. 452; Shelby v. Tardy, 84 Ala. 327; Steiner v. Parker, 108 Ala. 357.

678 (3423). **Multifariousness.**—Unless taken by demurrer, objection to a bill because of multifariousness must not be entertained.

679 (3424) (3762) (3328) (2877). **Waiver of oath to answer.** When a bill is filed for any other purpose than discovery only, the plaintiff may waive, in or upon the bill, the answer being made on

the oath of the defendants, or either of them; and in such case the answer is entitled to no more weight as evidence than the bill.

Unless oath waived, answer must be sworn to.—Paige v. Broadfoot, 100 Ala. 610. **Unless bill for discovery only, oath may be waived.**—Bromberg v. Bates, 98 Ala. 621. **Unsworn answer mere pleading.**—Rainey v. Rainey, 35 Ala. 282; Guthrie v. Quinn, 43 Ala. 561; Zelnicker v. Brigham, 74 Ala. 598; Watts v. Bank, 76 Ala. 474; Thorington v. City Council, 88 Ala. 548; Ex parte Ashurst, 100 Ala. 573, 578. **When unsworn answer conclusive evidence against respondent.**—Latham v. Staples, 46 Ala. 462; McGehee v. Lehman, 65 Ala. 316; Thorington v. City Council, 88 Ala. 548. **Bill or answer not evidence, unless noted in submission.**—Goodloe v. Dean, 81 Ala. 479; Rice v. Tobias, 83 Ala. 348. **Denials of unsworn answer insufficient to dissolve injunction.**—Hart v. Clark, 54 Ala. 490; superseding Lockhart v. Troy, 48 Ala. 579. **When oath to answer to amended bill waived.**—Wilkinson v. Bradley, 54 Ala. 677. **How answer of corporation sworn to.**—Griffin v. Bank, 17 Ala. 258; Mining & Mfg. Co. v. Hale, 93 Ala. 542.

680. Rule requiring two witnesses to overcome sworn answer modified.—The rule requiring two witnesses, or one witness and corroborating circumstances, to overcome an answer under oath denying the allegations of the bill, is abolished in all cases where the bill is sworn to by the complainant; and such answer shall have only such weight as evidence as the evidence of such defendant taken upon interrogatories.*

Former rule stated.—Marshall v. Croom, 52 Ala. 554; Wynn v. Rosette, 66 Ala. 517; Pattison v. Bragg, 95 Ala. 55; Bank v. Steele, 98 Ala. 85.

681 (3425) (3763) (3329) (2878). **Issue of summons.**—Upon the filing of the bill, the register must forthwith issue a summons and copy for each defendant against whom publication is not shown to be necessary, requiring him to appear and demur, plead to or answer the bill within thirty days after service.

682 (3426) (3764, 3765) (3330, 3331) (2879, 2880). **Service of summons.**—A copy of such summons must be personally served by the sheriff, if the defendant is to be found in his county, his return indorsed on the original, and returned to the register within five days after service; but it is not necessary to serve a copy of the bill.

Sufficiency of summons.—Lenert v. Redwood, 9 Port. 79. **Service or appearance necessary to support decree.**—Kirk v. McAllister, 39 Ala. 343. Presumption of service from lapse of time.—Wilson v. Holt, 83 Ala. 528. **What sufficient service and return.**—Cleveland v. Pollard, 37 Ala. 556; Florence v. Paschal, 50 Ala. 28. **Summons to city served on mayor.**—Lyon v. Lorant, 3 Ala. 151. **Sheriff's return not proof of official character of party served, as mayor, president, secretary, etc.**—Lyon v. Lorant, 3 Ala. 151; Bldg. Assn. v. Agee, 99 Ala. 571, 591; Independent Pub. Co. v. Press Assn., 102 Ala. 475, 480.

683 (3427) (3766) (3332) (2881). **Summons executed in another county returned by mail.**—When the summons is executed in any other county than the one in which the court from which the same issues, is held, the return may be made by mail, directed to the register, the title of the suit being indorsed on the envelope, and the word "summons" written against the same.

684 (3428) (3767) (3333) (2882). **Mailed within five days.** When the return is by mail, the summons, directed and indorsed according to the provisions of the preceding section, must be deposited in a post-office of the county in which the same is executed, within five days after the execution.

*As amended by joint committee.

685 (3429) (3768) (3334). **How parties of unsound mind may be made defendants.**—When a party to a suit, or other proceedings in chancery, is alleged to be of unsound mind, and to have no legal guardian, such party may be brought into court by service of process personally upon him, and a guardian ad litem appointed for such person, as in case of infants over fourteen years of age who fail to select or nominate a guardian ad litem.

686 (3430) (3769) (3335) (2884). **Publication as to non-residents.**—If any defendant is shown to be a non-resident, or if his residence is unknown, or if, being a resident, he has been absent from the state more than six months from the filing of the bill, or conceals himself so that process cannot be served on him, the register must, on proof thereof by affidavit, make out and superintend the execution of the appropriate order of publication.

Resident absenting himself to avoid service.—Glover v. Glover, 18 Ala. 367. **Defendant may not object, that publication for unnecessary party not perfected.**—Mims v. Mims, 35 Ala. 23. **Place of publication discretionary with register or chancellor.**—Mobley v. Leophart, 51 Ala. 587. **Statute and rules as to publication must be strictly observed.**—Hanson v. Patterson, 17 Ala. 738; Paulling v. Creagh, 63 Ala. 398; Sayre v. Elyton Land Co., 73 Ala. 85; Chilton v. Life Ins. Co., 74 Ala. 290.

687. **Summons as to non-residents.**—A summons to answer the bill may be issued to a non-resident defendant and may be personally served upon him if found within the state; and in such case, publication is not necessary.

688 (3431) (3770) (3336) (2885). **Fee for publication deposited with register.**—In all cases in which an order of publication is necessary, a sufficient amount of money must be deposited with the register to cover the expense of such publication; and the bill may be dismissed, on thirty days' notice to the plaintiff or his solicitor, on failure to make such deposit within that time.

689 (3432) (3771) (3337) (2886). **Defendant entitled to copy of bill.**—Any defendant, after service of a summons, or after being brought into court by publication, may, on application to the register, obtain a copy of the bill, to be taxed as other costs.

690 (3433) (3774) (3340) (2889). **Publication and proceedings against defendants whose names are unknown.**—In cases where it is necessary to make any persons defendants to a bill, and the names of all or any of them are unknown to the plaintiff, and cannot be ascertained on diligent inquiry, and he annexes to his bill an affidavit that the names of such persons are unknown, that he has made diligent inquiry to ascertain the same, and that their residence, as he believes, is not in this state, proceedings may be had, and a decree rendered against them without naming them; and the register must make publication as in case of non-residents, describing such unknown parties, as near as may be, by the character in which they are sued, and with reference to their title or interest in the subject-matter.

Right statutory.—Bingham v. Jones, 84 Ala. 202; Bell v. Hall, 76 Ala. 546; City of Opelika v. Daniel, 59 Ala. 211.

691 (3434) (3775) (3341) (2890). **Time for answer; decree pro**

confesso.—A defendant must demur, plead, or answer within thirty days after the service of the summons, or within thirty days after the period specified in the order of publication, if the publication required by the order has been perfected, or he must obtain further time; otherwise, a decree pro confesso may be passed.

Failure to answer in pursuance of agreement authorizes decree pro confesso.—Pearce v. Daughdrill, 54 Ala. 456. **Effect of decree pro confesso.**—Johnson v. Kelly, 80 Ala. 135.

692 (3435) (3776) (3342) (2891). **When answer compelled by attachment.**—Answers from defendants upon whom there has been personal service of process may be compelled by attachment, if the bill is filed for discovery, or answer on oath is not waived.

693 (3436) (3777) (3343) (2892). **Arrest under attachment; discharge on bond.**—Such attachments are executed by the arrest of the defendant and bringing him before a chancellor, circuit judge, or register, who may discharge him on his giving bond with surety in such sum as may be fixed by such chancellor, circuit judge, or register to be approved by the arresting officer, payable to the register of the court in which the bill is filed, and conditioned that he will file a full answer to the bill, within a time to be prescribed by the officer before whom such defendant is brought; which bond must be returned with the attachment within the same time after service, and in the same manner, if by mail, as a summons is required to be returned under the provisions of this chapter.

694 (3437) (3778) (3344) (2894). **Suit on attachment bond.** Upon the forfeiture of the bond, the chancellor may direct the same to be sued, and the whole or such part of the penalty as he directs, may be recovered against any or all of the obligors having ten days' notice, by motion in the circuit court of the county in which the court issuing the attachment is held; and on the trial of such motion, the indorsement by the register of forfeiture is presumptive evidence of the fact.

695 (3438) (3779) (3345) (2895). **Defendant imprisoned until he files answer or bond.**—In case a defendant refuses or neglects to give such bond, he must be committed to jail by the sheriff, and there kept until he files a full answer with the register.

696 (3439) (3780) (3346) (2896). **Oath to answer; by whom administered.**—When an answer is required to be sworn to, the oath may be administered by any officer authorized to take and certify affidavits, or by a commissioner appointed by the register.

Blank commission should not issue.—Guice v. Parker, 46 Ala. 616.

697 (3440) (3781) (3347) (2897). **Protection from full answer.** A defendant may in his answer protect himself from furnishing a full answer to the allegations of the bill.

When partial answer receivable.—Bentley v. Cleaveland, 22 Ala. 814.

698 (3441) (3782) (3348) (2898). **Application to answer specially.**—When a party offers to answer specially, and applies for leave to do so, the ground of such application may be contested, and the application must only be granted upon reasonable notice.

699 (3442) (3783) (3349) (2899). **All defenses may be set up in answer.**—A defendant may incorporate all matters of defense in his answer, and is not required to plead specially in any case.

May incorporate demurrer at any time before final decree.—Crawford v. Childress, 1 Ala. 482; Shaw v. Lindsey, 60 Ala. 344; Ruse v. Bromberg, 88 Ala. 619; Harland v. Person, 93 Ala. 273.

700 (3443) (3784) (3350) (2900). **Grounds of demurrer.**—A demurrer to the bill must set forth the ground of demurrer specially, and otherwise must not be heard.

Formerly general demurrer turned inquiry upon equity of bill.—Werborn v. Tiller, 10 Ala. 305; Chambers v. Wright, 52 Ala. 444. **"That there is no equity in bill" only general demurrer.**—Hart v. Clark, 54 Ala. 490; Erwin v. Reese, 54 Ala. 589; Pate v. Hinson, 104 Ala. 599. **Ruling confined to special cause assigned.**—Chambers v. Wright, 52 Ala. 444; Masterson v. Pullen, 62 Ala. 145; P. & M. Ins. Co. v. Selma Bank, 63 Ala. 585; Humphreys v. Burleson, 72 Ala. 1; Werborn v. Kahn, 93 Ala. 201; Dickerson v. Winslow, 97 Ala. 491; Baker v. Graves, 101 Ala. 247. **Demurrer to whole bill, good in part only, to be overruled.**—Burke v. Roper, 79 Ala. 138; Houston v. Williamson, 81 Ala. 482; Echols v. Orr, 106 Ala. 237. **Decree sustaining demurrer referable to good grounds.**—Baker v. Graves, 101 Ala. 247; Steiner v. Parker, 108 Ala. 357; Tatum v. Tatum, 111 Ala. 209; McDonald v. Pearson, Ala. (21 So. 534) (overruling S. & N. Ala. R. Co. v. Highland Ave. & B. R. Co., 104 Ala. 233).

701 (3444) (3785) (3351) (2901). **No replication.**—No replication is necessary to an answer.

Not necessary to traverse matter of defense.—Forrest v. Robinson, 2 Ala. 215; American F. L. Mortgage Co. v. Dykes, 111 Ala. 178. **Matter in avoidance of answer to be introduced by amendment of bill.**—Lanier v. Hill, 30 Ala. 111; Smith v. Vaughan, 78 Ala. 201; American F. L. Mortgage Co. v. Dykes, 111 Ala. 178.

702 (3445) (3786) (3352) (2902). **Effect of answer on hearing on bill and answer.**—When the case is heard on bill and answer without testimony, the answer must be taken to be true, so far as it is responsive to the allegations of the bill, except in those cases where the complainant has waived the oath of the defendant to the answer.

Formerly, when the submission was by consent, answer taken as true in all respects.—Forrest v. Robinson, 2 Ala. 215; White's heirs v. Florence Bridge Co., 4 Ala. 464. **Matter not responsive to bill, not provable even by sworn answer.**—Bates v. Murphy, 2 Stew. & Port. 165; Rembert v. Brown, 17 Ala. 667; Keiffer v. Barney, 31 Ala. 192; Frazer v. Lee, 42 Ala. 25; Wynn v. Rosette, 66 Ala. 517; Green v. Casey, 70 Ala. 417; Buchanan v. Buchanan, 72 Ala. 55; Barton v. Barton, 75 Ala. 400; Goodloe v. Dean, 81 Ala. 479. **Sworn answer responsive to bill taken as true.**—Foxworth v. White, 72 Ala. 224. **When oath to answer waived, answer mere pleading.**—Marks v. Cowles, 61 Ala. 299; Buchanan v. Buchanan, 72 Ala. 55. **But admissions of unsworn answer conclusive on respondent.**—Thorington v. City Council, 88 Ala. 548. **When hearing on bill and unsworn answer, relief denied unless authorized by admitted allegations of bill.**—Winter v. City Council, 83 Ala. 589.

703 (3446) (3787) (3353). **Dismissal of suit in vacation.**—Before an answer or cross-bill is filed, the complainant may, on application to the register in vacation, dismiss the suit. On such application, the register must enter on the minutes an order of dismissal; and may issue execution against the complainant for all costs which have accrued. After answer or cross-bill filed, the complainant may, on application to the register in vacation, dismiss the suit; and the register must enter an order of dismissal on the minutes. But the defendant, at the next succeeding term of the court, may show cause against the dismissal, and procure a vacation of the or-

der. If cause is not shown at the next succeeding term, the order is final; and execution may issue against the complainant for all costs which have accrued.

ARTICLE 5.

AMENDMENTS; EXCEPTIONS; FILING PAPERS; SERVING NOTICES; EXAMINATION OF PARTIES; MAKING ANSWER A CROSS-BILL; REVIVOR OF SUIT BY A DEFENDANT.

704 (3447) (3788) (3354) (2903). **Amendments before answer.** Amendments to bills before answers, pleas, or demurrers filed, are allowable as of course and without notice; and amendments to any summons may be made before service thereof.

705 (3448) (3789) (3355) (2904). **Amendments after service and before answer.**—After a defendant has obtained a copy of the bill from the register, and before answer, plea, or demurrer, amendments to the bill may be made without notice, upon payment of the costs of furnishing a copy of the amendment to such defendants as have obtained a copy of the bill; and amendments may also be made after demurrer, and before argument on the same terms.

706 (3449) (3790) (3356). **Amendments before decree, on terms.** Amendments to bills must be allowed at any time before final decree, by striking out or adding new parties, or to meet any state of evidence which will authorize relief; and amendments to answers must be allowed at any time before final decree, so as to set up any matter of defense; but such amendments to bills and answers must be allowed on such terms as the chancellor may impose, not extending beyond the payment of all the costs; and if an amendment be allowed at the hearing to bill or answer, the party against whom the amendment is allowed shall be entitled to a continuance as a matter of right; and if the cause is continued, both parties shall have the right to take additional testimony; and if an amendment be allowed in vacation, both parties shall have the right to take additional testimony without a special application.

Rule prior to statute stated.—Rapier v. Gulf City Paper Co., 69 Ala. 476. **Allowance of amendment matter of right,** when not making entirely new case nor radical departure from original cause of action nor working entire change of parties.—Pitts v. Powledge, 56 Ala. 147; Hinton v. Citizens' M. Ins. Co., 63 Ala. 488; Scott v. Ware, 64 Ala. 174; Jones v. Reese, 65 Ala. 134; Rapier v. Gulf City Paper Co., 69 Ala. 476; Adams v. Sayre, 70 Ala. 318; Bolman v. Lohman, 74 Ala. 507; Adams v. Phillips, 75 Ala. 461; Morton v. N. O. & Selma R. Co., 79 Ala. 590; Shelby v. Tardy, 84 Ala. 327; Conner v. Smith, 88 Ala. 300; Park v. Lide, 90 Ala. 246; Winston v. Mitchell, 93 Ala. 554; Ex parte Ashurst, 100 Ala. 573. **When, under this rule, amendment properly allowable.** Moore v. Alvis, 54 Ala. 356 (overruling Winter v. Quarles, 43 Ala. 692); Hart v. Clark, 54 Ala. 490; Pitts v. Powledge, 56 Ala. 147; Ala. Warehouse Co. v. Jones, 62 Ala. 550; Adams v. Sayre, 70 Ala. 318; Prickett v. Sibert, 75 Ala. 315; Tatum v. Walker, 77 Ala. 563; Johnson v. Durner, 88 Ala. 580; Fite v. Kennamer, 90 Ala. 470; Winston v. Mitchell, 93 Ala. 554; Freeman v. Brown, 96 Ala. 301; Collins v. Stix, 96 Ala. 338; M. & F. R. Co. v. McKenzie, 96 Ala. 465; Price v. Bell, 96 Ala. 534; McGhee v. Alexander, 104 Ala. 116; Scheerer v. Agee, 106 Ala. 139; Milner v. Stanford, 102 Ala. 277; Smith v. Hiles-Carver Co., 107 Ala. 272; Harrison v. Yerby, 14 So. Rep. 321 (not officially reported). **When not.**—King v. Avery, 37 Ala. 169; Gardner v. Pickett, 46 Ala. 191; Leg-

gett v. Bennett, 48 Ala. 380; Penn v. Spence, 54 Ala. 35; Ray v. Womble, 56 Ala. 32; Rapier v. Gulf City Paper Co., 69 Ala. 476; McKay v. Broad, 70 Ala. 377; Ward v. Patton, 75 Ala. 207; Glass v. Glass, 76 Ala. 368; Tatum v. Walker, 77 Ala. 563; Owen v. Bankhead, 82 Ala. 399; Parsons v. Johnson, 84 Ala. 254; Park v. Lide, 90 Ala. 246; Mobile Savings Bank v. Burke, 94 Ala. 125; Baker v. Graves, 101 Ala. 247. **To meet any state of evidence already taken.** King v. Avery, 37 Ala. 169; Alexander v. Taylor, 56 Ala. 60; Smith v. Coleman, 59 Ala. 260; Hinton v. Citizens M. Ins. Co., 63 Ala. 488; Wright v. Dunklin, 83 Ala. 317; Beatty v. Brown, 85 Ala. 209. **Demurrer does not lie to amendment, but only to bill as amended.**—Hodges v. Verner, 100 Ala. 612. **Amendment making bill one with double aspect.**—Ala. Warehouse Co. v. Jones, 62 Ala. 550; Rapier v. Gulf City Paper Co., 69 Ala. 476; Adams v. Sayre, 70 Ala. 318; Ward v. Patton, 75 Ala. 207; Tatum v. Walker, 77 Ala. 563; Winston v. Mitchell, 93 Ala. 554. **Not error to refuse amendment when no relief obtainable under it.**—Tutwiler v. Atkins, 106 Ala. 194. **Effect of introducing inconsistent allegations.**—American F. L. M. Co. v. Sewell, 92 Ala. 163. **The right must be claimed before final decree.**—Smith v. Coleman, 59 Ala. 260; Munter v. Linn, 61 Ala. 492; Winter v. Merrick, 69 Ala. 86; Beatty v. Brown, 85 Ala. 209. **When in time.**—Martin v. Mohr, 56 Ala. 221. When not.—Owen v. Bankhead, 82 Ala. 399. **When facts occurring after bill filed may be introduced.**—Ala. Warehouse Co. v. Jones, 62 Ala. 550; Freeman v. Brown, 96 Ala. 301. **Necessary to set up new matter in avoidance of plea or answer,** but not necessary to traverse.—Lanier v. Hill, 30 Ala. 111; Smith v. Vaughan, 78 Ala. 201; American F. L. M. Co. v. Dykes, 111 Ala. 178. **Not regular mode of bringing in personal representatives or heirs upon revivor.**—Floyd v. Ritter, 65 Ala. 501. But may serve as suggestion of death and names of representative and heirs.—Wells v. Mortgage Co. 109 Ala. 430. **Doctrine of relation.**—King v. Avery, 37 Ala. 169; Crawford v. Kirksey, 55 Ala. 282; Adams v. Phillips, 75 Ala. 461; Lipscomb v. McClellan, 72 Ala. 151; Jones v. McPhillips, 82 Ala. 102; Wilson v. Holt, 91 Ala. 204; Winston v. Mitchell, 93 Ala. 554. **Introduction of parties acquiring interest in subject-matter of suit not always matter of right.**—Morton v. N. O. & Selma R. Co., 79 Ala. 590. **When complainant must have opportunity to amend before decree dismissing bill.**—Bishop v. Wood, 59 Ala. 253; Kingsbury v. Flowers, 65 Ala. 479, 486; Lee v. Lee, 67 Ala. 406; Kingsbury v. Milner, 69 Ala. 502; Stoudenmire v. DeBardelaben, 72 Ala. 300; Shackelford v. Bankhead, 72 Ala. 476; Massey v. Modawell, 73 Ala. 421; Conner v. Smith, 74 Ala. 115; Goodlett v. Kelly, 74 Ala. 213; Gilmer v. Wallace, 75 Ala. 220; Gilmer v. Morris, 80 Ala. 78; Wright v. Dunklin, 83 Ala. 317; Olds v. Marshall, 93 Ala. 138; Kyle v. McKenzie, 94 Ala. 236. **Dismissal in term time without leave to amend,** no leave being asked, not erroneous.—Munchus v. Harris, 69 Ala. 506; Buford v. Ward, 108 Ala. 307; American F. L. Mortgage Co. v. Dykes, 111 Ala. 178, 193. **When notice of application to amend necessary.**—Masterson v. Masterson, 32 Ala. 437; Holly v. Bass, 63 Ala. 387; Hinton v. Citizens M. Ins. Co., 63 Ala. 488; McClenny v. Ward, 80 Ala. 243. **Notice presumed from presence in court,** at allowance of amendment.—Gayle v. Johnston, 80 Ala. 395. **Amendment allowable after reversal** of final decree. Winter v. Merrick, 69 Ala. 86; Park v. Lide, 90 Ala. 246; Price v. Bell, 96 Ala. 534. **Answer setting up exemption may be amended.**—Zelnicker v. Brigham, 74 Ala. 598. **Admissions of unsworn answer may be stricken out** by amendment at any time before final decree.—Ex parte Ashurst, 100 Ala. 573. **Answer may be amended to incorporate demurrer at any time before final decree.**—Shaw v. Lindsey, 60 Ala. 344; Ruse v. Bromberg, 88 Ala. 619; Harland v. Person, 93 Ala. 273. **When refusal of such amendment not reversible error.**—Eureka Co. v. Edwards, 80 Ala. 250. **Amendment not presumed from mere granting of leave.**—Keith v. Cliatt, 59 Ala. 408. **Imposition of terms discretionary and not revisable.**—McLane v. Riddle, 19 Ala. 180; Rives v. Walthall, 38 Ala. 329; Mahone v. Williams, 39 Ala. 202. **Amendment striking out unnecessary defendant no ground of continuance to another defendant.** Elyton Land Co. v. Denny, 108 Ala. 553.

707 (3450) (3791) (3357) (2905). **Register may allow amendments after answer.**—The register may, on notice to the opposing party, allow amendments to bills after answer, and amendments to answers, but only on payment of the costs of the amendment by the party making the application.

708 (3451) (3792) (3358) (2907). **Answer to amendment.**—If an amendment to the bill is made after answer filed, and an answer to the amendment is required, the defendant must answer within thirty days after notice thereof, or obtain further time to answer; failing

therein, the matter of the amendment may be taken as confessed. But at any time before the hearing, the order or decree pro confesso may be set aside on application to the register or chancellor, and on filing a full and sufficient answer, on such terms as the chancellor or register may prescribe.

709 (3452) (3793) (3359) (2908). **What objections set for separate hearing.**—When an objection is made to a bill for want of parties, or joinder of improper parties, it may be set for hearing on that objection only; and if not set for hearing on that ground, the court, if the objection prevail on the final hearing, must dismiss the bill.

710 (3453) (3794) (3360) (2909). **Decree, when objection for want of parties first taken at hearing.**—If the defendant, at the hearing of a cause, take an objection for want of parties, not having by plea or answer taken the objection, the court may render a decree saving the rights of parties not before it, or it may grant leave to amend the bill on terms not extending beyond the payment of costs.

711 (3454) (3795) (3361) (2910). **Pleadings indorsed with date of filing.**—All bills, answers, and other papers filed in any cause must be indorsed by the register with the true date on which they were filed.

712 (3455) (3796) (3362) (2911). **Notices; when served on solicitor.**—Notice in relation to any supplemental bill, amendment, decree, motion, or other proceeding in the court of chancery, served on the solicitor of the party, is valid.

713 (3456) (3797) (3363) (2912). **Notice to parties in default.** When parties are in default for want of an answer, or other cause, the notices may be entered on the order book of the register, and such entries, for such time as is fixed by the register, are sufficient in cases of amendments, supplemental bills, and of other orders in the cause.

714 (3457) (3798) (3364) (2913). **Exceptions to answers.**—Exceptions to answers must be made within sixty days after the same are filed, and notice must be given by the register of the day of hearing the same.

715 (3458) (3799) (3365) (2914). **Defendant may examine complainant.**—If the defendant wishes to examine the complainant touching the subject-matter of the bill, or his defense, he may, after filing his answer, exhibit interrogatories to the complainant and call upon him to answer the same; and on his failing to answer them within such time as may be prescribed by the register, his bill must be dismissed with costs, unless such time is extended.

716. Complainant may examine defendant.—If the complainant wishes to examine the defendant touching the matters at issue, he may exhibit interrogatories to the defendant and call upon him to answer the same; and on his failure to answer them within such time as may be prescribed by the register, the court may, by attachment, compel him to answer them, or may render a decree granting relief to

the complainant, or may extend the time for such answers to be made.

717. Copy of interrogatories to be served.—Upon the filing of interrogatories under either of the two preceding sections, the register must issue a copy thereof, which, together with a copy of the order of the register fixing the time for answering them, must be served upon the party to whom the interrogatories are propounded, or his solicitor, not less than sixty days before the expiration of such time.

718 (3459) (3800) (3356) (2915). **Exceptions to such interrogatories.**—Exceptions may be taken to such interrogatories and heard before the register at such time as he may prescribe, on reasonable notice to the party filing the interrogatories, or his solicitor, subject to an appeal to the chancellor.

719. Answers to such interrogatories evidence.—The answers to such interrogatories, when duly sworn to before and certified by an officer authorized to take and certify affidavits, or a commissioner appointed by the register to take and certify such answers, are evidence in the cause when offered by the party taking them; but such party is not precluded from offering other testimony touching the same facts, or from contradicting such answers.

720 (3460) (3801, 3802) (3367, 3368) (2916, 2917). **Answer may be made cross-bill.**—A defendant may obtain relief against a party complainant or defendant for any cause connected with, or growing out of the bill, by alleging in his answer, and as a part thereof, the facts upon which such relief is prayed. The matters or facts thus alleged and put in issue must be considered in the nature of a cross-bill, and be heard at the same time as the original bill.

By English rule, prevailing here prior to statute, answer could not be made cross-bill.—Lehman v. Dozier, 78 Ala. 235. **Answer made cross-bill governed by rules relating to cross-bills.**—Taunton v. McInnish, 46 Ala. 619. **Hearing on statutory cross-bill,** whether on merits or demurrer must not be earlier than hearing on original bill.—Ex parte Thornton, 46 Ala. 384. **As general rule, dismissal of bill carries cross-bill.**—Dill v. Shahan, 25 Ala. 694; Con. Life Ins. Co. v. Webb, 54 Ala. 688; Wilkinson v. Roper, 74 Ala. 140. **When such dismissal does not carry cross-bill.**—Abels v. P. & M. Ins. Co., 92 Ala. 382; Lehman v. Dozier, 78 Ala. 235; Wilkinson v. Roper, 74 Ala. 140; Gilman v. N. O. & S. R. Co., 72 Ala. 566. **Nature and purpose of cross-bill.**—Davis v. Cook, 65 Ala. 617; Gilman v. N. O. & S. R. Co., 72 Ala. 566; O'Neill v. Perryman, 102 Ala. 522. **Affirmative relief not obtainable under answer, cross-bill necessary.**—Ketchum v. Creagh, 53 Ala. 224; Watts v. Eufaula Bank, 76 Ala. 474; Morton v. N. O. & S. R. Co., 79 Ala. 590; Bedell v. New England M. S. Co., 91 Ala. 325; Cotton v. Scott, 97 Ala. 447. **One defendant may not have relief against another without becoming actor.**—Trimble v. Fariss, 78 Ala. 260. **Not until amendment of Jan. 22, 1885, could one defendant obtain relief against another** defendant by statutory cross-bill, unless irregularity waived.—Gilman v. N. O. & S. R. Co., 72 Ala. 566; Jones v. Robinson, 77 Ala. 499; Lehman v. Dozier, 78 Ala. 235; Abels v. P. & M. Ins. Co., 92 Ala. 382.

721 (3461) (3803, 3804) (3369, 3370) (2918, 2919). **Answer to such matter.**—The party complainant or defendant, as to whom such new matter is alleged, must make answer thereto under the rules and regulations provided in this chapter for the answers of defendant to original bills. An answer on oath may be required or waived in or upon the answer introducing such matter; and if an answer on oath is waived, the answer is not evidence for the party respondent.

722 (3462) (3805). **Revivor of suit by defendant.**—Upon the abatement of a suit by reason of the death or other disability of the complainant, or if he be suing as executor, administrator, or trustee, by reason of his resignation or removal, if there be not, within ninety days after his death, resignation, or removal, an application to revive by his legal representative, his successor, or party in interest, a defendant, having an interest in the further prosecution of the suit, may at any time within twelve months, revive the same by bill of revivor, or by bill of revivor and supplement, or by bill of revivor and cross-bill.*

Revivor and appearance in original suit will not support decree in cross-suit, without service of process or appearance therein.—Paulling v. Creagh, 63 Ala. 398.

ARTICLE 6.

EVIDENCE IN CHANCERY; HOW TAKEN; COMMISSIONERS; WITNESSES.

723 (3463). **Oral examination of witnesses.**—Either party may require witnesses residing within one hundred miles of the place of trial, to be examined orally, instead of by interrogatories. Such examination may be taken before the register, or before an examiner appointed by the court, or by a special commissioner of the appointment of the register, as the applicant may desire.

Commissioner should not rule upon evidence—"His business is to write down the questions and the objections to them, if any, and put down the answers, referring the legality or relevancy of the evidence to the court."—Elyton Land Co. v. Denny, 108 Ala. 553.

724 (3464). **Notice of oral examination.**—Notice of the requirement of an oral examination must be given by the party desiring it to the adverse party, or to his solicitor of record, if he have such solicitor residing in the district; but if such adverse party do not reside in the district, and have no solicitor of record residing therein, notice may be given by an entry on the order-book of the register.

725 (3465) (3806) (3371) (2920). **Testimony by interrogatories.** In all other cases than that provided for in the first section of this article, testimony in chancery causes must be taken by interrogatories, under the rules now in force, or such as may hereafter be adopted.

726 (3466) (3807) (3372) (2921). **Rules as to competency same as at law.**—The rules of evidence as to the competency of witnesses in courts of chancery are the same as in courts of law.

727 (3467) (3808) (3373) (2922). **Testimony, when taken.**—The plaintiff may take testimony at any time after answer, or after a decree pro confesso, and the defendant at any time after filing his answer.

Proper practice when depositions have been taken without notice while decree pro confesso in force against party, afterwards answering.—Planters & Merchants' Bank v. Walker, 7 Ala. 926. **Irregularity of taking testimony before cause at issue may be waived.**—Reynolds' admr. v. Pharr, 9 Ala. 560.

*As amended by joint committee.

After decree pro confesso, testimony may be taken ex parte.—Atkisson v. Atkisson, 17 Ala. 256; Jordan v. Jordan, 17 Ala. 466.

728 (3468) (3809) (3374) (2923). **Proof of exhibits proved before register.**—Exhibits to bills and answers may be proved by affidavits filed with the exhibits in the register's office thirty days before the hearing.

729 (3469) (3810) (3375). **When testimony may be retaken.** The party against whom the deposition of a witness has been taken, may retake the testimony of such witness, under the provisions of section 1845 (2811) of this Code, and the provisions of that section apply to such testimony when taken.

730 (3470) (3811) (3376) (2924). **Commissions to take testimony.** All commissions for the taking of testimony must be directed to one or more commissioners, to be appointed by the register, and made returnable with all convenient speed.

Commissioner is officer of court pro hac vice.—Potier v. Barclay, 15 Ala. 439. **When objection to incompetency of commissioner or irregularity in taking deposition must be made.**—Colgin v. Redman, 20 Ala. 650; Harris v. Miller, 30 Ala. 221. **When return of commissioner sufficient.**—King v. King, 28 Ala. 315. **Not proper to issue blank commission.**—Worsham v. Goar, 4 Port. 441. **Consent to issuance of commission waives irregularity of failure to name residence of witness.**—Farmer v. Farmer, 86 Ala. 322; Aicardi v. Strang, 38 Ala. 326. **Commissioner may amend certificate in open court.** Wolfe v. Underwood, 97 Ala. 375; Dunlap v. Horton, 49 Ala. 412.

731 (3471) (3812) (3377) (2925). **Service of interrogatories.** As amended Dec. 14, 1894, p. 130, §1. No commission to take testimony must issue until the adverse party, or his solicitor, if either of them reside in the district, has been served with notice of the filing of the interrogatories for ten days; but after such service, such party may, on application to the register, obtain a copy of the interrogatories, the cost thereof to be taxed as other costs in the cause.

Cross-interrogatories filed after ten days from notice, but before commission issued, will not be stricken from file.—E. T. V. & G. R. Co. v. Watson, 90 Ala. 41.

732 (3472) (3813) (3378) (2926). **If adverse party a non-resident.**—If such adverse party, or his solicitor, do not reside in the district, this notice may be given by the register mailing a copy of such notice, postage prepaid, to such solicitor of record, at his place of residence, ten days before the issuance of the commission; but such party may, on application to the register, obtain a copy of the interrogatories as provided in the preceding section. The certificate of the register is prima facie evidence of the mailing of such notice. Ib. §2.

733 (3473) (3814) (3379) (2927). **Rebutting interrogatories.** After such notice has been given, if cross-interrogatories are filed, the party has five days to file rebutting interrogatories; but this time may be extended on application to the register without notice.

734 (3474) (3815) (3380). **Register may act as commissioner, unless objected to.**—When interrogatories are filed in the chancery court for the purpose of taking the deposition of a witness in any cause pending in such court, and the solicitor filing the same shall appoint the register, in writing indorsed on the interrogatories, as the commissioner to take the same, the register may, without the

issuance of a commission to himself, proceed to take the testimony of the witness specified in the interrogatories, under the rules and regulations applying to the taking of such testimony by commissioners appointed by such register, unless the opposite party, within ten days after such interrogatories are filed, files an objection in writing, when the appointment of a commissioner must be made as usual.

See citations to sections 730 and 723.

735. Subpœnas for witnesses; examination.—The commissioner, register, or examiner has power to issue subpœnas for witnesses, to administer oaths to them and to take and certify their testimony.

736. Subpœnas executed by sheriff or constable; proof of default.—Such subpœnas may be executed by any sheriff or constable; and the certificate of the commissioner, register, or examiner that a witness failed to appear and testify, together with the return of service by the officer, is presumptive evidence of the facts.

737. Compensation of witnesses.—Witnesses in chancery causes are entitled to the same compensation as in civil cases at law, to be proved before and certified by the commissioner, register, or examiner, and taxed as costs in the cause.

738. Fees for taking depositions.—For taking and certifying the testimony of witnesses, the commissioner, register or examiner is entitled to twenty cents for every hundred words, not including the caption, certificate or exhibits, one dollar and fifty cents for each day he is necessarily engaged, and five cents for each mile necessarily traveled by him in the taking of such testimony; all of which must, upon his certificate, be taxed as costs in the cause; but the chancellor may, for good cause shown, reduce such compensation.*

739 (3476) (3817) (3384) (2931). **Default of witness, penalty.** If the witness fail to attend before the commissioner, register, or examiner, being served with a subpœna so to do, the commissioner, register, or examiner may indorse on the subpœna that the witness failed to attend, and return the same to the clerk of the circuit court of the county, who must enter the case on the docket, and such proceedings may be had as in the case of defaulting witnesses in the circuit court, the indorsement on the subpœna being presumptive evidence of the default of such witness.

740. Defaulting witness may be committed, without bail, until he consents to testify.—If a witness fails, after due notice, to appear before the commissioner, register, or examiner, or, being present, refuses to testify, the commissioner, register, or examiner must, when requested by either party or his solicitor, certify the facts to any chancellor or circuit judge; and thereupon the witness may be committed and compelled to testify in all respects as in cases of defaulting witnesses before commissioners appointed from courts of law, the bail-bond in such case to be enforced in the circuit court of the county.

*As amended by joint committee.

ARTICLE 7.

REFERENCES TO THE REGISTER; EXCEPTIONS.

741 (3477) (3818) (3385) (2932). **Proceedings before the register on reference.**—Whenever a reference is made to the register, the party at whose instance, or for whose benefit the reference is made, must cause such matter to be presented to the register within the time limited for the hearing, and if no time is limited, within three months after the reference is made; and if such party omit to do so, the adverse party may cause proceedings to be had before the register, at the costs of the the party procuring the reference.

As a rule, **exception to evidence introduced on reference, must be reserved before register.**—Kirkman v. Vanlier, 7 Ala. 217; Davenport v. Bartlett, 9 Ala. 179; Taylor v. Kilgore, 33 Ala. 214; Kinsey v. Kinsey, 37 Ala. 393. **When exception or objection before register unnecessary.**—Clark v. Knox, 70 Ala. 607. Objection to mass of testimony partly legal, may be overruled. Brantley v. Gunn, 29 Ala. 387. **Register must obey instructions of chancellor.**—Lang v. Brown, 21 Ala. 179; Taylor v. Kilgore, 33 Ala. 214; Henderson v. Huey, 45 Ala. 275. **Register must take down testimony in writing.**—Mahone v. Williams, 39 Ala. 202.

742 (3478) (3819) (3386) (2933). **Notice of day for hearing; proceedings thereon.**—Upon any such reference, the register must assign a time and place for proceeding therein, and give reasonable notice to each of the parties, or their solicitors; and if either party fail to appear at the time and place appointed, the register may proceed ex parte, or, in his discretion, adjourn the examination to another day, giving notice to the adverse party, or his counsel, of such adjournment.

743 (3479) (3820) (3387) (2934). **Authority of the register on reference.**—The register, in all matters referred, must proceed with the least practicable delay, and has authority—

1. To examine the parties on oath as to all the items of reference.
2. To require the production of all books, papers, writings, vouchers and documents in relation to such matters.
3. To examine on oath, viva voce, all witnesses produced by the parties before him, and take down such evidence in writing.
4. To hear the depositions of witnesses taken under a commission, or upon oral examination, as in other chancery cases.
5. To do all other acts, and direct all other inquiries and proceedings in the matters before him, which may be necessary, subject at all times to the revision and control of the chancellor.

Taking down evidence.—Mahone v. Williams, 39 Ala. 202. **Practice as to reference, evidence and report, stated.**—Kinsey v. Kinsey, 37 Ala. 393; Mahone v. Williams, 39 Ala. 202. **Register reports conclusions, not evidence.** Kirkman v. Vanlier, 7 Ala. 217; Alexander v. Alexander, 8 Ala. 796; Kinsey v. Kinsey, 37 Ala. 393; Mahone v. Williams, 39 Ala. 202; Vaughan v. Smith, 69 Ala. 92. But statement of account should be accompanied by explanations. O'Neill v. Perryman, 102 Ala. 522.

744 (3480) (3821) (3388) (2936). **Evidence in cause used before register.**—All affidavits, depositions and documents, which have been made or filed in the cause, may be used on reference before the register.

Answer of one defendant not evidence against co-defendant.—Halstead v. Shepard, 23 Ala. 558; Pearson v. Darrington, 32 Ala. 227. **Ex parte affidavits receivable, unless objected to.**—Pearson v. Darrington, 32 Ala. 227. **Books of account between parties;** when admissible.—Kirkman v. Vanlier, 7 Ala. 217. **When register need not consider paper,** signature to which was proven before chancellor.—Aday v. Echols, 18 Ala. 353. **Rule as to re-examination on reference,** of witness testifying in cause.—Pearson v. Darrington, 32 Ala. 227.

745 (3481) (3822) (3389) (2937). **Exceptions to register's decisions.**—Either party may reserve in writing any question arising on a reference for the revision of the chancellor. But the statement of the name of a witness and the page on which his testimony is noted is in all cases sufficient to call such testimony to the attention of the chancellor.*

Evidence relied on to support exception must be noted.—Mahone v. Williams, 39 Ala. 202; Mooney v. Walter, 69 Ala. 75; Vaughan v. Smith, 69 Ala. 92; Crump v. Crump, 69 Ala. 156; Pruitt v. McWhorter, 74 Ala. 315; State v. McBride, 76 Ala. 51; Kilpatrick v. Hinson, 81 Ala. 464. **Conclusion of register on evidence is not disturbed unless plainly wrong.**—Kinsey v. Kinsey, 37 Ala. 393; Mahone v. Williams, 39 Ala. 202; Lehman v. Levy, 69 Ala. 48; Munden v. Bailey, 70 Ala. 63; Winter v. Banks, 72 Ala. 409; Glover v. Hembree, 82 Ala. 324. **Exception must be definite and specific.**—Alexander v. Alexander, 8 Ala. 796; Royall v. McKenzie, 25 Ala. 363; O'Reilly v. Brady, 28 Ala. 530; Foster v. Gressett, 29 Ala. 393; Pearson v. Darrington, 32 Ala. 227; Powers v. Dickie, 49 Ala. 81; Vaughan v. Smith, 69 Ala. 92. **Exception to report, based upon secondary or incompetent evidence,** not sustainable, without objection to evidence before register.—Taylor v. Kilgore, 33 Ala. 214; Kinsey v. Kinsey, 37 Ala. 393. **Exception to irrelevant evidence not sustainable if sufficient legal evidence to justify report.**—Powers v. Dickie, 49 Ala. 81. **Exception overruled by chancellor need not be renewed on re-statement of account.**—Harbin v. Bell, 54 Ala. 389; Moore v. Randolph, 70 Ala. 575. **Informality, in exception, curable by amendment, not considered, when objection first made on appeal.**—Moore v. Randolph, 70 Ala. 575. **Exceptions not passed on by chancellor not considered on appeal.**—Bryant v. Stephens, 58 Ala. 636; Waldrop v. Carnes, 62 Ala. 374. **Report, regular on face, confirmed without exception, not assailable on appeal.**—Gerald v. Miller, 21 Ala. 433; Taunton v. McInnish, 46 Ala. 619; Waldrop v. Carnes, 62 Ala. 374; Nunn v. Nunn, 66 Ala. 35; Bellinger v. Lehman, 103 Ala. 385. **When exception to report must be taken.**—Lewis v. Lewis, Minor, 35. **When report should be set aside, without exceptions.**—Levert v. Redwood, 9 Port. 79; Lang v. Brown, 21 Ala. 179; Bobe v. Stickney, 36 Ala. 482. **Chancellor may make calculation without reference.**—Thornton v. Neal, 49 Ala. 590; Chambers v. Wright, 52 Ala. 444. **Re-reference to allow additional testimony discretionary** with chancellor.—Nunn v. Nunn, 66 Ala. 35. **Order of reference, so framed as to cut off right of exception to report, erroneous.**—McCartney v. Calhoun, 11 Ala. 110. **Report of amount due must be confirmed before issuance of execution.**—Stapler v. Hurt, 16 Ala. 799.

ARTICLE 8.

DECREES PRO CONFESSO AND FINAL DECREES WITHOUT PERSONAL SERVICE.

746 (3482) (3823) (3390) (2938). **Decrees pro confesso.**—Decrees pro confesso may be taken before the register on the failure of the defendant to demur, plead to, or answer the bill within thirty days after service of the summons, or thirty days after the period specified in the order of publication, if the publication required by the order has been perfected, unless the time for answering or pleading has been extended; in which case, a decree pro confesso may be passed at the expiration of such time.

*As amended by joint committee.

Time of taking decree.—Levert v. Redwood, 9 Port. 80; Pitfield v. Gazzam, 2 Ala. 325; Keiffer v. Barney, 31 Ala. 192. **Decree rendered on thirtieth day from service too soon.**—Madden v. Floyd, 69 Ala. 221. **Service must be perfected before decree can be taken.**—Butler v. Butler, 11 Ala. 668; Hurter v. Robbins, 21 Ala. 585. **After appearance, decree may be rendered, without service, for want of answer.**—Mobile & C. P. R. Co. v. Talman, 15 Ala. 472. **Waiver of irregularity in taking decree.**—Bank v. St. John, 25 Ala. 566. **When irregularity of decree against husband available to wife.**—Keiffer v. Barney, 31 Ala. 192. Decree should state facts on which founded.—Hartley v. Bloodgood, 16 Ala. 233; Cullman v. Branch Bank, 23 Ala. 797; Keiffer v. Barney, 31 Ala. 192; McDonald v. McMahon, 66 Ala. 115. Should show compliance with prerequisites.—Holly v. Bass, 63 Ala. 387.

747 (3483) (3824) (3391) (2939). **On such decrees allegations of bill taken as admitted; exceptions.**—In all cases in which decrees pro confesso are lawfully taken, the allegations of the bill are to be regarded as admitted, except in the case of infant defendants, persons of unsound mind, executors, administrators, and bills for divorce.

Not evidence, if bill afterwards dismissed.—Garrett v. Ricketts, 9 Ala. 529. **Dispenses with necessity of proof except in cases stated.**—Arnold v. Sheppard, 6 Ala. 299; Welborn v. Tiller, 10 Ala. 305; Carradine v. O'Connor, 21 Ala. 573. **Effect on trustee of decree against beneficiary.**—Johnson v. Longmire, 39 Ala. 143; citing Hartley v. Bloodgood, 16 Ala. 233; Julian v. Reynolds, 8 Ala. 680, 683; Moore v. Hubbard, 4 Ala. 187, 192. **No proof need be taken against an administrator, a merely nominal party.**—Thornton v. Neal 49 Ala. 590. **On revivor after death of party,** against whom decree has been taken, answer from administrator not required.—Jones v. Beverly, 45 Ala. 161. **Conclusive even in subsequent suit between parties or their privies.**—A. G. S. R. Co. v. S. & N. R. Co., 84 Ala. 570. **Only admission of facts well pleaded, not of right to relief.**—McDonald v. Mobile Life Ins. Co., 56 Ala. 468; Johnson v. Kelly, 80 Ala. 135. **Admits exhibits to bill also.**—Baker v. Young, 90 Ala. 426. **After decree pro confesso, omission of note of evidence on submission not error.**—Jones v. Beverly, 45 Ala. 161.

748 (3484) (3825) (3392) (2940). **Not heard on day of taking decree.**—No cause in which a decree pro confesso is taken must be heard on the same day; but the cause may be set for hearing on any subsequent day.

McDonald v. McMahon, 66 Ala. 115.

749 (3485) (3826) (3393) (2941). **Defendant may contest decree on merits, or appear on reference.**—A defendant against whom a decree pro confesso is taken can appear and contest a decree on the merits of the bill, or may appear before the register on a reference.

May move to dismiss for want of equity.—Smith v. Robinson, 11 Ala. 840; Madden v. Floyd, 69 Ala. 221. **But not for want of proper parties.**—Thornton v. Neal, 49 Ala. 590. **May contest on merits.**—McDonald v. Mobile Life Ins. Co., 56 Ala. 468; Johnson v. Kelly, 80 Ala. 135.

750 (3486) (3827) (3394) (2942). **Decree set aside on full answer.**—A defendant who has been served with a summons may, at any time before publication of the testimony, on making a proper showing, obtain leave from the chancellor or register to set aside such decree, upon filing a full and sufficient answer, and upon such terms, not extending beyond full costs, as the chancellor deems proper; and the defendant may also plead or demur upon such terms as the chancellor may order.

Decree will not be set aside to allow plea.—Bank v. St. John, 25 Ala. 566. **When defendant may not file answer without leave or consent.**—Davenport v. Bartlett, 9 Ala. 179; Hurter v. Robbins, 21 Ala. 585. **After reversal default may be set aside on answer filed.**—Keenan v. Strange, 12 Ala. 290. **Right not lost by one ineffectual attempt to exercise it.**—Pond v. Lockwood, 11 Ala. 567.

751 (3487) (3828) (3395) (2943). **When set aside as against defendant on publication.**—A defendant brought into court by publication, against whom a decree pro confesso has been rendered, may also, before publication of the testimony, set aside such decree on application to the chancellor or register, on filing a full and sufficient answer, and such other terms, not extending beyond the payment of costs to the time of the application, as may be imposed.

752 (3488) (3829) (3396) (2944). **Answer after publication of testimony.**—The permission to file an answer, after the publication of the testimony, rests in the sound discretion of the chancellor.

753 (3489) (3830) (3397) (2945). **Decree without personal service not absolute for twelve months; copy sent defendant.**—A decree made against a defendant, without personal service, who does not appear, is not absolute for twelve months from the rendition thereof, except as otherwise in this article provided; and in such case the court must direct a copy of the decree to be sent to such defendant, or, in case of infants, or persons of unsound mind, to their guardians, if their residences can be ascertained.*

Statute not applicable to resident infant.—Tabor v. Lorance, 53 Ala. 543. **Decree should direct compliance with statute,** but failure not ground of reversal. Holly v. Bass, 63 Ala. 387; Hurt v. Blount, 63 Ala. 327. **Statute must be read into decree.**—Sayre v. Elyton Land Co., 73 Ala. 85.

754 (3490) (3831) (3398) 2946). **Petition to set aside decree and defend on merits.**—Such defendant may file a petition, showing sufficient cause for setting aside such decree and permitting him to defend the suit on the merits, at any time within such twelve months, unless he has been served with a copy of such decree, when such petition must be filed within six months from such service. If the parties have been dismissed, notice of such petition shall be given those in interest. Upon the hearing of such petition, the chancellor has full power to open the decree and proceed with the cause as if no decree had been rendered therein.*

When petition filed, during statutory period, showing sufficient cause, opening of decree a duty.—Lehman v. Collins, 69 Ala. 127. **Appeal lies from order dismissing such petition.**—Buford v. Ward, 108 Ala. 307.

755 (3491) (3832) (3399) (2947). **When testimony on file used by either party.**—In the case provided for in the preceding section, either party may use the testimony of witnesses on file in the cause, who have died, or removed from the state, or become insane.

756 (3492) (3835) (3402) (2950). **When decree becomes conclusive.**—Where personal service of a decree rendered under the provisions of this article is made by serving the defendant with a copy of such decree, the same is conclusive and binding on him, if the petition to set aside such decree is not made within six months from such service.

757 (3493) (3836) (3403) (2951). **To whom preceding section not applicable.**—The provisions of the preceding section do not apply to infants, or persons of unsound mind, who are allowed twelve

*"Eighteen" changed to "twelve" by joint committee.

months from the termination of their respective disabilities to show cause against such decrees.

758 (3494) (3833) (3400) (2948). **Rights and liabilities of parties without service extend to representatives.**—The rights and liabilities of any plaintiff or defendant on bills taken pro confesso, without personal service, extend to the personal representatives of any deceased plaintiff or defendant; and with reference to the altered state of the parties, and any new interest acquired, the chancellor may, on petition, upon due notice being given and sustained by proof, permit any party to file such bills and adopt such proceedings as the circumstances of the case may require for having the matter of the decree duly considered, and the rights of the parties interested therein duly ascertained and determined.

759 (3495) (3834) (3401) (2949). **Execution of decrees on bills taken pro confesso without service.**—It is no objection to the execution of a decree rendered against a defendant, that it was founded on a bill taken pro confesso without personal service; but before the execution of such decree, within twelve months from the rendition thereof, the plaintiff, or party interested, must give bond, with two sureties, payable to and approved by the register, in a penalty to be prescribed by the chancellor or such register, conditioned to pay the pecuniary value of the personal property which may be disposed of, or placed beyond the control of the court or party, by the execution of the decree, and interest thereon from the time such property is so disposed of, or placed beyond such control; and to account for the value, rents and profits of any real estate transferred by the operation of such decree, and further to abide and perform such decree as the court may render, if the decree taken on the bill pro confesso is set aside; and the chancellor may, if such decree is set aside, render a final decree against all the parties to such bond.

Statute construed and applied.—Hurt v. Blount, 63 Ala. 327; Holly v. Bass, 63 Ala. 387; Sayre v. Elyton Land Co., 73 Ala. 85; Lehman v. Collins, 69 Ala. 127. **When sale under decree without compliance with statute not subject to collateral attack.**—Seelye v. Smith, 85 Ala. 25.

ARTICLE 9.

BILLS OF REVIEW, NE EXEAT, EQUITABLE ATTACHMENTS, GARNISHMENTS AND WRITS OF SEIZURE.

760 (3496) (3842) (3404) (2952). **Suspension of decree on presenting a bill of review.**—When a decree has been rendered, and a bill of review is presented, the chancellor may direct the proceedings on such decree to be suspended until a decree is rendered on such bill of review, or until the further order of the court; requiring such bond of the plaintiff as will effectually protect the interest of the parties interested in the decree rendered; on which bond the chancellor may render a final decree for any portion, or the whole of the penalty.

Leave to file must be obtained.—Caller v. Shields, 2 Stew. & Port. 417.

Leave discretionary with chancellor.—P. & M. Bank v. Dundas, 10 Ala. 661; Murrell v. Smith, 51 Ala. 301. **Notice of application for leave** and waiver. Mitchell v. Hardie, 84 Ala. 349. **Order of suspension inoperative after dismissal of bill** of review.—Hogan v. Davis, 3 Ala. 70. **Object and effect of bill of review, prayer and relief.**—McCall v. McCurdy, 69 Ala. 65. **May be filed only by parties to former suit** or their privies.—Curry v. Peebles, 83 Ala. 225. **Allegations of bill;** precision required, and details of former suit.—Caller v. Shields, 2 Stew. & Port. 417; McDougald v. Dougherty, 39 Ala. 409; Goldsby v. Goldsby, 67 Ala. 560. **Bill of review for error apparent.**—Caller v. Shields, 2 Stew. & Port. 417; P. & M. Bank v. Dundas, 10 Ala. 661; McDougald v. Dougherty, 39 Ala. 409; Stallworth v. Blum, 50 Ala. 46; Noble v. Hallonquist, 53 Ala. 229; Bishop v. Wood, 59 Ala. 253; Tankersly v. Pettis, 61 Ala. 354; Gordon v. Ross, 63 Ala. 363; George v. George, 67 Ala. 192; Goldsby v. Goldsby, 67 Ala. 560; Cresswell v. Jones, 68 Ala. 420; McCall v. McCurdy, 69 Ala. 65; Ashford v. Patton, 70 Ala. 479; Banks v. Long, 79 Ala. 319; Hooper v. Hardie, 80 Ala. 114; Mitchel v. Hardie, 84 Ala. 349; Smyth v. Fitzsimmons, 97 Ala. 451; Cook v. Bolling, 99 Ala. 455; Thorington v. Thorington, 111 Ala. 237. **Bill of review for newly-discovered evidence.**—Caller v. Shields, 2 Stew. & Port. 417; Williams v. Murphy, 1 Port. 40; Bradshaw v. Garrett, 1 Port. 47; Cochran v. Rison, 20 Ala. 463; McDougald v. Dougherty, 39 Ala. 409; Murrell v. Smith, 51 Ala. 301; Banks v. Long, 79 Ala. 319; Wilson v. Wilson, Ala. (21 So. 67.) **Original bill, in nature of bill of review,** lies, without leave, to impeach decree for fraud.—Ex parte Smith, 34 Ala. 455; Stallworth v. Blum, 50 Ala. 46; Curry v. Peebles, 83 Ala. 225; McDonald v. Pearson, Ala. (21 So. 534.)

761 (3497) (3843) (3405) (2953). **Application to file such bills, when made.**—Application to file bills of review must be made within three years after the rendition of the decree, except in cases of infants and persons of unsound mind, who may apply within three years after the termination of their respective disabilities.

Not required to file bill within three years—only necessary to make application.—Mitchel v. Hardie, 84 Ala. 349. **Exception in favor of infants.**—Heflin v. Ashford, 85 Ala. 125. **Infant may file bill to review decree founded on admissions of guardian ad litem.**—Hooper v. Hardie, 80 Ala. 114. **Limitation of three years applies by analogy** to bills to impeach decree for fraud.—Gordon v. Ross, 63 Ala. 363.

762 (3498) (3844) (3406) (2954). **Writ of ne exeat; equitable attachment.**—Writs of ne exeat and equitable attachments may issue on equitable debts and demands in any case in which an attachment at law may issue; and in the issue of equitable attachments, and all the proceedings thereon, the provisions in relation to attachments from courts of law must be observed, except so far as may be otherwise provided in this chapter.

Ne exeat.—Lucas v. Hickman, 2 Stew. 111; Baker v. Rowan, 2 Stew. & Port. 361. **Equitable attachment; order for writ** must be obtained.—McKenzie v. Bentley, 30 Ala. 139. **Statutory bond and affidavit and prayer** for writ necessary.—Smith v. Moore, 35 Ala. 76. **Affidavit of no intention to vex or harass** defendant required.—Saunders v. Cavett, 38 Ala. 51. **Writ may be sued out before maturity of demand.**—Ware v. Seasongood, 92 Ala. 152. **What may be reached.**—Smith v. Moore, 37 Ala. 327; Dollins v. Lindsey, 89 Ala. 217.

763 (3499) (3845) (3407) (2955). **Chancellors may examine answers in such cases in vacation.**—Chancellors may, in vacation, examine all answers in relation to writs of ne exeat and attachments returnable into chancery, and writs of seizure, discharge, or reduce any bail taken, or levy made, on application and reasonable notice to the adverse party.

See citations to preceding section.

764 (3500) (3846) (3408) (2956). **Attachments on legal demands to subject equitable effects.**—Courts of chancery may also issue writs of attachment on legal demands, founded on any judgment or contract, express or implied, in such cases as attachments may issue

from courts of law; which attachments operate only on the effects of the defendant held by an equitable title, or on demands owing by other persons, to which the defendant against whom the attachment issues is in equity entitled, whether due or not.

Will lie at suit of husband's creditor to reach improvements made by him on wife's land.—Ware v. Seasongood, 92 Ala. 152.

765 (3501) (3847) (3409) (2957). **Attachments may issue before judgment for debt.**—To authorize the issue of equitable attachments, it is not necessary that the demand of the plaintiff should be reduced to a judgment, but the court may render a decree for the amount proved, and execution may issue to enforce the same as from courts of law.

Demand need not be due.—Ware v. Seasongood, 92 Ala. 152.

766 (3502) (3848) (3410) (2958). **Property to be specified.** Equitable attachments must specify the property, effects, or demands, on which they are intended to operate; and a copy of the bill must, in such cases, be served with the summons.

767 (3503) (3849) (3411) (2959). **Replevy of property attached.** Any property levied on by an equitable attachment may be replevied by the defendant, or any one for him, on giving bond with surety in double the value of the property levied on, to be approved by the sheriff, payable to the plaintiff, and conditioned as replevy bonds on attachments from courts of law.

768 (3504) (3850) (3412) (2960). **Replevy bond to be returned.** When property levied on by an equitable attachment is replevied, the bond must be returned with the attachment.

769 (3505) (3851) (3413) (2961). **Lien of such attachments.** Equitable attachments are a lien upon the property or debts attached from the service of the attachment.

770 (3506) (3852) (3414) (2962). **If property not delivered, execution issues on replevy bond.**—If a decree is rendered in a case in which an equitable attachment has been levied, and the property replevied is not forthcoming within such time as the court may direct, to be proved by the affidavit of the party before the register, the replevy bond in such case has the force of a judgment, and execution may issue thereon for the whole, or any portion of the penalty, as the court may direct, against any or all of the parties thereto.

771 (3507) (3853) (3415) (2963). **Writs of ne exeat and attachment; orders in respect to.**—Chancellors, circuit judges and registers of the court in which the bill is filed, may make all necessary orders for the issuing of writs of ne exeat and equitable attachments, and for the sale of personal property levied on, as in like cases from courts of law; the money arising from such sale to be paid to the register.

772 (3508) (3854, 3855, 3856). **Garnishments may issue.**—On all decrees for the payment of money, or on all decrees for the payment of costs, and in all suits in which a decree for the payment of money may be rendered, a writ of garnishment may be issued by the register, under the rules and regulations prevailing in the circuit courts.

Writ reaches only demands and liabilities subject to same process at law. Jones v. Crews, 64 Ala. 368; Henderson v. Ala. Gold Life Ins. Co., 72 Ala. 32; Long v. Walker, 84 Ala. 72.

773 (3509) (3857) (3416) (2964). **Writs of seizure in aid of suit commenced in chancery.**—Writs may also issue from the courts of chancery on an original bill, or in aid of a suit pending in such court, by the order of any chancellor, judge of the circuit court, or register, for the seizure of personal property, when the same is claimed under an equitable title, or when a decree is sought against the same, and it is in danger of being wasted, carried beyond the jurisdiction of the court, or otherwise disposed of.

Writ of seizure substitute for injunction.—Walker v. Radford, 67 Ala. 446.

774 (3510) (3858) (3417) (2965). **Affidavit to be made by plaintiff.**—The plaintiff in such case must sustain his claim by affidavit, and give bond with surety, payable to the defendant, in double the value of the property, to be approved by the register, conditioned to pay all damages the defendant may sustain by the wrongful or vexatious suing out of such writ.

This section qualifies both 762 and 764.—Ware v. Seasongood, 92 Ala. 152.

775 (3511) (3859) (3418) (2966). **Property restored on giving bond.**—The officer executing such writ must restore the property seized to the defendant, on his giving bond in double the value of the same, with surety, to be approved by such officer, payable to the plaintiff, and conditioned to have such property forthcoming to answer the decree of the court.

776 (3512) (3860) (3419) (2967). **When property delivered to plaintiff.**—If the defendant neglects, for five days after the seizure of such property, to give such bond, the sheriff must deliver the same to the plaintiff, on his giving bond with surety in double the value of such property, to be approved by the sheriff, payable to the defendant, conditioned, if unsuccessful in his suit, to return such property within thirty days after its determination.

777 (3513) (3861) (3420) (2968). **Return of writs and bonds.** Such writs, with the proper return thereon, and the bonds taken under the provisions of either of the last two sections, must be returned to the register of the court from which the writ issues.

778 (3514) (3862) (3421) (2969). **Decree when plaintiff sustains his claim.**—If the claim of the plaintiff is sustained, the court may direct that if its decree in relation to such property is not performed within a specified time, execution may issue on the bond of the defendant for all, or such portion of its penalty as the court may determine under all the circumstances.

779 (3515) (3863) (3422) (2970). **Liability of plaintiff and his sureties.**—If the plaintiff is unsuccessful, and fails to deliver the property to the defendant within thirty days after the determination of the suit, he and his sureties are liable to an action, and, in case of a recovery, to damages, not exceeding fifty per centum on the value of the property.

780 (3516) (3864) (3423). **Equitable attachment for benefit of**

surety in written contract.—A writ of attachment may be issued out of the court of chancery, on the application of any surety, indorser, accommodation drawer, acceptor, or maker of any bond, bill, or note, or other contract in writing, against the principal debtor, to be levied on the property or effects of the defendant, whether held by a legal or equitable title, whenever such surety, indorser, acceptor, maker, or drawer, could sue out an attachment at law, if he was a creditor of such principal debtor; and the provisions in reference to attachments at law must be observed in the issue of such attachments, and such writ of attachment may be granted by the register in chancery.

Peevey v. Cabaniss, 70 Ala. 253.

781 (3517) (3865) (3424). **When such attachments may be dissolved.**—When such attachments are sued out by any indorser, surety, acceptor, maker, or drawer, of any bond, bill, note, or other contract in writing, not due and payable, such attachment must be dissolved, on application to the chancellor, in vacation or term time, or by the register in vacation, on the principal debtor furnishing the complainant complete indemnity against his liability, and paying all costs which may have accrued on such attachment.

Peevey v. Cabaniss, 70 Ala. 253.

782 (3518) (3866) (3425). **Decree in favor of surety.**—No decree must be rendered in favor of the complainant in such attachment, until he has paid the debt for which he is liable as the surety, indorser, accommodation maker, drawer, or acceptor, of the defendant.

783 (3519). **Creditor may intervene.**—If the surety die before paying the debt, and there is not administration of his estate, or his personal representative fail or refuse for sixty days to revive the suit, the creditor may by petition intervene and prosecute the suit to a final decree in his own name, becoming liable for the costs as if he had been the original complainant.

Valid exercise of legislative power.—Peevey v. Cabaniss, 70 Ala. 253.

ARTICLE 10.

INJUNCTIONS.

784 (3520) (3867) (3426) (2971). **By whom granted.**—Injunctions may be granted, returnable into any of the courts of chancery in this state, by the judges of the supreme and circuit courts and chancellors.

Grantable by other judges when specially authorized, as for instance, judges of city and criminal courts.—Ex parte Greene, 29 Ala. 52; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; Ex parte Sayre, 95 Ala. 288; Cofer v. Schening, 98 Ala. 338.

785 (3521) (3868) (3427) (2972). **Injunction of judgment a release of errors.**—An injunction obtained by a defendant to a judgment at law, to stay proceeding thereon, operates as a release to errors as to such defendant.

Practice under statute of 1816, requiring release of errors to be filed. Cotton v. Wilson, Minor, 118; Bates v. P. & M. Bank, 9 Port. 376; Reynolds v. Pharr, 9 Ala. 560; Paulding v. Watson, 21 Ala. 279.

As amended Feb. 27, 1889, p. 116.

786 (3522) (3869) (3428) (2973). **Bond on injunction of judgment.**—No injunction must issue to stay proceedings after judgment, in a personal action, until the party at whose application the writ issues gives bond with surety, in double the amount of such judgment, payable to the opposite party, and approved by the register, conditioned, on the dissolution of such injunction, to pay the amount of the judgment enjoined with interest, and also such damages and costs as may be decreed against such party.

Within section, is injunction of statutory judgment by surety on claim bond.—Ex parte Fechheimer, 103 Ala. 154. **But injunction of execution against or levy on particular property only, is not.**—Dunn v. Bank, 2 Ala. 152; Wiswell v. Munroe, 4 Ala. 9; Bartlett v. Gayle, 6 Ala. 305; Halsey v. Murray, 112 Ala. 185. **Neither is injunction of judgment by a stranger.** Bartlett v. Gayle, 6 Ala. 305; Barnard v. Davis, 54 Ala. 565; Halsey v. Murray, 112 Ala. 185 (overruling McCalley v. Wilburn, 77 Ala. 549). **Excess in penalty not destructive of effect as statutory bond.**—Buckner v. Stewart, 34 Ala. 529. **Injunction of judgment of supreme court.**—Wiswell v. Munroe, 4 Ala. 9; Roebling Sons Co. v. Stevens El. Co., 93 Ala. 39. **As means of obtaining equitable set-off.**—Scholze v. Steiner, 100 Ala. 148; s. c., 105 Ala. 607; s. c., Ala. (21 So. 428). **Venue of bill to enjoin judgment.**—Shrader v. Walker, 8 Ala. 244; Butler v. Butler, 11 Ala. 668; Freeman v. McBroom, 11 Ala. 943; Eldridge v. Turner, 11 Ala. 1049; Branch Bank v. Rutledge, 13 Ala. 196; see also citations to section 676.

Ib.

787 (3523) (3870) (3429) (2974). **Bond on injunction after recovery of lands.**—No injunction must issue to stay proceedings at law after judgment, in any action for the recovery of lands, unless the party give bond with surety, payable to the opposite party, and approved by the register, in such sum as the officer granting the application directs, conditioned for the payment of the damages in such judgment, if enjoined, and also all damages and costs which the plaintiff in such judgment sustains by the suing out of such injunction, if the same is dissolved.

Ib.

788 (3524) (3871) (3430) (2975). **Bond on injunction in other cases.**—In other cases, the party must give bond with surety, in such sum as the officer granting the application directs, payable to the party against whom the application is granted, and approved by the register, and conditioned to pay all damages and costs which any person may sustain by the suing out of such injunction, if the same is dissolved.

Governs all cases not within 786 and 787.—Halsey v. Murray, 112 Ala. 185. Cited, Clay v. Powell, 85 Ala. 538. **Writ without bond irregular.**—Thorington v. Gould, 59 Ala. 461. **But opportunity to give bond allowed** before discharge of writ.—Jones v. Ewing, 56 Ala. 360. **Form and construction of bond.** Moore v. Harton, 1 Port. 15; Dubberly v. Black, 38 Ala. 193; Bolling v. Tate, 65 Ala. 417; Washington v. Timberlake, 74 Ala. 259; May v. Walter, 85 Ala. 438; Person v. Thornton, 86 Ala. 308. **Without decree of dismissal of bill or dissolution, there is no breach.**—Walter v. May, 85 Ala. 438. **Such decree entitles defendant to at least nominal damages.**—Rosser v. Timberlake, 78 Ala. 162. **And counsel fees paid or incurred in procuring dissolution.**—Garrett v. Hill, 19 Ala. 344; Holmes v. Weaver, 52 Ala. 516; Robertson v. Robertson, 58 Ala. 68; Bolling v. Tate, 65 Ala. 417; Rosser v. Timberlake, 78 Ala. 162. And sometimes **for fees for whole case.**—Jackson v. Millspaugh, 100 Ala. 285. **Whether rendered in chancery or supreme court, or both.**—Bolling v. Tate, 65 Ala. 417; Cooper v. Hames, 93 Ala. 280. **But not for services gratuitously performed.**—Schening v. Cofer, 97 Ala. 726. **How and in whose name action to be brought.**—Smith v. Mutual Loan & Trust Co., 102 Ala. 282. **Recovery of separate damages.**—Weeden v. Jones, 106 Ala. 336.

789 (3533) (3880) (3440) (2985). **Notice of injunction to stay a judgment served on the attorney is valid.**—Notices of injunctions, or other restraining process, staying proceedings in suits or on judgments at law, served upon the attorney of the party on whom such injunction or process is to operate, are valid.

790 (3525) (3872) (3431) (2976). **Application for injunction refused; how renewed; when refusal final.**—If any application is made to a circuit judge for an injunction, and refused, no other circuit judge can act on the application, but the application may be made to a chancellor or judge of the supreme court; if refused by a chancellor, it may be renewed to a judge of the supreme court, but no other officer; and, if refused by a judge of the supreme court, cannot be renewed.

791 (3526) (3873) (3432) (2977). **Application to justice of supreme court.**—No application must be made to a judge of the supreme court for an injunction, or other equitable process which may be granted by any other judge or officer, unless the same has been made to such other judge or officer, and refused by him.

792 (3527) (3874) (3433) (2978). **Refusal to grant injunction indorsed on bill.**—When an application for an injunction is refused, the officer to whom the same is made must indorse his refusal on the bill, and sign his name thereto; and any one erasing such indorsement is guilty of a misdemeanor, and, on conviction thereof, must be fined not less than five hundred dollars.

793 (3528) (3875) (3434) (2979). **On dissolution of injunction, damages granted for delay.**—Whenever an injunction to stay proceedings in an action is dissolved on a final hearing, the chancellor may decree six per centum damages on the amount of money for which such judgment was enjoined, if of opinion that the injunction was obtained for delay.

Applies only to injunction of judgments.—Halsey v. Murray, 112 Ala. 185. **Damages decreed only when allegations of bill untrue or evasive.**—Crawford v. Bank, 5 Ala. 55; Mallory v. Matlock, 10 Ala. 595; Weissinger v. Johnson, 13 Ala. 93; Contra, Wharton v. Jones, 49 Ala. 102, where damages decreed on dismissal for want of equity.

794 (3529) (3876) (3435) (2980). **Effect of bond on dissolution of injunction of a judgment; execution.**—A bond to enjoin proceedings at law on a judgment for money, upon the dissolution thereof, in whole or in part, either upon an interlocutory or final decree, has the force and effect of a judgment; and being certified by the register to the clerk of the court in which the judgment was rendered, execution may issue against any or all the obligors thereto, for the amount of such judgment which has been enjoined, interest and the damages decreed.

Applies only to bonds given on injunction of judgments by person liable therefor.—Halsey v. Murray, 112 Ala. 185 (overruling McCalley v. Wilburn, 77 Ala. 549). **When the statutory judgment will not be enjoined.**—Knabe v. Rice, 106 Ala. 516. **Certificate of register not essential to execution.**—Wiswell v. Munroe, 4 Ala. 9; Dubberly v. Black, 38 Ala. 193.

795 (3530) (3877) (3436) (2981). **Execution for costs.**—The reg-

ister may also issue execution for costs, if decreed against the party obtaining the injunction, against any or all the parties to the bond.

General, not confined to injunction of judgments.—Newsom v. Thornton, 61 Ala. 95.

796 (3531) (3878) (3437) (2982). **If injunction of judgment is dissolved pending suit, refunding bond required.**—When an interlocutory decree is made dissolving an injunction to stay proceedings on a judgment at law, the chancellor must require of the defendant a refunding bond, in double the amount of the sum enjoined, payable to, and to be approved by the register, conditioned to refund the money and interest he may collect on the judgment, if the same is, on the final hearing of the bill, perpetually enjoined; and the court may render a final decree on such bond against any or all the parties thereto.

Only applicable to injunction of judgments by person liable therefor. Halsey v. Murray, 112 Ala. 185. **Cases wherein refunding bond was required.** McLaughlin v. McLaughlin, 36 Ala. 145; Robertson v. Walker, 51 Ala. 484; Barnard v. Davis, 54 Ala. 565; Rice v. Tobias, 83 Ala. 348; Dexter v. Ohlander, 95 Ala. 467; Rogers v. Haines, 96 Ala. 586; Jackson v. Elliott, 100 Ala. 669.

As amended Dec. 18, 1894, p. 238.

797 (3532) (3879) (3438) (2983). **Motion to dissolve or discharge in vacation.**—A defendant may, in vacation, upon ten days' notice to the complainant or his solictor, move, before the chancellor of the division in which the bill is filed, to dissolve an injunction for want of equity in the bill or on the coming in of the answer, or to discharge an injunction, to be heard on the original papers or certified copies thereof; and motions to discharge and dissolve may be made and heard at the same time, without prejudice to either.

When notice of motion void for uncertainty.—Florence v. Paschal, 48 Ala. 458. **Motion may be heard out of division.**—Griffin v. Branch Bank, 9 Ala. 201. **When may be renewed.**—Hudson v. Crutchfield, 12 Ala. 433. **Right of party in contempt to make motion.**—Jacoby v. Goetter, 74 Ala. 427; Crabtree v. Baker, 75 Ala. 91. **Difference between motion to discharge and motion to dissolve.**—Jones v. Ewing, 56 Ala. 360; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; Ex parte Sayre, 95 Ala. 288; Ex parte Fechheimer, 103 Ala. 154. **Motion to discharge proper when injunction irregularly granted.**—Jones v. Ewing, 56 Ala. 360; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275. **Writ will not be discharged for defective verification of bill** until opportunity given to supply sufficient affidavit.—Calhoun v. Cozens, 3 Ala. 498; Jacoby v. Goetter, 74 Ala. 427; Forney v. Calhoun Co., 84 Ala. 215. **Issuance of writ without bond, irregular.**—Thorington v. Gould, 59 Ala. 461. **Proper order in such case.**—Jones v. Ewing, 56 Ala. 360. **Formerly,** motion to discharge would not lie, in vacation.—Ex parte Sayre, 95 Ala. 288. **Motion to dissolve in vacation made only for want of equity in bill or upon denials of answer.**—Jones v. Ewing, 56 Ala. 360; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; Ex parte Sayre, 95 Ala. 288. **When submission on final hearing, improper merely to dissolve injunction, without making final decree.**—Trump v. McDonnell, 112 Ala. 256. **When bill wanting in equity, injunction dissolved,** whether answer admits or denies allegations of bill.—Nelson v. Dunn, 15 Ala. 501; Cave v. Webb, 22 Ala. 583; Powell v. Central P. R. Co., 24 Ala. 441; Norris v. Norris, 27 Ala. 519; Harrison v. McCrary, 37 Ala. 687; Garrett v. Lynch, 44 Ala. 683; Satterfield v. John, 53 Ala. 127; Hart v. Clark, 54 Ala. 490; Bishop v. Wood, 59 Ala. 253; Chambers v. Ala. Iron Co., 67 Ala. 353; Gunn v. Hardy, 107 Ala. 609. On motion to dissolve for want of equity, **all amendable defects treated as amended.**—Ala. & Fla. R. Co. v. Kenney, 39 Ala. 307; Robertson v. Walker, 51 Ala. 484; Jones v. Ewing, 56 Ala. 360; Chambers v. Ala. Iron Co., 67 Ala. 353; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; Scholze v. Steiner, 100 Ala. 148; L. & N. R. Co. v. City of Bessemer, 108 Ala. 238. **And bill and exhibits treated as true.**—Cox. v. M. & G. R. Co., 44 Ala. 611. **As a rule, injunction dissolved, when answer fully denies facts, supporting equity of bill.**—Withers v. Dickey, 1 Stew. 190; Hogan v. Branch Bank, 10 Ala. 485; Hudson v. Crutchfield, 12 Ala. 433; Barney v. Earle, 13 Ala. 106; Moore v. Barclay, 23 Ala. 739; Jones v. Cowles, 26 Ala. 612; Hill v. Averett, 27 Ala. 484;

Rogers v. Bradford, 29 Ala. 474; Miller v. Bates, 35 Ala. 580; Brooks v. Diaz, 35 Ala. 599; Saunders v. Cavett, 38 Ala. 51; Yonge v. Shepperd, 44 Ala. 315; Satterfield v. John, 53 Ala. 127; Barr v. Collier, 54 Ala. 39; Collier v. Falk, 61 Ala. 105; Weems v. Weems, 73 Ala. 462; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; Jackson v. Jackson, 84 Ala. 343; Morrison v. Coleman, 87 Ala. 655; Parsons v. Joseph, 92 Ala. 403; L. & N. R. Co. v. Philyaw, 94 Ala. 463; Weems v. Roberts, 96 Ala. 378; Elliott v. Sibley, 101 Ala. 344; Turner v. Stephens, 106 Ala. 546. **This rule not inflexible; court weighs probable consequences** to parties from retention and dissolution.—Rembert v. Brown, 17 Ala. 667; Miller v. Bates, 35 Ala. 580; Bibb v. Shackelford, 38 Ala. 611; Satterfield v. John, 53 Ala. 127; Chambers v. Ala. Iron Co., 67 Ala. 353; C. & W. R. Co. v. Witherow, 82 Ala. 190; Harrison v. Yerby, 87 Ala. 185; Whitley v. Dunham Lumber Co., 89 Ala. 493; Scholze v. Steiner, 100 Ala. 148; P. & M. Bank v. Laucheimer, 102 Ala. 454; New England M. S. Co. v. Powell, 97 Ala. 483. **When not dissolved in redemption suit,** although answer denies payment of debt.—Hinson v. Brooks, 67 Ala. 491; Whitley v. Dunham Lumber Co., 89 Ala. 493. **Answer considered only as responsive to bill.**—Rembert v. Brown, 17 Ala. 667; Jones v. Ewing, 56 Ala. 360; Farris v. Houston, 78 Ala. 250; C. & W. R. Co. v. Witherow, 82 Ala. 190; Bolling v. Roman, 95 Ala. 518; B. M. R. Co. v. City of Bessemer, 98 Ala. 274; Scholze v. Steiner, 100 Ala. 148. Answer **not considered as to fact, burden of proving which is on respondent.**—McClure v. Colclough, 6 Ala. 492; Jackson v. Jackson, 84 Ala. 343; s. c., 91 Ala. 292. **Answer must contain explicit, certain and unevasive denial of facts.**—Savage v. Benham, 17 Ala. 119; Rembert v. Brown, 17 Ala. 667; Grady v. Robinson, 28 Ala. 289; Walker v. Tyson, 52 Ala. 593; C. & W. Ry. Co. v. Witherow, 82 Ala. 190; Kinney v. Ensminger, 87 Ala. 340; Consolidated E. L. Co. v. Peoples' E. L. Co., 94 Ala. 372; Henry v. Watson, 109 Ala. 335. **When facts charged positively in bill, dissolution will not be made on denials on information and belief.**—Calhoun v. Cozens, 3 Ala. 498; Hart v. Clark, 54 Ala. 490. **Otherwise, when facts charged in bill on information and belief.**—Hogan v. Branch Bank, 10 Ala. 485. **Not dissolved on unsworn answer.**—Griffin v. State Bank, 17 Ala. 258; Rainey v. Rainey, 35 Ala. 282; Hart v. Clark, 54 Ala. 490. **Motion entertained, although exceptions filed to answer.**—Barney v. Earle, 13 Ala. 106. **When dissolved on answer of one of several defendants.**—Long v. Brown, 4 Ala. 622; Dunlap v. Clements, 7 Ala. 539; Mobile Commissioners v. Putnam, 44 Ala. 506; Garrett v. Lynch, 44 Ala. 683; Colton v. Price, 50 Ala. 424; Hartley v. Matthews, 96 Ala. 224. **When answer of corporation authorizes dissolution.**—Griffen v. State Bank, 17 Ala. 258; modifying Hogan v. Branch Bank, 10 Ala. 485. **When bill may and may not be aided by affidavits.**—Withers v. Dickey, 1 Stew. 190; Long v. Brown, 4 Ala. 622; Barnard v. Davis, 54 Ala. 565; Henry v. Watson, 109 Ala. 335; H. A. & B. R. Co. v. B. R. & El. Co., Ala. (21 So. 342). **Partial dissolution or modification** of injunction.—Maulden v. Armistead, 18 Ala. 500; Miller v. Bates, 35 Ala. 580; Steiner v. Scholze, 105 Ala. 607. **Retention of bill for other relief** on dissolution.—Norris v. Norris, 27 Ala. 519; Harrison v. McCrary, 37 Ala. 687. **On redemption bill, injunction should not be dissolved, when complainant obtains relief,** although foreclosure ordered, for debt ascertained.—Alston v. Lehman, Ala. (20 So. 950).

798. Order for injunction made before bill filed, valid.—It is not ground of objection to an injunction that the order granting the same was made prior to the filing of the bill.

Formerly a mere irregularity.—Ex parte Sayre, 95 Ala. 288; Henry v. Watson, 109 Ala. 335.

ARTICLE 11.

RECEIVERS.

799 (3534) (3881) (3441) (2986). **Receivers appointed by chancellor or register.**—Receivers may be appointed by the chancellor in term time or vacation, and by the register in vacation, upon application in writing; and when the application is made in vacation, reasonable notice of the time of such application, and the person to whom it will be submitted, must be given, or a good reason shown to the chancellor or register for the failure to give the same.

Appointment of receiver before filing of bill is void.—Crowder v. Moone, 52 Ala. 220; Harwell v. Potts, 80 Ala. 70. But may be made before answer. Weis v. Goetter, 72 Ala. 259; Micou v. Moses, 72 Ala. 439. **Affidavits pro and con receivable on hearing application.**—Micou v. Moses, 72 Ala. 439. **Appointment matter of discretion.**—Ex parte Walker, 25 Ala. 81; Bard v. Bingham, 54 Ala. 463. **But this discretion is to be exercised according to established principles.**—Briarfield Iron Works v. Foster, 54 Ala. 622; Hughes v. Hatchett, 55 Ala. 631; Pearce v. Jennings, 94 Ala. 524; Ft. Payne Fur. Co. v. Ft. Payne C. & I. Co., 96 Ala. 472; Etowah M. Co. v. Wills Valley M. & M. Co., 106 Ala. 492. **The power is exercised with caution.**—Hughes v. Hatchett, 55 Ala. 631; Randle v. Carter, 62 Ala. 95; Micou v. Moses, 72 Ala. 439; Bank of Florence v. U. S. Sav. & L. Co., 104 Ala. 297. **Reasonable probability of complainant's success should appear.**—Bank of Florence v. U. S. Sav. & Loan Co., 104 Ala. 297; American F. L. M. Co. v. Turner, 105 Ala. 520. **Requires strong case to dispense with notice; cases wherein notice was excused.**—Sims v. Adams, 78 Ala. 395; Ashurst v. Lehman, 86 Ala. 370; Heard v. Murray, 93 Ala. 127; Hendrix v. Am. F. L. M. Co., 95 Ala. 313; Maxwell v. Peters Shoe Co., 109 Ala. 371. **Cases wherein notice held necessary.**—Crowder v. Moone, 52 Ala. 220; Moritz v. Miller, 87 Ala. 331; Thompson v. Tower Mfg. Co., 87 Ala. 733; Dollins v. Lindsey, 89 Ala. 217; Lindsay v. Am. M. Co., 97 Ala. 411; Bank of Florence, v. U. S. Sav. & L. Co., 104 Ala. 297. **Trustee displaced by receiver only for peril to trust fund.**—Satterfield v. John, 53 Ala. 127; Randle v. Carter, 62 Ala. 95; Ft. Payne F. Co. v. Ft. Payne C. & I. Co., 96 Ala. 472. **Receivers of partnership property.**—Bard v. Bingham, 54 Ala. 463; Sims v. Adams, 78 Ala. 395; Word v. Word, 90 Ala. 81; Irwin v. Everson, 95 Ala. 64. **Receivers of corporations for official mismanagement;** when and when not appointed.—Roman v. Woolfolk, 98 Ala. 219; Little Warrior Coal Co. v. Hooper, 105 Ala. 665; Bridgeport Development Co. v. Tritsch, 110 Ala. 274; Bell v. Montgomery Light Co., 110 Ala. 651. **Receivers of rents and profits between vendor and vendee, mortgagor and mortgagee;** when and when not appointed.—Meyer v. Johnston, 53 Ala. 237; Hughes v. Hatchett, 55 Ala. 631; McLean v. Presley, 56 Ala. 211; Eslava v. Crampton, 61 Ala. 507; Lehman v. Tallassee Mfg. Co., 64 Ala. 567; Scott v. Ware, 65 Ala. 174; Stewart v. Riddle, 70 Ala. 219; Ashurst v. Lehman, 86 Ala. 370; Bolling v. Vandiver, 91 Ala. 375; Hendricks v. Am. F. L. M. Co., 95 Ala. 313; Lindsay v. Am. M. Co., 97 Ala. 411; Cooper v. Berney Bank, 99 Ala. 119; Jackson v. Hooper, 107 Ala. 634; Ala. Nat'l Bank v. Mary Lee C. & Ry. Co., 108 Ala. 288; Warren v. Pitts, Ala. (21 So. 494). **Receivers on creditors' bills.** Weis v. Goetter, 72 Ala. 259; Micou v. Moses, 72 Ala. 439; Moritz v. Miller, 87 Ala. 331; Miller v. Lehman, 87 Ala. 517; Thompson v. Tower Mf'g. Co., 87 Ala. 733; McCullough v. Jones, 91 Ala. 186; Heard v. Murray, 93 Ala. 127; Werborn v. Kahn, 93 Ala. 201; McKinnon v. Pike Co. Guano Co., 94 Ala. 521; Pearce v. Jennings, 94 Ala. 524; Ft. Payne Fur. Co. v. Ft. Payne C. & I. Co., 96 Ala. 472; Sackhoff v. Vandegrift, 98 Ala. 192; Talladega Mercantile Co. v. Jenifer Iron Co., 102 Ala. 259; Strickland v. Gay, 104 Ala. 375; Maxwell v. Peters Shoe Co., 109 Ala. 371. **Receiver of attached property not appointed without injunction of attachment suit.**—Strickland v. Gay, 104 Ala. 375. **Appointment subject to existing liens.**—Talladega Mercantile Co. v. Jenifer Iron Co., 102 Ala. 259. **Receiver of property already in custodia legis.**—Rapier v. Gulf City Paper Co., 64 Ala. 330; Dollins v. Lindsey, 89 Ala. 217; Sackhoff v. Vandegrift, 98 Ala. 192; Stanton v. Heard, 100 Ala. 515; Strickland v. Gay, 104 Ala. 375; Williams v. Dismukes, 106 Ala. 402; Gay v. Brierfield C. & C. Co., 106 Ala. 615; see also George v. Central R. Co., 101 Ala. 607. **Receivership of railroads.** Meyer v. Johnston, 53 Ala. 237; Kelly v. Ala. & Cin. R. Co., 58 Ala. 489. **Power of receiver to contract debts;** intervention by creditor of receiver. H. A. & B. R. Co. v. Thornton, 105 Ala. 225; s. c., 94 Ala. 353. **Property charged with expenses** of administration.—Beckwith v. Carroll, 56 Ala. 12; Thornton v. H. A. & B. R. Co., 94 Ala. 353. **Extension of receivership to another suit.**—Scott v. Ware, 65 Ala. 174; Ala. Nat'l Bank v. Mary Lee C. & Ry. Co., 108 Ala. 288; Mercantile T. & D. Co. v. Florence Water Co., 111 Ala. 119. **Appointment of complainant,** stockholder and director, as receiver of corporation not void.—Mercantile T. & D. Co. v. Florence Water Co., 111 Ala. 119. **Determination of receivership, pending appeal,** within discretion of court.—Ex parte Hood, 107 Ala. 520. **State court cannot interfere with possession of trustee or receiver appointed by Federal court.**—Gay v. Briarfield C. & I. Co., 106 Ala. 615. **Allowance for expenses, counsel fees and compensation.**—Magee v. Cowperthwaite, 10 Ala. 966; Saulsbury v. Lady Ensley C. I. & R. Co., 110 Ala. 585. **Validity of appointment not assailable collaterally.**—Comer v. Bray, 83 Ala. 217; Florence Gas, El. L. & P. Co. v. Hanby, 101 Ala. 15. **Levy on property in hands of receiver void.**—Dugger v. Collins, 69 Ala. 324; Ex parte Tillman, 93 Ala. 101; Stanton v. Heard, 100 Ala. 515. **Fraudulent appointment of receiver assailable at suit of creditors by original bill.**—Ala. Nat'l Bank v. Mary Lee C. & Ry. Co., 108 Ala. 288. Re-

ceivers' certificates.—Meyer v. Johnston, 53 Ala. 237. **Bill for receiver; how verified.**—Burgess v. Martin, 111 Ala. 656. **Order permitting execution creditor to levy on property** in hands of receiver; when vacated by mandamus. Bridgeport, etc., Co. v. Bridgeport, etc., Co., 104 Ala. 276.

800 (3535) (639, 640) (730, 731). **Appointment by register; suspension of order.**—When an order appointing a receiver is made by the register, it shall be subject to appeal to the chancellor, which may be heard in term time or vacation; and such order must be suspended whenever the appellant enters into bond with sufficient sureties, to be approved by the register, in such sum as he shall prescribe, payable to the appellee, and conditioned to pay the appellee all such costs and damages as he may sustain in case the appeal is not prosecuted to effect.

On appeal, hearing is de novo and additional affidavits, etc., receivable. Heard v. Murray, 93 Ala. 127; Werborn v. Kahn, 93 Ala. 201; Etowah M. Co. v. Wills Valley M. & M. Co., 106 Ala. 492. **Denial of motion to vacate appointment not appealable.**—Miller v. Lehman, 87 Ala. 517.

801. Complainant must give bond before appointment of receiver. When application is made to the chancellor or register for the appointment of a receiver, such chancellor or register must, before making such appointment, require the complainant to enter into bond with surety, in such sum as the chancellor or register may prescribe, payable to the opposite party, and approved by the register, with condition to pay all damages which any person may sustain by the appointment of the receiver, if such appointment is vacated. Feb. 18, 1895, p. 585, §1.

Statute mandatory.—Capital City Water Co. v. Weatherly, 108 Ala. 412; Dreyspring v. Loeb, Ala. (21 So. 73).

802. Any person damaged may sue on bond.—Any person damaged by the appointment of the receiver, in the event such appointment is vacated, may recover, by suit upon such bond, in his own name, all damages so sustained, not exceeding the penalty of the bond. Ib. §2.

803. Receiver may be sued without leave of court.—A receiver or manager of property, appointed by any court, may be sued in respect to any act or transaction of his, in carrying on the business connected with such property in this state, without the previous leave of the court in which such receiver or manager was appointed.* Feb. 18, 1895, p. 100

804. Service of process on receivers.—In suits at law or in equity against foreign or domestic receivers holding, owning, claiming or operating property in this state, the summons or summons and complaint may be executed by the delivery of a copy thereof to the receiver if he is found within the state; or, upon affidavit being made by the plaintiff, his agent or attorney, that the receiver cannot be found within the state, then service may be had by leaving a copy of the summons, or, if the action be at law, a copy of the summons and complaint, with any agent in the employ of such receiver; and if there be two or more receivers of the same estate, firm, person, or corporation, service upon one of such receivers, or his agent as herein provided, is sufficient. Dec. 14, 1894, p. 158.

*As amended by joint committee.

ARTICLE 12.

BILLS TO CORRECT ERRORS IN SETTLEMENTS IN THE PROBATE COURT.

805 (3536) (3837) (2274) (1915). **Bill in chancery to correct settlements; when to be filed.**—When any error of law or fact has occurred in the settlement of any estate of a decedent, to the injury of any party, without any fault or neglect on his part, such party may correct such error by bill in chancery, within two years after the final settlement thereof; and the evidence filed in the court of probate in relation to such settlement must be received as evidence in the court of chancery, with such other evidence as may be adduced; and a failure to appeal from the decree of the probate court shall not be held to be such fault or neglect as will bar the complainant of the remedy herein provided.

Last clause, declaring effect of failure to appeal, first appeared in Code of 1886.—Hall v. Pegram, 85 Ala. 522. Effect of that clause not decided; s. c. Under section 3837 of Code of 1876, **it was firmly settled that judgments of probate courts are of equal dignity with judgments at law, and to open them in equity required** same grounds as in cases of judgments at law: (1) **Injury to complainant.**—Boswell v. Townsend, 57 Ala. 308; Massey v. Modawell, 73 Ala. 421; Waldron v. Waldron, 76 Ala. 285. (2) **Absence of fault or neglect of party complaining.**—Robertson v. Walker, 51 Ala. 484; Boswell v. Townsend, 57 Ala. 308; Lyne v. Wann, 72 Ala. 43; Stoudenmire v. DeBardelaben, 72 Ala. 300; Cawthorne v. Jones, 73 Ala. 82; Vincent v. Martin, 79 Ala. 540. (3) **Special ground of relief, as fraud, accident, or mistake.**—Otis v. Dargan, 53 Ala. 178; Waring v. Lewis, 53 Ala. 615; Gamble v. Jordan, 54 Ala. 432; Paulling v. Creagh, 54 Ala. 646; Stabler v. Cook, 57 Ala. 22; Bowden v. Perdue, 59 Ala. 409; Lowe v. Guice, 69 Ala. 80; Hatcher v. Dillard, 70 Ala. 343; Alexander v. Alexander, 70 Ala. 357; Humphreys v. Burleson, 72 Ala. 1; Foxworth v. White, 72 Ala. 224; Waldron v. Waldron, 76 Ala. 285; Watts v. Frazer, 80 Ala. 186; Tutwiler v. Lane, 82 Ala. 456; Crumpler v. Deens, 85 Ala. 149; Hall v. Pegram, 85 Ala. 522; Knabe v. Rice, 106 Ala. 516. **Error alone not sufficient.**—Cowan v. Jones, 27 Ala. 317. **Bill would not lie for set-off, which should have been presented in probate court.**—Duckworth v. Duckworth, 35 Ala. 70; Wilson v. Randall, 37 Ala. 74. **Settlements in probate court held conclusive on minors represented by guardian ad litem.**—Waring v. Lewis, 53 Ala. 615; Stabler v. Cook, 57 Ala. 22; Jones v. Fellows, 58 Ala. 343; Watts v. Frazer, 80 Ala. 186. **When not so represented, settlement voidable.**—Hutton v. Williams, 60 Ala. 133; Cox v. Johnson, 80 Ala. 22; Turrentine v. Daly, 82 Ala. 205. **Instances of fraud relieved against.**—Mock v. Steele, 34 Ala. 198; Morrow v. Allison, 39 Ala. 70; Humphreys v. Burleson, 72 Ala. 1; Watts v. Frazer, 80 Ala. 186. See also Meadows v. Edwards, 46 Ala. 354; Monnin v. Beroujon, 51 Ala. 196, in connection with later decisions. **Limitation of two years.**—Ansley v. King, 35 Ala. 278; Baldwin v. Dening, 51 Ala. 553. When not applicable.—Millsap v. Stanley, 50 Ala. 319.

806 (3537) (3838) (2275) (1916). **Infants, etc., allowed longer time.**—The limitations of the preceding section do not extend to infants or persons of unsound mind, who are allowed two years after the termination of their respective disabilities, but in no case to exceed twenty years.

807 (3538) (3839) (2451) (2041). **Settlements by guardians may be corrected.**—Errors of law or fact in the settlement of accounts of guardians may be corrected in chancery according to the provisions of the two preceding sections.

See citations to section 805.

808 (3539) (3840, 3841). **Irregular sales of lands under decrees of court of probate may be confirmed.**—Sales of lands made under a decree of the court of probate, the parties in interest having had

legal notice of the proceedings in which the decree was rendered, which are invalid because of errors, omissions, or irregularities in the proceedings in the court of probate, may be confirmed by a decree of the court of chancery, if it be shown that the lands were sold for their full value, which has been fully paid to the party entitled to receive it.

Proof that lands sold for full value essential.—Ganey v. Sikes, 76 Ala. 421; s. c., 84 Ala. 348.

ARTICLE 13.

BILLS TO COMPEL THE DETERMINATION OF CLAIMS TO LANDS AND TO QUIET TITLE.

809. Person in possession of and claiming lands may file bill to clear title.—When any person is in peaceable possession of lands, whether actual or constructive, claiming to own the same, and his title thereto, or to any part thereof, is denied or disputed, or any other person claims or is reputed to own the same, or any part thereof, or any interest therein, or to hold any lien or incumbrance thereon, and no suit is pending to enforce or test the validity of such title, claim or incumbrance, such person so in possession may bring and maintain a suit in equity to settle the title to such lands, and to clear up all doubts or disputes concerning the same. Dec. 10, 1892, p. 42, §1.

Object of suit.—Ward v. Janney, 104 Ala. 122; Cheney v. Nathan, 110 Ala. 254.

810. Contents of bill.—The bill must describe the lands with certainty, must allege the possession and ownership of the complainant and that the defendant claims or is reputed to claim some right, title, or interest in or incumbrance upon such lands, and must call upon him to set forth and specify his title, claim, interest or incumbrance, and how and by what instrument the same is derived and created. Ib.

Insufficient description of land.—Ward v. Janney, 104 Ala. 122.

811. Contents of answer.—If the defendant shall answer claiming any estate or interest in, or incumbrance upon such lands, he must, in such answer, specify and set forth the title, claim, interest or incumbrance so claimed, and if not claimed in or upon the whole of the lands, he must specify and describe, with sufficient certainty, the part in or upon which the same is claimed, and the manner in which and the sources through which such title, claim, interest or incumbrance is claimed to be derived and created. Ib. §8.

When affirmative relief not granted to defendant on answer alone.—Cheney v. Nathan, 110 Ala. 254.

812. Jury trial on demand; decree.—Upon the application of either party, a trial by jury shall be directed to determine the issues, or any specified issue, of fact presented by the pleadings; and the court is bound by the result, but may, for sufficient reasons, order a new trial thereof; and when such trial is not requested, or as to the Ib. §§4, 5.

facts for which the same is not requested, the court shall consider and determine such title, claim, interest or incumbrance, and shall, upon the finding of the jury, or upon such consideration and determination, finally adjudge and decree whether the defendant has any right, title, or interest in, or incumbrance upon such lands, or any part thereof, and what such right, title, interest or incumbrance is, and in or upon what part of the lands the same exists; and such decree is binding and conclusive upon all the parties to the suit.

Decree.—Cheney v. Nathan, 110 Ala. 254.

Ib. §2. **813. Decree when defendant fails to answer, or disclaims interest; costs.**—No decree for costs shall be had against a defendant who suffers a decree pro confesso against him, or who, in his answer, disclaims all title to, interest in, or incumbrance on such lands; but the court shall, in such cases, without further proof, decree that such defendant has no estate or interest in, or incumbrance on, such lands, or any part thereof; and any defendant who shall, by answer under oath, deny that he claims, or ever has claimed or pretended to have any estate, interest, or incumbrance in or upon such lands or any part thereof, shall be entitled to recover his costs in the suit.

ARTICLE 14.

CREDITORS' BILLS.

814 (3540) (3882) (3442) (2987). **Creditors' bills to enforce collection of judgments.**—When an execution for money from any court has been issued against a defendant, and is not satisfied, the plaintiff, or the person for whose benefit such execution is sued out, may file a bill in chancery against such defendant to compel the discovery of any property belonging to him, or held in trust for him; and to prevent the transfer, payment, or delivery thereof to such defendant, except when the trust has been created by, or proceeded from some other person than the defendant himself; and the court may bring any other party before it, and decree such property, or the interest of the defendant therein, to the satisfaction of the sum due the plaintiff.

The chancery court had original jurisdiction at suit of judgment creditor: (1) Without return of nulla bona to reach property fraudulently conveyed on which judgment or execution was a lien; (2) to reach equitable assets not subject at law, after exhaustion of legal remedies.—Morgan v. Crab, 3 Port. 470; Roper v. McCook, 7 Ala. 318; P. & M. Bank v. Walker, 7 Ala. 926; Brown v. Bates, 10 Ala. 432; Dargan v. Waring, 11 Ala. 988; Reese v. Bradford, 13 Ala. 837; Sanders v. Watson, 14 Ala. 198; Holt v. Bancroft, 30 Ala. 193; Evans v. Welch, 63 Ala. 250; Lehman v. Meyer, 67 Ala. 396; Cawthorn v. Jones, 73 Ala. 82; Mathews v. Mobile Ins. Co., 75 Ala. 85; Chardavoyne v. Galbraith, 81 Ala. 521; Carter v. Coleman, 82 Ala. 177. While statute declaratory of existing jurisdiction, it **extended remedy by allowing general allegations of interests sought to be reached.**—Brown v. Bates, 10 Ala. 432; Floyd v. Floyd, 77 Ala. 353; Martin v. Carter, 90 Ala. 96. **Several creditors, by judgment or decree, may join** as complainants, or one or more may proceed for themselves and others of the defined class.—Brown v. Bates, 10 Ala. 432. **Allegation and proof of return of nulla bona,** when necessary under this statute.—Brown v. Bates, 10 Ala. 432; Pharis v. Leachman, 20 Ala. 662; Nix v. Winter, 35 Ala. 309; Mixon v. Dunklin, 48 Ala. 455. **Filing of bill followed by service constitutes equitable levy, giving complainant a lien.**—Dargan v. Waring, 11

Ala. 988. **Judgment creditor has election to file bill or sell under execution.** Betts v. Nichols, 84 Ala. 278; Ladd v. Smith, 107 Ala. 506.

815 (3541) (3883) (3443) (2988). **Bill for discovery of collusive judgments or fraudulent conveyances.**—A bill for discovery may be filed, and the defendant compelled to answer such bill, when the defendant is charged with having confessed or suffered a judgment, where no portion or a part only of such judgment is due, with the intent to hinder, delay, or defraud creditors, or with having conveyed his property with the like intent.

816 (3542) (3884) (3444) (2989). **Answers to such bills compelled.**—A defendant may be compelled to answer a bill in chancery, charging him with any fraud affecting the rights or property of others.

817 (3543) (3885) (3445) (2990). **Not evidence on indictment for fraud.**—No answer made to a bill under the provisions of the two preceding sections can be read in evidence against the defendant, on an indictment for any fraud charged in the bill.

818 (3544) (3886) (3446). **Creditor without lien may subject property fraudulently transferred.**—A creditor without a lien may file a bill in chancery to discover or to subject to the payment of his debt any property which has been fraudulently transferred or conveyed, or attempted to be fraudulently transferred or conveyed by his debtor.

Before enactment of statute, simple contract creditors could not maintain such bill.—Reese v. Bradford, 13 Ala. 837; Sanders v. Watson, 14 Ala. 198; Turney v. Morrow, 26 Ala. 339; Smith v. Moore, 35 Ala. 76; Evans v. Welch, 63 Ala. 250; Lehman v. Meyer, 67 Ala. 396; Mathews v. Mobile Ins. Co., 75 Ala. 85; Sweetzer v. Buchanan, 94 Ala. 574; Dickinson v. Nat'l Bank, 98 Ala. 546; Marble City L. & F. Co. v. Golden, 110 Ala. 376. **Scope and purpose of statute defined.**—Reynolds v. Welch, 47 Ala. 200; Todd v. Neal 49 Ala. 266; McAnally v. O'Neal, 56 Ala. 299; Evans v. Welch, 63 Ala. 250; Lehman v. Meyer, 67 Ala. 396; Bromberg v. Heyer, 69 Ala. 22. Statute **abrogates rule requiring lien and exhaustion of legal remedies.**—Carter v. Coleman, 82 Ala. 177. **Not confined to cases asking discovery.**—Zelnicker v. Brigham, 74 Ala. 598. **Debt must be due.**—Jones v. Massey, 79 Ala. 370; Freider v. Lienkauf, 92 Ala. 469; McGhee v. Imp. & Tr. Bank, 93 Ala. 192; Gibson v. Trowbridge Fur. Co. 93 Ala. 579. **Who may join as complainants:** two or more simple contract creditors.–Ruse v. Bromberg, 88 Ala. 619; Tower Mfg. Co. v. Thompson, 90 Ala. 129; Gibson v. Trowbridge Fur. Co., 93 Ala. 579. Also simple contract creditor and creditor with lien.—Steiner v. Lobman, 108 Ala. 357. When existing and subsequent creditors may join.—O'Neil v. B'ham Brew. Co., 101 Ala. 383. **Who may file bill:** Parol assignee of judgment.—Jones v. Smith, 92 Ala. 455; judgment creditor without lien.—Wooten v. Steele, 109 Ala. 563. **Parol transfer assailable.**—Chardavoyne v. Galbraith, 81 Ala. 521. **Creditors may bring successive suits, until property exhausted.**—Beachman v. Aurora S. P. Mfg. Co., 110 Ala. 555. **Party participating in or advising transfer may not assail it.**—Kahn v. Peter, 104 Ala. 523. Statute **does not confer on simple contract creditor right of redemption.**—Seals v. Pheiffer, 77 Ala. 278. **Fraudulent grantee may acquire subsequent title.**—Seals v. Pheiffer, 77 Ala. 278. **Parties may rescind before rights of creditors intervene.**—Goetter v. Smith, 104 Ala. 481. **Several independent fraudulent grantees may be pursued by one bill.**—Allen v. Montgomery R. Co., 11 Ala. 437; Halstead v. Shepard, 23 Ala. 558; Randle v. Boyd, 73 Ala. 282; Russell v. Garrett, 75 Ala. 348; Hinds v. Hinds, 80 Ala. 225; Handley v. Heflin, 84 Ala. 600; Collins v. Stix, 96 Ala. 338; Hill v. Moone, 104 Ala. 353. **Creditors may reach proceeds, when fraudulent transferee has disposed of property.**—Dickinson v. Nat'l Bank, 98 Ala. 546. **Allegations of bill; when and when not sufficient.**—Jones v. Massey, 79 Ala. 370; Burford v. Steele, 80 Ala. 147; Miller v. Lehman, 87 Ala. 517; Cartwright v. Bamberger, 90 Ala. 405; Sides v. Scharff, 93 Ala. 106; Gibson v. Trowbridge Fur. Co., 93 Ala. 579; Klein v. Miller, 97 Ala. 506; Curran v. Olmstead, 101 Ala. 692; Williams v. Spragins, 102 Ala. 424; Fort Payne Bk. v. Sanitarium, 103 Ala. 358; Mountain v. Whitman, 103 Ala. 630; McClarin v.

Anderson, 104 Ala. 201; Echols v. Orr, 106 Ala. 237; Beall v. Lehman, 110 Ala. 446. **Unnecessary to allege return of execution.**—Jones v. Smith, 92 Ala. 455. Or insolvency.—Dickson v. McLarney, 97 Ala. 383; O'Neil v. B'ham Brewing Co., 101 Ala. 383. Or deficiency of legal assets.—McClarin v. Anderson, 109 Ala. 571. **Must appear transfer was fraudulent.**—O'Conner M. & M. Co. v. Coosa Fur. Co., 95 Ala. 614. And was made by debtor.—Cawthorn v. Jones, 73 Ala. 82. **Grantee may dispute complainant's debt.**—Yeend v. Weeks, 104 Ala. 331. **Owner of inchoate or contingent claim within protection of statute.**—Crawford v. Kirksey, 50 Ala. 590; Bibb v. Freeman, 59 Ala. 612; Anderson v. Anderson, 64 Ala. 403; Fearn v. Ward, 65 Ala. 33; Jenkins v. Lockard, 66 Ala. 377; Keel v. Larkin, 72 Ala. 493; Fearn v. Ward, 80 Ala. 555; Bragg v. Patterson, 85 Ala. 233; Yeend v. Weeks, 104 Ala. 331; Scott v. Brown, 106 Ala. 604; Wooten v. Steele, 109 Ala. 563. **Parties defendant, necessary and proper**, who are and who are not.—Pharis v. Leachman, 20 Ala. 662; Nix v. Winter, 35 Ala. 309; Houston v. Blackman, 66 Ala. 559; Harris v. Moore, 72 Ala. 507; Coffey v. Norwood, 81 Ala. 512; Handley v. Heflin, 84 Ala. 600; Jones v. Smith, 92 Ala. 455; Sides v. Scharff, 93 Ala. 106; P. & M. Bank v. Laucheimer, 102 Ala. 454; Staton v. Rising, 103 Ala. 454; Merchants' Bank v. McGee, 108 Ala. 304; McClarin v. Anderson, 109 Ala. 571, s. c., 104 Ala. 201; Williams v. Spragins, 102 Ala. 424; Kennedy v. First Nat. Bk., 107 Ala. 170. **Creditor may pursue property fraudulently conveyed although debtor has other legal assets.**—Carter v. Coleman, 82 Ala. 177; Dickson v. McLarney, 97 Ala. 383; O'Neil v. B'ham Brewing Co., 101 Ala. 383; McClarin v. Anderson, 109 Ala. 571. **Collusive attachments as attempted transfer.**—Cartwright v. Bamberger, 90 Ala. 405, s. c., 99 Ala. 622; Bamberger v. Voorhees, 99 Ala. 292; P. & M. Bank v. Laucheimer, 102 Ala. 454; Rice v. Less, 105 Ala. 298; Steiner v. Parker, 108 Ala. 357; Pollak Co. v. Muscogee Mfg. Co., 108 Ala. 467; Comer v. Heidelbach, 109 Ala. 220. **Collusive suit and appointment of receiver as such transfer.**—Ala. Nat. Bk. v. Mary Lee C. & Ry. Co., 108 Ala. 288; Little Warrior Coal Co. v. Hooper, 105 Ala. 665. Fraudulent organization of corporation. Metcalf v. Arnold, 110 Ala. 180. **Answer of grantee should be full and specific.**—Robinson v. Moseley, 93 Ala. 70; Moog v. Barrow, 101 Ala. 209; Thompson v. Tower Mfg. Co., 104 Ala. 140; Wooten v. Steele, 109 Ala. 563. **Exemptions, how and when claimed.**—Zelnicker v. Brigham, 74 Ala. 598; McTeers v. Perkins, 106 Ala. 411; Kennedy v. First Nat. Bank, 107 Ala. 170; Kelley v. Connell, 110 Ala. 543. **General creditor's bill before decree no bar to independent suit of another creditor.**—Talladega Mercantile Co. v. Jenifer Iron Co., 102 Ala. 259; Hall v. Improvement Co., 104 Ala. 577; Maxwell v. Peters Shoe Co., 109 Ala. 371; Ala. Iron & Steele Co. v. McKeever, 112 Ala. 134. **As against existing creditors, burden of proof of adequate consideration rests on grantee.**—Zelnicker v. Brigham, 74 Ala. 598; Moog v. Farley, 79 Ala. 246; Calhoun v. Hannon, 87 Ala. 277; Lehman v. Greenhut, 88 Ala. 478; Smith v. Collins, 94 Ala. 394; Page v. Francis, 97 Ala. 379; Murray v. Heard, 103 Ala. 400; Schall v. Weil, 103 Ala. 411; Thompson v. Tower Mfg. Co., 104 Ala. 140; Miller v. Rowan, 108 Ala. 98; Robert Graves Co. v. McDade, 108 Ala. 420; Cook v. Thornton, 109 Ala. 523; Wooten v. Steele, 109 Ala. 563; Halsey v. Connell, 111 Ala. 221. **Burden of proof of reservation of benefit on attacking creditor.**—Pollak v. Searcy, 84 Ala. 259; Roswald v. Hobbie, 85 Ala. 73; Dollins v. Pollock, 89 Ala. 351; Murray v. Heard, 103 Ala. 400; Cook v. Thornton, 109 Ala. 523. **On bill filed to reach property of debtor in name of third person** burden of proof to show debtor's interest is generally on complainant. First Nat. Bank v. Kennedy, 91 Ala. 470. But **in contest with husband's creditors burden of proof on wife.**—Floyd v. Floyd, 77 Ala. 353; Booker v. Waller, 81 Ala. 549; Bangs v. Edwards, 88 Ala. 382; Lammons v. Allen, 88 Ala. 417; McTeers v. Perkins, 106 Ala. 411; Kelley v. Connell, 110 Ala. 543, distinguishing First Nat'l Bank v. Kennedy, 91 Ala. 470. **By filing bill and service of process, lien acquired.**—Weir v. Goetter, 72 Ala. 259; Mathews v. Mobile Ins. Co., 75 Ala. 85.

819 (3545) (3887). **Bill of discovery by creditor.**—A creditor, having obtained a judgment at law upon which execution has issued and been returned "no property found," or a creditor without a lien or judgment, may, in the court of chancery of the district in which the judgment debtor resides, or in the court of chancery of the district in which the judgment was rendered, file a bill for the discovery of the assets of the debtor subject to the payment of debts; and the debtor must answer on oath, and disclose all property, real or personal, in which he may have, or may claim an interest, legal or equitable; all moneys, effects, or choses in action, in which he may

have, or may claim an interest, legal or equitable; where such property, real or personal, is situate, or may be found; who has, or may claim possession thereof; in whose possession are the moneys, effects, or choses in action, in which he has, or may claim an interest, legal or equitable, and where such moneys, effects, or choses in action may be found.

Statute **not unconstitutional, as impairing right of trial by jury.**—Montg. & Fla. Ry. Co. v. McKenzie, 85 Ala. 546, s. c., 96 Ala. 465; Norman v. Goetter, 96 Ala. 468; Cook v. N. Y. Condensed Milk Co., 100 Ala. 580; Cook v. Schmidt, 100 Ala. 582. **Bill of discovery must be sworn to.**—Lawson v. Warren, 89 Ala. 584; Sweetzer v. Buchanan, 94 Ala. 574. **Verification on information and belief.**—Burgess v. Martin, 111 Ala. 656. To bill of discovery against corporation, officers necessary parties.—Legrand v. McKenzie, 110 Ala. 493. **What bill for discovery should allege.**—Floyd v. Floyd, 77 Ala. 353; Lawson v. Warren, 89 Ala. 584; Williams v. Stoutz, 92 Ala. 516; Sweetzer v. Buchanan, 94 Ala. 574; Wood v. Hudson, 96 Ala. 469; Sorrell v. Vance, 102 Ala. 207. **May be amended to show other secreted assets.**—Montg. & Fla. Ry. Co. v. McKenzie, 96 Ala. 465. **This statute confers new jurisdiction.**—Ex parte Hardy, 68 Ala. 303.

As amended Feb. 28, 1889, p. 96.

820 (3546). **Several creditors may join in such bill; assignee of judgment may file.**—Any number of judgment creditors upon whose judgments executions have issued and been returned "no property found," or creditors without liens or judgments, may join as complainants in such bill. The assignee of a judgment, or the several assignees of several judgments, may maintain such bill. It is no objection to such bill that judgment creditors, and creditors without liens or judgments, and the assignees of judgments, or any two or more of them, are joined as complainants therein.*

Prior to amendment of Feb. 28, 1889, several creditors without lien could not unite in bill.—M. & F. Ry. Co. v. McKenzie, 85 Ala. 546. May now do so.—Tower Mfg. Co. v. Thompson, 90 Ala. 129. **Not unconstitutional as impairing right of trial by jury.**—Cook v. N. Y. Conds. Milk Co., 100 Ala. 580.

Id.

821 (3547) (3888). **Orders; decrees.**—If from the answer it appears that the defendant has property, real or personal, or an interest in property, real or personal, subject to the payment of debts; or has moneys, effects, or choses in action, or an interest in moneys, effects, or choses in action, subject to the payment of debts, whether such property, moneys, effects, or choses in action, be within or without the state, the court, in term time or in vacation, must make all such orders or decrees as may be necessary and proper to reach and subject such property, moneys, effects, or choses in action, and for that purpose may appoint a receiver with authority to demand, sue for and recover, or otherwise to reduce to possession such property, moneys, effects, or choses in action; and may require the debtor to make to such receiver all conveyances, assignments, or transfers, which may be necessary and proper to enable him to receive, or to sue for and recover such property.

Receiver not appointed on answer showing property already encumbered beyond its value.—McCullough v. Jones, 91 Ala. 186. **Injunction may issue, before answer showing assets.**—Cook v. Schmidt, 100 Ala. 582.

822 (3548) (3887). **Examination of debtor.**—After answer filed, on the application of the complainant showing a necessity therefor, which application must be verified by oath, the chancellor, in term

*Last clause added by joint committee.

time or in vacation, may order an examination of the debtor before the register, or before an examiner specially appointed, touching and concerning his property, real or personal, moneys, effects, or choses in action; and it is the duty of the debtor to attend at the time and place to which he may be summoned by the register or examiner, and submit to such examination. The provisions of this section apply to any bill filed under this article.*

Feb. 18, 1895. p. 881.

823. Judgment creditor of corporation may file bill against one or more stockholders.—A judgment creditor of a corporation, having an execution returned "no property found," may, by bill in equity, subject to the payment of his judgment, the unpaid subscription of one or more stockholders in such corporation, without joining the other stockholders, and without regard to whether the corporation has called for such subscription, or could maintain suit therefor against the stockholder.

ARTICLE 15.

ISSUES OUT OF CHANCERY.

824 (3585) (3890) (3463) (3001). **Trial of issues of fact.**—An issue of fact, directed to be tried by a jury, may be tried by a jury summoned to attend the court of chancery, or may be certified for trial to the circuit court of the district. A change of the venue of the trial may be had for good cause shown to the chancellor, as in civil cases in courts of common law.

Order directing issue is interlocutory.—Dabbs v. Dabbs, 27 Ala. 646. **Purpose of jury trial, and when directed.**—Kennedy v. Kennedy, 2 Ala. 572; Alexander v. Alexander, 5 Ala. 517; Atwood v. Smith, 11 Ala. 894; Adams v. Munter, 74 Ala. 338; Rice v. Tobias, 83 Ala. 348; Mathews v. Forniss, 91 Ala. 157. **On contest of will jury trial matter of right.**—Hill v. Barge, 12 Ala. 687. **Except in issues of devastavit vel non, trial by jury discretionary with chancellor.**—Alexander v. Alexander, 5 Ala. 517; Anonymous, 35 Ala. 226; Adams v. Munter, 74 Ala. 338; Rice v. Tobias, 83 Ala. 348. **Should not be ordered before evidence taken.**—Johnston v. Hainesworth, 6 Ala. 443; Rice v. Tobias, 83 Ala. 348. **When reference to register, instead of issue to a jury, proper.**—Springle v. Shields, 17 Ala. 295. **Verdict merely advisory,** and may be disregarded.—Marshal v. Croom, 60 Ala. 121; Adams v. Munter, 74 Ala. 338; Mathews v. Forniss, 91 Ala. 157. **Will be disregarded when case did not authorize directing of issue.**—Atwood v. Smith, 11 Ala. 894. **New trial, practice and principles.**—Alexander v. Alexander, 5 Ala. 517; Dabbs v. Dabbs, 27 Ala. 646; Adams v. Munter, 74 Ala. 338. **Questions arising on trial may not be reserved by bill of exceptions.**—Alexander v. Alexander, 5 Ala. 517; Barnett v. M. & E. R. Co., 51 Ala. 555; Mathews v. Forniss, 91 Ala. 157.

825 (3586) (3891) (3464) (3002). **Evidence in such trials; parties examined.**—Such issue must be tried upon the like evidence as a suit at law, together with such parts of the bill, answers, depositions, and other proceedings in the cause as the court may order; and the court may also order the examination of the parties to the suit, allowing the other party to impeach or contradict such evidence.

826 (3587) (3892) (3465) (3003). **Proceedings to summon jury, etc., before chancellor.**—If such issue is to be tried before the chancellor, he may make the necessary order for a jury to be summoned,

*Last clause added by joint committee.

and witnesses to be subpœnaed by the register of the district in which the trial is to be had; and render judgments, conditional and absolute, as the law directs.

827 (3589) (3894) (3467). **Pay of jurors and how taxed.**—In all cases in which jurors are summoned to attend upon the chancery courts, they must be allowed the same compensation as jurors attending upon the circuit courts, to be taxed and collected as other costs in the case in which they are called to serve as jurors.

828 (3588) (3893) (3466). **Practice in partition suits when title or adverse claim involved.**—In suits for partition of lands, either by metes and bounds, or by sale for division when the same cannot be equitably partitioned among the owners, if the defendant denies the title of the complainant, or asserts an adverse claim or title in himself, the chancellor need not dismiss the bill, but may direct the issue as to the title of the complainant, or as to such adverse claim or title of the defendant, to be tried as other issues of fact are triable, according to the three sections next preceding; but if neither party to the suit demands a jury, the chancellor shall try such issue as to the title of complainant, or as to such adverse claim or title of defendant, together with the other facts or issues of the case.

As amended Nov. 25, 1896, p. 11.

Prior to original statute (Acts 1857–8, p. 294) the practice in partition suits was to stay proceedings and direct trial of title at law.—Horton v. Sledge, 29 Ala. 478; Harrison v. Taylor, 111 Ala. 317. The statute authorized the jury trial to be had in chancery.—Ormond v. Martin, 37 Ala. 598. Before amendments of January 31, 1895 (Acts 1894–5, p. 331), and of November 26, 1896 (Acts of 1896–7, p. 11), the statute (Code of 1886, section 3588) was confined to bills for partition by metes and bounds.—McMath v. DeBardelaben, 75 Ala. 68; Keaton v. Terry, 93 Ala. 85; Ferris v. Montgomery L. & I. Co., 94 Ala. 557; Sibley v. Alba, 95 Ala. 191; Gore v. Dickinson, 98 Ala. 363. And the chancery court could not entertain jurisdiction to sell land for division, if adversely held. McEvoy v. Leonard, 89 Ala. 455; Sellers v. Friedman, 100 Ala. 499 (overruling McQueen v. Turner, 91 Ala. 273); Kilgore v. Kilgore, 103 Ala. 614; Davis v. Bingham, 111 Ala. 292; although jurisdiction was not ousted by mere adverse claim, without adverse possession.—Sherer v. Garrison, 111 Ala. 228; Hillens v. Brinsfield, 108 Ala. 605. Section 3588, Code of 1886, was held not applicable to contest between complainant and stranger alleged to have no interest. Bullock v. Knox, 96 Ala. 195.

ARTICLE 16.

RELIEVING INFANTS OF DISABILITIES OF NON-AGE.

829 (2357) (2735). **When chancery may relieve from disabilities of non-age.**—The several chancery courts of the state, in term time, or the chancellors in vacation, are authorized to relieve minors over eighteen years of age from the disabilities of non-age, in the following cases, and none other:

1. Whenever the father of such minor, or the mother, if the father is dead, shall petition the court in writing, praying that such minor be relieved from the disabilities of non-age, and the court shall be satisfied that it is to the interest of such minor.

2. Whenever any such minor, having no father, mother, or guardian, shall petition the court to be relieved of the disabilities of non-age, and the court shall be satisfied that it is to the interest of such minor.

3. Whenever such minor, having no father or mother, but having a guardian, shall petition the chancery court to be relieved from the disabilities, and the guardian shall join in such petition, and the court shall be satisfied that it is to the interest of such minor.

Jurisdiction special and limited; recitals of jurisdictional facts impeachable collaterally by extrinsic evidence.—Cox v. Johnston, 80 Ala. 22.

830 (2358) (2736). **Where petition filed.**—The petition must be filed in the district in which the parent or guardian of such minor resides, when the petition is filed by the parent or guardian; and in the district where the minor resides, when the petition is filed by a minor who has no parent or guardian, or whose parents reside beyond the limits of the state.

If infant has guardian, petition must be joint and signed by both.—Cox v. Johnston, 80 Ala. 22.

831 (2359) (2737). **Notice given by register.**—Whenever the petition is filed by a parent who is the guardian of a minor, or by a minor and the guardian, it shall be the duty of the register to give notice of the filing of such petition in some newspaper published in the district, and if no newspaper is published in such district, then in such manner as may be prescribed by the chancellor in vacation; and such notice shall be given once a week for three successive weeks before the time of hearing such petition.*

832 (2360) (2738). **Who may contest; evidence, how taken.**—Upon the hearing of all such petitions, any person may contest the granting of the same, upon giving security for costs of such contest. All evidence touching such petitions shall be taken in such manner as may be directed by the court, or the chancellor in vacation.

833 (2361) (2739). **Decree and its effect.**—If, on the hearing of the evidence adduced, and upon such other evidence as may be required by the court, the court shall be satisfied that it will be to the interest of such minor to be relieved from the disabilities, the court shall thereupon decree accordingly, and such decree shall have the effect of investing such minor with the right to sue and be sued, contract and be contracted with, to buy, sell and convey real estate, and generally to do and perform all acts which such minor could lawfully do if twenty-one years of age, except as hereinafter provided.

834 (2362) (2740). **Court may restrict rights of minor.**—The court, in rendering its decree, may, if it deem it advisable, restrict and qualify the rights of minors relieved from the disabilities of non-age, as to acquittances to, and contracts with guardians, executors, administrators, trustees, and other persons indebted to such minors, to such an extent as to the court may seem proper in each particular case; and such restrictions shall be fully set forth in the decree relieving such minor from the disabilities of non-age.

835 (2363) (2741). **Copy of decree filed with judge of probate for record.**—Every minor, relieved of the disabilities of non-age under the provisions of this article, must file a certified copy of the de-

* As amended by joint committee.

cree relieving him from such disabilities in the office of the judge of probate in each of the counties in which such minor shall thereafter reside, and in the office of the judge of probate of each county in the state where such minor shall do any business or make any contracts; and it shall be the duty of the judge of probate to record the decree and keep the same for the inspection of the public.*

ARTICLE 17.

PROTECTION OF ESTATES OF INTEMPERATE PERSONS.

836 (2502) (2815) (2399). **Bill by relatives of intemperate.** When any man, over twenty-one years of age, or any man under twenty-one years of age who has been relieved of the disabilities of non-age, is, by reason of intemperance, unfit to manage his estate, or is wasting or squandering it, and thereby in danger of being reduced to poverty and want, his wife or brother or sister or next of kin, or any or either of them, may themselves, or by their next friend, if minors, file their bill in chancery to preserve the estate of such intemperate person from further waste, and for general relief.

Statute confers new jurisdiction and is strictly construed.—Jones v. Semple, 91 Ala. 182. **Father as next of kin may file bill** although inebriate has other relatives first mentioned.—Pinkston v. Semple, 92 Ala. 564.

837 (2503) (2816) (2400). **Allegations of bill; decree.**—The bill provided for in the preceding section must specify the cause for which relief is prayed, and the estate proposed to be secured, and such person of intemperate habits must be made a party defendant thereto; if the allegations of the bill are admitted, either expressly or by a failure to answer thereto, or it is established by proof that the allegations of the bill are true, and that such person is wasting his estate, or is for the cause alleged unfit for its management, so that such person will probably be reduced to want, the chancellor must deprive him of all further control over it, and provide for its safekeeping by the appointment of a trustee, who shall give bond in double the value of the estate committed to him, to be approved by the register.*

Decree **operates only on property specified in bill**—subsequently acquired property and general power to contract debts not affected.—Jones v. Semple, 91 Ala. 182. After decree, sale by inebriate of property specified, even with consent of trustee who receives purchase-money and to one without notice of the proceeding, is void.—Pinkston v. Semple, 92 Ala. 564.

838 (2505) (2818) (2402). **Security of estate pending suit.** Pending such suit the chancellor must, by injunction or otherwise, secure the estate against further waste; but no such decree affects the rights of creditors acquired previously to the institution of the suit.

839 (2504) (2817) (2401). **Duty of trustee.**—The trustee appointed under this article must manage and superintend the affairs of the estate, and, from the avails thereof, provide for the support

*As amended by joint committee.

of such intemperate person, and his wife and children, if any, which support must be suitable to the means and estate of such intemperate person.

Power of trustee terminates with death of ward, liability to account remaining.—Ex parte Williams, 87 Ala. 547.

840 (2506) (2819) (2403). **Restoration of estate.**—On the petition of the person whose estate has been committed to the control of a trustee, and on notice to such trustee, and on satisfactory proof of the reformation of such intemperate person, and of his fitness to have charge of his estate, the chancellor must order it to be restored to him.

841. Jurisdiction; management and settlement of trust.—The chancery court making such appointment may direct and control the trustee in the management of the trust estate, and has jurisdiction of the settlements, partial and final, of his accounts.

842. Settlements.—The trustee must, at least once in three years, make partial settlement of his accounts, and may be required to do so at any time; and on the termination of the trust, he, or if he be dead, his personal representative, must make final settlement thereof, such settlements to be governed by the provisions of this Code regulating settlements of guardians' accounts in the court of probate, so far as such provisions may be applicable.

Liable to account on termination of trust by death of ward.—Ex parte Williams, 87 Ala. 547.

843. Compensation of trustee.—Such trustee is entitled, for his services, to such compensation as is allowed guardians.

ARTICLE 18.

CALL OF THE DOCKET; HEARING OF CAUSES; RENDITION, LIEN, EFFECT AND ENFORCEMENT OF DECREES; COSTS.

844 (3590) (3895). **Call of docket; setting causes for hearing.** If the term is more than one week, on the first day the docket must be called, not peremptorily, but for orders which may be taken by consent, or for the submission of causes which stand on decrees pro confesso. The call of the docket thereafter may be peremptory. The parties may by consent set down causes for hearing on such day of the term as they may select.

845 (3591) (3896) (3470) (3006). **Decrees in writing; rendered in term time or vacation.**—Decrees must be rendered in writing, in term time, if practicable; but in cases deemed by the chancellor difficult, he may reserve the rendition of decree until vacation, and may render it at any time before or during the next term.

Decrees in vacation.—Lewis v. Lewis, Minor, 35; Erwin v. Reese, 54 Ala. 589; Rogers v. Torbut, 58 Ala. 523; Forrest v. Luddington, 68 Ala. 1; Shine v. Bolling, 82 Ala. 415. **When error to dismiss bill in vacation without allowing opportunity to amend.**—Bishop v. Wood, 59 Ala. 253; Kingsbury v. Milner, 69 Ala. 502; Stoudenmire v. DeBardelaben, 72 Ala. 300; Shackelford v. Bankhead, 72 Ala. 476; Yonge v. Hooper, 73 Ala. 113; Conner v. Smith, 74 Ala. 115; Goodlet v. Kelly, 74 Ala. 213; Gilmer v. Wallace, 75 Ala. 220; Gilmer

v. Morris, 80 Ala. 78; Wright v. Dunklin, 83 Ala. 317; Olds v. Marshall, 93 Ala. 138; Kyle v. McKenzie, 94 Ala. 236.

846 (3592). **Causes may be referred to arbitration.**—By agreement in writing filed with the register in vacation, or by an entry on the minutes in term time, the parties may refer a cause to an arbitrator of their selection, for final decree. The arbitrator must certify the decree, when rendered, to the register ,and the register must enter it on the minutes of the court. Such decree shall have the force and effect of a decree rendered by the chancellor; and therefrom an appeal may be taken to the supreme court, as from other final decrees in chancery.

847 (3593) (3897) (717). **Orders and decrees by consent.**—Chancellors may make orders and render final decrees at any time by consent of parties or their counsel.

Written consent not necessary—Shine v. Bolling, 82 Ala. 415. Decrees in vacation by consent.—Lewis v. Lewis, Minor, 35; Erwin v. Reese, 54 Ala. 589.

848 (3594) (3898) (3468) (3004). **Liens and priority of decrees.** Executions issued on decrees of a court of chancery, for payment or recovery of money, are liens upon real and personal property subject to execution, from their delivery to the officer, in the same manner and to the same extent, and the rules as to the priority of liens from such court are the same, as in courts of law.

849 (3595) (3899) (3469) (3005). **Decrees for conveyances and releases operate as such; executed by commissioner.**—When a decree is made for a conveyance, release, or acquittance, and the party against whom the decree is made does not execute the same by the time specified in the decree, such decree operates in all respects as fully as if the conveyance, release, or acquittance, was made; or the court may decree, in default of the execution of such conveyance, release, or acquittance, the same to be executed by the register or a commissioner in the name of the party; and the conveyance, release, or acquittance, when so executed, is as valid in all respects as if executed by the party; or the court may directly divest title out of one party and vest it in another.

Last clause confirms rule declared in Jones v. Woodstock Iron Co., 95 Ala. 551, which overruled Prewitt v. Ashford, 90 Ala. 294, and Weathers v. Hill, 92 Ala. 492. When rule declared in Prewitt v. Ashford, 90 Ala. 294, is rule of property.—Ashford v. Prewitt, 102 Ala. 264.

850 (3596). **Protection of tenant having crop planted on lands decreed to be sold.**—A tenant or occupant of lands ordered or decreed to be sold by the court of chancery, having a crop planted or growing on such lands, or about being planted, may retain possession until the expiration of the current year, on securing to the purchaser the payment of the reasonable rent; such rent must, before or after the sale, be ascertained and determined by the chancellor, and the tenant or occupant must enter into bond, in a sum equal to double the amount of such rent, payable to the register, and by him approved, with sufficient surety, and with condition for the payment of such rent to the purchaser on the expiration of the year; and if, on the expiration of the year, such rent, or any part thereof, is not

paid to the purchaser, such bond has the force and effect of a judgment, and execution may be issued thereon by the register against any or all the obligors in such bond, for so much of such rent as remains unpaid.

851 (3597) (3900) (3471) (3007). **Costs at discretion of chancellor.**—Costs may be apportioned at the discretion of the chancellor; and in all cases where costs are decreed against any party who has given security for costs, execution may issue against such security.

Taxation of costs discretionary.—Randolph v. Rosser, 7 Port. 249; Bryan v. Bryan, 34 Ala. 516; Kitchell v. Jackson, 71 Ala. 556; Allen v. Lewis, 74 Ala. 379; Falkner v. Campbell, P. P. & Mfg. Co., 74 Ala. 359. **But the discretion is a legal one to be exercised according to general rules and former precedents.**—Gray v. Gray, 15 Ala. 779. **When division of costs proper.**—Hudson v. Kelly, 70 Ala. 393; Purdue v. Brooks, 85 Ala. 459; Connor v. Armstrong, 91 Ala. 265; Waller v. Jones, 107 Ala. 331. **General rule requires mortgagor seeking redemption to pay costs.**—May v. Eastin, 2 Port. 414; Blum v. Mitchell, 59 Ala. 535. **Although costs may sometimes be charged against mortgagee.**—May v. Eastin, 2 Port. 414; Speakman v. Oaks, 97 Ala. 503. **In foreclosure cases, costs may be made payable out of any money in custody of court,** belonging to any party, and subject to mortgage lien.—Falkner v. Campbell, P. P. & Mfg. Co., 74 Ala. 359. **Costs against wife in divorce case not awarded.**—Richardson v. Richardson, 4 Port. 467. **Costs against next friend.**—Gray v. Gray, 16 Ala. 649. **When costs taxable against relators** in bill by attorney-general for their benefit.—State ex rel v. City Council of Montgomery, 74 Ala. 226. **Taxation of costs may be varied on appeal.**—Hunt v. Lewin, 4 Stew. & Port. 138; Alexander v. Alexander, 5 Ala. 517; Allen v. Lewis, 74 Ala. 379.

852 (3598) (3901) (3473) (3008). **Decrees enforced by attachment or sequestration.**—Courts of chancery may also enforce their decrees, orders and rules by process of attachment against the party or officer in contempt, or by process of sequestration against his property.

853 (3599) (3902) (3474) (3009). **Decree for performance of some act to prescribe time.**—If a decree is for the execution of a conveyance, the delivery of deeds, or any other specified act, the decree must, in all such cases, prescribe the time within which such act is to be performed.

854 (3600) (3903). **Sales to be made by register.**—When any property is ordered to be sold by the decree of any chancery court for the satisfaction of any debt secured by any mortgage or deed of trust, such sale shall in all cases be made by the register of the court ordering the same.

Sale by receiver under order of the court is good, and register not entitled to commissions, when so made.—R. & D. R. Co. v. Sibert, 97 Ala. 393. **Purchaser's remedy for confirmation** of sale.—Haralson v. George, 56 Ala. 295.

855 (3601) (3904) (3475) (3010). **Attachment on affidavit of failure to perform.**—Upon an affidavit being filed with the register by the party entitled to have such act done, his agent, or solicitor, stating that the decree of the court has not been performed, the register must issue an attachment against the delinquent party, upon which he may be arrested and committed to jail until he performs such act, or he is discharged by a special order of the chancellor extending the time for the performance; and if such act is not performed within the time as extended, another attachment may issue on the affidavit of the party, his agent, or solicitor.

856 (3602) (3905) (3476) (3011). **If attachment not executed, sequestration follows.**—Upon the issue of an attachment, if the delinquent cannot be found, a writ of sequestration may issue against the estate of such party to compel obedience to the decree.

857 (3603) (3906) (3477) (3012). **Decrees; how enforced.** Courts of chancery are authorized to issue such process, mesne and final, as has been used in such courts; and all writs for the collection of money, to obtain the possession of land or personal property, in use in the common-law courts, are to be adapted to the execution of decrees in the courts of chancery.

System of enforcing decrees assimilated to that prevailing in circuit courts; like writs allowed in each.—Allen v. Allen, 80 Ala. 154. **Practice in reference to writs of assistance.**—Creighton v. Paine, 2 Ala. 158; Trammel v. Simmons, 8 Ala. 271; Thompson v. Campbell, 57 Ala. 183; Hooper v. Yonge, 69 Ala. 484; Johnston v. Smith, 70 Ala. 108; Kemp v. Lyon, 76 Ala. 212; Wiley v. Carlisle, 93 Ala. 237.

858 (3604) (3907) (3478) (3013). **Return day of such process.** Writs from the court of chancery for the collection of money, or to obtain the possession of lands or personal property, may be made returnable on the first Monday of a month, to be specified in the writ; all other process, as the chancellor or register may direct, unless the return is fixed by law.

When day specified is beyond next term of court the execution not void. Brevard v. Jones, 50 Ala. 221.

859 (3605) (3908) (3479). **Execution on decrees for enforcement of liens.**—In all cases when an account is taken between the parties, execution as at law may issue for the amount of indebtedness ascertained by the decree of the court; and in all foreclosure suits, or suits for the enforcement of equitable liens, execution may issue for the balance found due after a sale of the property ordered and decreed to be sold.

Proper practice in foreclosure suits—two decrees contemplated and execution issues only after sale and confirmation.—Winston v. Browning, 61 Ala. 80; Tedder v. Steele, 70 Ala. 347; Sayre v. Elyton Land Co., 73 Ala. 85; McCall v. Rogers, 77 Ala. 349; Presley v. McLean, 80 Ala. 309; Johnson v. Ward, 82 Ala. 486; Baker v. Young, 90 Ala. 426; Perdue v. Brooks, 95 Ala. 611. **Applies only when defendant personally liable for debt.**—Teal v. Lewis, 85 Ala. 218.

860 (3606) (3910, 3911). **Decree on partition.**—A final decree of partition is operative to vest title, though releases or conveyances are not executed.

861 (3607) (3912) (3481). **Forthcoming bond.**—When the sale of any personal property is decreed, the register, or other person directed to make such sale, may take from the defendant a forthcoming bond, in double the amount of the property, in no case to exceed double the amount of the decree, for the delivery of such property on the day of sale.

862 (3608) (3913) (3482). **Effect of forfeiture.**—If the property is not delivered, such register, or person directed to make such sale, must return the bond "forfeited," in which case the bond shall have the force of a judgment; and execution may issue against all the obligors of such bond.

863 (3609) (3914) (3483) (3014). **Sheriff liable for failure to**

collect money.—For failing to collect money on any execution from the court of chancery, the sheriff and his sureties, or any or either of them, are liable to the same penalties, to be recovered in the same manner as on failure to collect execution from the law courts; the motion to be made by the plaintiff in the circuit court of the county in which the court from which the execution issues is held.

ARTICLE 19.

RULES OF PRACTICE ADOPTED BY THE SUPREME COURT, AND BY CHANCELLORS, RECOGNIZED.

864 (3610) (3915) (3484) (3015). **Rules of practice adopted by supreme court.**—All the rules now in force, which have been adopted by the supreme court, not contrary to the provisions of this Code, are recognized; and power is granted to such court to adopt such other rules to regulate the practice of the court of chancery, or such modifications of the existing rules as they may deem proper, and also to furnish forms of proceeding, to mould the process of the chancery court, and to prescribe rules of evidence in the same, from time to time, as experience may determine that the existing rules do not fully meet the ends of public justice.

Authority of supreme court to require chancellor to fix bond for restoration of attachments and injunctions on appeals.—Ex parte P. & M. Ins. Co., 50 Ala. 390. By authority of statute, supreme court adopted "Revised Rules" of chancery practice in 1854.—Ex parte Branch, 63 Ala. 383.

Dec. 17, 1894, p. 237.

865. Chancellors may adopt rules to facilitate business.—The several chancellors may, from time to time, adopt rules to facilitate the business of their respective divisions, not contrary to law nor inconsistent with the rules established by the supreme court.

CHAPTER 17.

CHANGE BILLS. 866-868.

866 (1193) (1424) (1171) (935). **Suits on paper issued to circulate as money.**—Every bill of exchange, note, bond, or instrument of any description, whatever may be its form or device, issued with the intent to circulate as money, without authority of law, is an absolute, unconditional promise of the association or person putting such bill, note, or other instrument in circulation, and may be sued on by the holder thereof, without transfer, or assignment, and without demand, protest, or notice, and the amount thereof recovered, with interest thereon at the rate of fifty per cent. per annum from the date thereof, or from the time the same was put in circulation.

Nelson v. State, 82 Ala. 44.

867 (1194) (1425) (1172) (936). **Corporations must not pay out**

change bills.—No turnpike, bridge, or railroad company, incorporated under any law of this state, must pay out, by their agents or officers, any change bills, notes, or paper issued without authority of law, the circulation or passing of which is prohibited by the laws of this state; and if such corporation allows the same, it incurs a forfeiture of its charter.

868 (1195) (1426) (1173). **Persons circulating change bills held makers; remedy; liability of officers of corporation.**—Any person, private corporation or association, or any individual member thereof, who circulates, passes off, or pays out any paper or instrument commonly called a "shinplaster," issued without authority of law, and to answer the purposes of money, or for general circulation, shall be deemed and held the maker of such paper or shinplaster; and any person to whom such paper or shinplaster is passed or paid may bring suit on the same against the person passing it, as maker thereof, and recover judgment upon his own oath, upon one day's notice, before any justice of the peace, in any county in this state, without regard to the county in which such paper was passed or paid out; but in the case of a private corporation or association having the management and control of its business committed to a president, secretary, treasurer, board of directors, or other official agency, only such members thereof as held, or assumed to hold, such official agency at the time of the commission of the offense charged, shall be held prima facie liable for the acts of such corporation or association, under the provisions of this section.

CHAPTER 18.

CHOSES IN ACTION. 869–896.

869 (1756) (2094) (1833) (1524). **What are negotiable intruments.**—Promissory notes and bonds payable in money at a bank or private banking house, or a certain place of payment therein designated, and bills of exchange, are governed by the commercial law.

The whole system of commercial paper is regulated by statute.—First Nat. Bank v. Nelson, 105 Ala. 180. **What is a negotiable promissory note.** Brazleton v. McMurray, 44 Ala. 323; Blackwell v. Hamilton, 47 Ala. 470; Hart v. Life Asso., 54 Ala. 495; Rice v. Rice, 68 Ala. 216; Boykin v. Bank, 72 Ala. 262; Montgomery v. Crossthwait, 90 Ala. 553; McGhee v. Bank, 93 Ala. 192; Com'l Bank v. Crenshaw, 103 Ala. 497; Anniston L. & T. Co. v. Stickney, 108 Ala. 146. **A stipulation on the back of a note, or a mortgage referred to therein, is a part thereof.**—Seymour v. Farquhar, 93 Ala. 292; Chambers v. Marks, 93 Ala. 412; Com'l Bank v. Crenshaw, 103 Ala. 497; Anniston L. &. T. Co. v. Stickney, 108 Ala. 146. **Instrument under seal was not, prior to this Code, negotiable.**—Howell v. Hallett, Min. 102; Sayre v. Lucas, 2 Stew. 259; Reed v. Scott, 30 Ala. 640; Blackwell v. Hamilton, 47 Ala. 470; McCrummen v. Campbell, 82 Ala. 566; Muse v. Dantzler, 85 Ala. 359. **But the seal of a corporation does not affect negotiability.**—Blackman v. Lehman, 63 Ala. 547. **There must be a certain time of payment.**—Owen v. Henderson, 7 Ala. 641; McDonnell v. Bank, 20 Ala. 313; Conn v. Thornton, 46 Ala. 587; Wright v. Paine, 62 Ala. 340; Boykin v. Bank, 72 Ala. 262; Mobile Savings Bank v. McDonnell, 83 Ala. 595; Massie v. Byrd, 87 Ala. 672; Com'l Bank v. Crenshaw, 103

Ala. 497; Anniston L. & T. Co. v. Stickney, 108 Ala. 146. **The reservation of the right to pay before maturity does not affect negotiability.**—Com'l Bank v. Crenshaw, 103 Ala. 497. **Nor the right to extend by giving new note.**—Anniston L. & T. Co. v. Stickney, 108 Ala. 146. **Note payable on demand is generally due forthwith,** and no demand is necessary.—Owen v. Henderson, 7 Ala. 641; Mobile Savings Bank v. McDonnell, 83 Ala. 595; Massie v. Byrd, 87 Ala. 672; Brockway v. Gadsden Mineral Land Co., 102 Ala. 620. **But if payable on a contingency it is not due until a contingency happens.**—Glenn v. Semple, 80 Ala. 159; Massie v. Byrd, 87 Ala. 672; Brockway v. Gadsden Mineral Land Co., 102 Ala. 620. **Must be payable in money.**—Bank v. Brown, 42 Ala. 108; Auerbach v. Pritchett, 58 Ala. 451; Anniston L. & T. Co. v. Stickney, 108 Ala. 146. **Must be for a certain amount and payable absolutely and unconditionally.**—Blackman v. Lehman, 63 Ala. 547; Montgomery v. Crossthwait, 90 Ala. 553; Com'l Bank v. Crenshaw, 103 Ala. 497; Anniston L. & T. Co. v. Stickney, 108 Ala. 146. **A stipulation agreeing to pay attorney's fee, cost of collection,** on failure to pay at maturity, **or waiving exemptions, does not make the amount uncertain.**—Montgomery v. Crossthwait, 90 Ala. 553; McGhee v. Bank, 93 Ala. 192; First Nat. Bank v. Slaughter, 98 Ala. 602. **To be negotiable there must be a certain payee,** except certain bonds.—Blackman v. Lehman, 63 Ala. 547; Hendricks v. Thornton, 45 Ala. 299; First Nat. Bank v. Johnston, 97 Ala. 655. **And be payable at a particular place;** but need not be presented there to fix the liability of the maker.—Montgomery v. Elliott, 6 Ala. 701; Clark v. Moses, 50 Ala. 326; Connerly v. P. & M. Ins. Co., 66 Ala. 432; Sims v. Bank, 73 Ala. 248; Brockway v. Gadsden Mineral Land Co., 102 Ala. 620; Com'l Bank v. Crenshaw, 103 Ala. 497. **The place must not be stated inferentially or by implication.**—Renfroe v. Bank, 83 Ala. 425. **The naming of a town, without more, is not a sufficient** designation.—Haden v. Lehman, 83 Ala. 243. **"Any bank in Savannah, Ga.," is sufficient.**—Boit v. Corr, 54 Ala. 112. **Naming town in date line,** and making a note payable at his office, a sufficient designation.—Rudulph v. Brewer, 96 Ala. 189. **When note is held by a bona fide purchaser the maker is estopped from saying there is no such** place as the one designated.—Brown v. Bank, 103 Ala. 123. **Certified checks are a species of commercial paper and governed by the law merchant.**—Nat'l Com. Bank v. Miller, 77 Ala. 168. **Coupons payable to bearer at a designated place** in a state where the common law is presumed to prevail, were negotiable before the statute.—Lehman v. Tallassee Mfg. Co., 64 Ala. 567; Reid v. Bk. of Mobile, 70 Ala. 199; K. C. M. & B. R. Co. v. Cobb, 100 Ala. 228. (See also citations to section 874 (1761).) **The law of force at the time of the execution of the instrument defines the liabilities of the parties.**—Cook v. Mut. Ins. Co., 53 Ala. 37. **Rights of holders of commercial paper, acquiring it in due course of business before maturity and without notice.**—Herbert v. Huie, 1 Ala. 18; Bank v. Hall, 6 Ala. 639; Saltmarsh v. Tuthill, 13 Ala. 390; Battle v. Weems, 44 Ala. 105; Ross v. Drinkard, 35 Ala. 434; Fenouille v. Hamilton, 35 Ala. 319; Bozeman v. Allen, 48 Ala. 512; Bank v. Poelnitz, 61 Ala. 147; Mayor v. Wetumpka Wharf Co., 63 Ala. 611; Blackman v. Lehman, 63 Ala. 547; Lehman v. Tallassee Mfg. Co., 64 Ala. 567; Dunbar v. Smith, 66 Ala. 490; Connerly v. P. & M. Ins. Co., 66 Ala. 432; Miller v. Boykin, 70 Ala. 469; Ried v. Bank, 70 Ala. 199; Capital City Ins. Co. v. Quinn, 73 Ala. 558; Barton v. Barton, 75 Ala. 400; Bank v. Dawson, 78 Ala. 67; Marks v. Bank, 79 Ala. 550 (distinguishing Bibb v. Reid, 3 Ala. 88, and Guild v. Thomas, 54 Ala. 414); Wildsmith v. Tracy, 80 Ala. 258; E. Birmingham L. Co. v. Dennis, 85 Ala. 565; Manning v. Maroney, 87 Ala. 563; Johnson v. Bank, 88 Ala. 271; McGhee v. Bank, 93 Ala. 192; Hanna v. Ingram, 93 Ala. 482; First Nat. Bank v. Johnston, 97 Ala. 655; Hood v. Robbins, 98 Ala. 484; Bank v. Slaughter, 98 Ala. 602; Brown v. Bank, 103 Ala. 123; Com'l Bank v. Crenshaw, 103 Ala. 497; Florence R. & I. Co. v. Bank, 106 Ala. 364; Hart v. Adler, 109 Ala. 467. **In a suit by the indorsee of negotiable paper, if a defense good as against the payee is shown, the plaintiff must show that he purchased the paper for value, before maturity, but need not disprove notice of the alleged imperfections; burden as to notice is on the defendant.**—Johnson v. Hanover Nat. Bank, 88 Ala. 271; First Nat. Bank v. Slaughter, 98 Ala. 602; Connerly v. P. & M. Ins. Co., 66 Ala. 432; Ross v. Drinkard, 35 Ala. 434; Ala. Nat. Bank v. Halsey, 109 Ala. 196; First Nat. Bank v. Dawson, 78 Ala. 67; Wildsmith v. Tracy, 80 Ala. 258. **Holder of such paper, as collateral security for a pre-existing debt, is not a purchaser for value.** McKenzie v. Br. Bk., 28 Ala. 606; Fenouille v. Hamilton, 35 Ala. 319; Connerly v. P. & M. Ins. Co., 66 Ala. 432; Miller v. Boykin, 70 Ala. 469; Boykin v. Bk. of Mobile, 72 Ala. 262; First Nat. Bank v. Johnston, 97 Ala. 655; Vann v. Marbury, 100 Ala. 438. **Nor one who acquires the paper on a usurious consideration.**—Capitol City Ins. Co. v. Quinn, 73 Ala. 558; McCall v. Rogers, 77 Ala. 349; Smith v. Lehman, 85 Ala. 394; Hart v. Adler, 109 Ala. 467. **Nor the holder of a note resting on a contract declared void by statute.**—Hanover Nat. Bank v. Johnson, 90 Ala. 549. **Forged check; rights, duties and liabilities of parties.**—Birmingham Nat. Bank v. Bradley, 103 Ala. 109. **What is a**

bill of exchange.—Sands v. Matthews, 27 Ala. 399; Auerbach v. Pritchett, 58 Ala. 451; Whilden v. M. & P. Bank, 64 Ala. 1; Nat. Com. Bank v. Miller, 77 Ala. 168; Bolling v. McKenzie, 89 Ala. 470; Teague v. LeGrand, 85 Ala. 493; Harris v. Russell, 93 Ala. 59; Anderson v. Jones, 102 Ala. 537. **Includes check.** Natl. Com. Bank v. Miller, 77 Ala. 168; First Nat. Bank v. Nelson, 105 Ala. 180. **Must be payable generally and in money.**—Bank v. Brown, 42 Ala. 108; Auerbach v. Pritchett, 58 Ala. 451; Anderson v. Jones, 102 Ala. 537. **And absolutely and unconditionally.**—Blackman v. Lehman, 63 Ala. 547.

870 (1757) (2095) (1834) (1526). **Other instruments also, as to grace, protest and notice.**—All other instruments payable in money, at a bank or private banking-house, or a certain place of payment therein designated, are governed by the commercial law, as to days of grace, protest and notice.

See citations to preceding section.

871 (1758) (2096) (1835) (1527). **No grace allowed on other contracts.**—No days of grace are allowed on any contracts, except those enumerated in the two preceding sections.

872 (1759) (2097) (1836) (1528). **Holidays; paper due on, due next succeeding business day.**—Sunday, Christmas day, the first day of January, the twenty-second day of February, Mardi Gras, Good Friday, the twenty-sixth day of April, the fourth day of July, the first Monday in September and the day designated by the governor for public thanksgiving, shall each be deemed a holiday. If Christmas day, or the first day of January, or the twenty-second day of February, or the twenty-sixth day of April, or the fourth day of July, falls on Sunday, the Monday following is the holiday. If any paper entitled to days of grace, by the allowance thereof, or subject to protest, becomes due on a holiday, it must be taken as due on the next succeeding business day.

As amended Feb. 26, 1889, p. 56.

Dec. 12, 1892, p. 93.

Legal holiday, except Sunday, is not dies non juridicus.—Belmont C. & R. Co. v. Smith, 74 Ala. 206; Pfister v. State, 84 Ala. 432; Babbit v. State, 87 Ala. 91; Hauerwas v. Goodloe, 101 Ala. 162. **Note payable on Sunday or holiday is properly presented and protested on the next succeeding business day.**—Brennan v. Carl Vogt, 97 Ala. 647; German Bank v. McGarry, 106 Ala. 633. **See citations** to section 2170 (1749).

873 (1760) (2118) (1857) (1549). **Inland and foreign bills defined.**—All bills drawn and payable within this state are inland bills, and those drawn in this state and payable elsewhere, are foreign bills, within the meaning of this chapter.

A bill drawn in Alabama, payable in Louisiana, is foreign, and governed by the laws of the state where payable.—Todd v. Neal, 49 Ala. 266. **Word "bill" as used here, includes check.**—First Nat. Bank v. Nelson, 105 Ala. 180.

874 (1761) (2098) (1837) (1529). **Paper not designating a certain payee, or payable to a fictitious person.**—All bonds, bills, or notes, except those issued to circulate as money, payable to any thing or bearer, to any fictitious person or bearer, or to bearer only, must be construed as payable to the person from whom the consideration moved; if payable to an existing person or bearer, must be construed as if payable to such person or order; but this section does not apply to state, county, municipal, or corporate bonds.

Includes all paper payable in money at a bank or designated place, governed by the law merchant, or by that law as to place, protest, and notice, except such as is specifically excepted.—Clark v. Field, 1 Ala. 468; First Nat. Bank v. Nelson, 105 Ala. 180. **Includes bank checks.**—First Nat. Bank v.

Nelson, 105 Ala. 180. **The title to a promissory note payable to a person or bearer can only pass by indorsement.**—Cobb v. Bryant, 86 Ala. 316. **Does not extend to indorsement in blank or to bearer.**—Sawyer v. Patterson, 11 Ala. 523. **Before the exception, municipal and corporate bonds, payable to bearer were included and were not commercial paper.**—Blackman v. Lehman, 63 Ala. 547. But **if such instruments were payable in another state, where the common law prevailed, they were still commercial paper.** Lehman v. Tallassee Mfg. Co., 64 Ala. 567; Reid v. Mobile, 70 Ala. 199; K. C. M. & B. R. Co. v. Cobb, 100 Ala. 228.

Feb. 28, 1889, p. 110.

875. State, county, municipal and corporate bonds; when negotiable without indorsement.—All bonds payable to any thing or bearer, to any fictitious person or bearer, or to bearer only, which have been or may be issued by the state, or any county or municipality thereof, or by any corporation under authority of law (except such bonds as appear on their face to be registered), shall be negotiable, without indorsement, according to the commercial law and governed thereby, except as to presentment, protest, notice and days of grace.

Prior to the statute, **such instruments were not negotiable paper unless payable in another state** where the common law was presumed to prevail. Blackman v. Lehman, 63 Ala. 547; Lehman v. Tallassee Mfg. Co., 64 Ala. 567; Reid v. Mobile, 70 Ala. 199; K. C. M. & B. R. Co. v. Cobb, 100 Ala. 228. **Negotiable bonds not due, with attached coupons past due;** when purchaser entitled to protection.—Morton v. N. O. & S. R. Co., 79 Ala. 590.

876 (1762) (2099) (1838) (1530). **Contracts in writing assignable by indorsement.**—All bonds, contracts and writings for the payment of money or other thing, or the performance of any act or duty, are assignable by indorsement so as to authorize an action thereon by each successive indorsee.

A replevy bond, made to the sheriff is within the provisions of the statute.—Adkins v. Allen, 1 Stew. 130; Sartin v. Weir, 3 S. & P. 421. **And the ordinary certificate of stock in a company.**—Spence v. Whitaker, 3 P. 297. **And a right to receive money for services to be rendered** under an existing contract.—Payne v. Mayor, 4 Ala. 333. **And a lease of land,** unless specially prohibited.—Nave v. Berry, 22 Ala. 382. **And a bond for title.**—Brown v. Chambers, 12 Ala. 697; Skinner v. Bedell, 32 Ala. 44. **And a contract to deliver cotton.**—Phillips v. Sellers, 42 Ala. 658. **And a receipt for a promissory note,** by which it is agreed that it shall be returned to the owner.—Henley v. Bush, 33 Ala. 636. **And a policy of fire insurance, after loss,** although containing a stipulation prohibiting its assignment.—Perry v. Merchants' Ins. Co., 25 Ala. 355. **And warehouse receipts for cotton.**—Lehman v. Marshall, 47 Ala. 362; Allen v. Maury, 66 Ala. 10; Ala. State Bank v. Barnes, 82 Ala. 607. **And a bond payable to a corporation,** their associates and successors.—Wilks v. G. P. R. Co., 79 Ala. 180. **And a promissory note payable to a married woman,** even though the assent of husband was not indorsed until afterwards. Keeble v. Bank, 93 Ala. 361. **A judgment is not within its provisions.**—Bunnell v. Magee, 9 Ala. 433; Lovins v. Humphries, 67 Ala. 437. **Nor tickets issued in payment for labor,** non-assignable on their face.—Tabler v. Sheffield L. I. & C. Co., 79 Ala. 377. **Nor condition in a deed that land should revert** on certain contingencies.—McMahan v. Williams, 79 Ala. 288. **Nor county warrants.**—Savage v. Mathews, 98 Ala. 535. **Nor an order to pay the amount of a demand to a named person.**—West v. Foreman, 21 Ala. 400. **There may be a succession of assignments** and the last indorsee may sue in his own name. Flexner v. Dickerson, 65 Ala. 72.

877 (1763) (2119). **Claims against railroad companies assignable.**—Claims against railroad companies, for injuries to property, may be assigned in writing, and each successive assignee thereof may sue thereon in his own name.

A claim for damages for injury to attingent property by the construction of a railroad embankment is not assignable so that assignee may sue in his own name; nor does it pass to a vendee of the land.—Evans v. S. & W. R. Co., 90 Ala. 54.

878 (1764). **Effect of transfer of note given for purchase-money of lands.**—The transfer of a bond, bill, or note, given for the purchase-money of lands, whether the transfer be by delivery merely, or in writing, expressed to be with or without recourse on the transferor, passes to the transferee the lien of the vendor on the lands.

Prior to the statute, if the transfer was by delivery merely, the lien did not pass.—Hightower v. Rigsby, 56 Ala. 126; Stabler v. Spencer, 64 Ala. 496; Bankhead v. Owen, 60 Ala. 457; Prickett v. Sibert, 71 Ala. 194; Weaver v. Brown, 87 Ala. 533; Davis v. Smith, 88 Ala. 596. **Transfer by delivery passes the lien of the vendor, but not the legal title to the note.**—Davis v. Smith, 88 Ala. 596; Jones v. Lockard, 89 Ala. 575; Knight v. Knight, 103 Ala. 484. **If the holder merely advanced money as a loan to the purchaser,** to whom the notes were surrendered, and who then placed them with the holder, no lien existed.—Jones v. Lockard, 89 Ala. 575.

879 (1765) (2100) (1839) (1531). **Set-off, etc., against the payee good until notice.**—All contracts and writings, except such as are governed by the commercial law, and paper issued to circulate as money, are subject to all payments, set-offs and discounts had or possessed against the same previous to notice of the assignment or transfer.

Set-offs against intermediate assignees are not available, unless there is a contract to allow them, founded on a new consideration.—Stocking v. Toulmin, 3 S. & P. 35; Kennedy v. Manship, 1 Ala. 43; McKenzie v. Hunt, 32 Ala. 494. **The indorsee of commercial paper, acquiring it after maturity,** or before maturity, as collateral for a pre-existing debt without a new consideration, **takes subject to all defenses.**—Cullum v. Bank, 4 Ala. 453; Glasscock v. Smith, 25 Ala. 474; McKenzie v. Bank, 28 Ala. 606; Fenouille v. Hamilton, 35 Ala. 319; Ware v. Russell, 57 Ala. 43; Bank v. Poelnitz, 61 Ala. 147; Connerly v. P. & M. Ins. Co., 66 Ala. 432; Miller v. Boykin, 70 Ala. 469; Reid v. Bank, 70 Ala. 199; Keel v. Larkin, 72 Ala. 493; Cap. City Ins. Co. v. Quinn, 73 Ala. 558; Haden v. Lehman, 83 Ala. 243. **Equitable set-off when the maker is insolvent.**—T. C. & D. R. Co. v. Rhodes, 8 Ala. 206; Donelson v. Posey, 13 Ala. 752; Wray v. Furniss, 27 Ala. 471; Carroll v. Malone, 28 Ala. 521; White v. Wiggins, 32 Ala. 424. **A non-negotiable certificate of deposit is within the statute.** Renfroe v. Bank, 83 Ala. 425. **And a stock certificate in the ordinary form,** although indorsed in blank.—E. Birmingham L. Co. v. Dennis, 85 Ala. 565. **And certificates issued by a county for jurors' and bailiffs' services.**—Allen v. McCreary, 101 Ala. 514.

880 (1766) (2101) (1840) (1532). **Acceptance to be written.**—No person within this state must be charged as the acceptor of a bill of exchange, unless his acceptance is in writing, signed by himself or agent.

An acceptance must be in writing.—Sands v. Mathews, 27 Ala. 399; Smith v. Ledyard, 49 Ala. 279; Auerbach v. Pritchett, 58 Ala. 451; Whilden v. M. & P. Bank, 64 Ala. 1; Anderson v. Jones, 102 Ala. 537; Williams v. Gallyon, 107 Ala. 439. **May be on separate paper.**—Smith v. Ledyard, 49 Ala. 279; Whilden v. M. & P. Bank, 64 Ala. 1. **No particular form of words necessary.** Whilden v. M. & P. Bank, 64 Ala. 1. **An order requesting the delivery of cotton is not a bill of exchange.**—Auerbach v. Pritchett, 58 Ala. 451. **The acceptor is the primary debtor.**—Manning v. Kohn, 44 Ala. 343; Wilson v. Isbell, 45 Ala. 142; Trammell v. Hudmon, 56 Ala. 235; Whilden v. M. & P. Bank, 64 Ala. 1; Capitol City Ins. Co. v. Quinn, 73 Ala. 558; Bolling v. McKenzie, 89 Ala. 470; Hunt v. Johnson, 96 Ala. 130; Sands v. Hammell, 108 Ala. 624. **An acceptance admits everything essential to the existence of liability of the acceptor;** the right of the drawer to draw and the capacity of the payee.—Young v. Lehman, 63 Ala. 519; Capitol City Ins. Co. v. Quinn, 73 Ala. 558.

881 (1767) (2102) (1841) (1533). **Written promise to accept.**—An unconditional promise, in writing, to accept a bill before it is drawn, amounts to an actual acceptance.

As a general rule there can be no breach of an agreement to accept until there has been a presentation and refusal.—Maas v. Montgomery I. Wks., 88 Ala. 323. **The promise to accept must be in writing and unconditional.**

Smith v. Ledyard, 49 Ala. 279; Whilden v. M. & P. Bank, 64 Ala. 1; Maas v. Montgomery I. Wks., 88 Ala. 323; Anderson v. Jones, 102 Ala. 537; Williams v. Gallyon, 107 Ala. 439.

882 (1768) (2103) (1842) (1534). **Bills to be accepted on the paper.** Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill; and a refusal so to do is a refusal to accept, and the bill may be protested for non-acceptance.

883 (1769) (2104) (1843) (1535). **Damages for breach of promise to accept a bill.**—The last three sections must not be construed to impair the right of any person to whom a promise to accept a bill has been made, and who, on the faith of such promise, has negotiated the bill, to recover damages of the person making such promise, on his refusal to accept such bill.

The promise inures to the benefit of the person advancing money on the faith of it, and he may sue in his own name.—Sands v. Mathews, 27 Ala. 399; Smith v. Ledyard, 49 Ala. 279; Whilden v. Bank, 64 Ala. 1.

884 (1770) (2105) (1844) (1536). **Refusal to return bill within twenty-four hours is an acceptance.**—Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who refuses, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, must be deemed to have accepted the same.

If the bill is retained by agreement or consent, it does not amount to an acceptance.—Sands v. Mathews, 27 Ala. 399; Williams v. Gallyon, 107 Ala. 439.

885 (1771) (2106) (1845) (1537). **Damages on protested bills.** The damages on bills of exchange, inland or foreign, protested for non-acceptance or non-payment, are five per cent. on the sum drawn for.

To recover damages the bill must have been protested.—Jordan v. Bell, 8 P. 53; Leigh v. Lightfoot, 11 Ala. 935; Knott v. Venable, 42 Ala. 186. **Holder may protest for the purpose of claiming damages,** although protest is waived. Bellinger v. Glenn, 80 Ala. 190; White v. Keith, 97 Ala. 668. **The acceptor is not liable for statutory damages.**—Trammell v. Hudmon, 56 Ala. 235. **One sued as payee and indorser is not relieved** because the bill was addressed to and accepted by him.—McKenzie v. Clanton, 33 Ala. 528.

886 (1772) (2107) (1846) (1538). **Damages include all charges except interest and protest fees.**—Damages on protest for non-payment are in the place of all charges except costs of protest incurred previous to, and at the time of giving notice of non-payment; but the holder may recover legal interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which payment of the principal sum has been demanded, and costs of protest.

Trammell v. Hudmon, 56 Ala. 235.

887 (1773) (2108) (1847) (1539). **When bill is payable in our currency, damages cover the exchange.**—If the amount in such bill specified is expressed in money of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, must be ascertained without reference to the rate of exchange between this state and the place on which such bill was

drawn, at the time of the demand of payment or notice of non-payment.

888 (1774) (2109) (1848) (1540). **When payable in foreign currency, the exchange is added.**—If the amount in such bill specified is expressed in the money or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, must be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

889 (1775) (2110) (1849) (1541). **Damages and charges on protest for non-acceptance.**—When a bill of exchange is protested for non-acceptance, the same rate of damages is allowed as in the case of a protest for non-payment; and such damages are in the place of all charges, except costs of protest, incurred previous to, and at the time of giving notice of non-acceptance; but the holder is entitled to recover legal interest, exclusive of the damages, upon the amount of the principal sum, from the time when the same would have become payable, if accepted, interest on the damages from the demand of acceptance, and costs of protest.

890 (1776) (2111) (1850) (1542). **Notice of protest; where sent, etc.**—In all cases where notice of the non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, is given by sending the same by mail, it is sufficient if such notice is directed to the place where the person sought to be charged by such notice resided at the time of drawing, making, or indorsing such bill, note, or negotiable instrument; or to the post-office nearest his residence at that time, unless at the time of affixing his signature to such bill, note, or instrument, he specifies thereon the post-office to which he requires the notice to be addressed.

[**If parties reside at a distance,** and ordinarily communicate by general post, **the notice may be sent by mail,** but must be forwarded by the post of the next day after dishonor or by the first post succeeding the day of dishonor. Whitman v. Bank, 8 P. 258; Crawford v. Bank, 7 Ala. 205; Knott v. Venable, 42 Ala. 186; Philipe v. Harberlee, 45 Ala. 597; John v. City Bank, 57 Ala. 96; s. c., 62 Ala. 529; Shelton v. Carpenter, 60 Ala. 201; German Bank v. McGarry, 106 Ala. 633. **The post must have been regularly established** by the government.—Philipe v. Harberlee, 45 Ala. 597. **The statute only changes the law merchant to the extent of making a notice sent to the post-office of the party at the time of signing sufficient,** without regard to any subsequent change of residence.—John v. City Bank, 57 Ala. 96; s. c., 62 Ala. 529; Brennen v. Carl Vogt, 97 Ala. 647; German Bank v. McGarry, 106 Ala. 633. **The notary, or agent for collection, is in no sense the holder to whom notice should be given.**—Philipe v. Harberlee, 45 Ala. 597. **Waiver of laches by subsequent promise to pay.**—Isbell v. Lewis, 98 Ala. 550; Bolling v. McKenzie, 89 Ala. 470.

891 (1777). **Personal notice; when not necessary.**—If the party to be charged reside at the place of protest, and it be a town or city having ten thousand or more inhabitants, or in which there is a free postal delivery of the mail, notice of protest may be given through the mail, the postage being prepaid.

Notice may properly be sent by mail when the parties reside in a town of ten thousand inhabitants or where there is a free mail delivery.—Brennen v. Carl Vogt, 97 Ala. 647. **Otherwise, if parties reside in the same place, personal notice must be given** as required by the law merchant.—John v. Bank, 57 Ala. 96; s. c., 62 Ala. 529; Isbell v. Lewis, 98 Ala. 550.

892 (1778) (2112, 2113) (1851, 1852) (1543, 1544). **Mode of charging indorser or assignor on non-negotiable paper.**—On all contracts assigned by writing, which are not governed by the commercial law, when the amount due exceeds one hundred dollars, to charge the indorser or assignor, suit must be brought against the maker to the first court to which suit can properly be brought after making the indorsement or assignment. If the amount due does not exceed one hundred dollars, suit must be brought against the maker within thirty days after suit can properly be brought. In either case, if judgment is obtained, execution must be issued as authorized by law, and the inability of the maker to pay such judgment proved by the return of "no property."

A substitute for presentment, demand and notice.—Cavanaugh v. Tatum, 4 S. & P. 204; Woodcock v. Campbell, 2 P. 456; Ivey v. Sanderson, 6 P. 420; Ryland v. Bates, 4 Ala. 342; s. c., 6 Ala. 668; Hagerthy v. Bradford, 9 Ala. 567; Foster v. Stafford, 14 Ala. 714; Hays v. Myrick, 47 Ala. 335. **Applies to notes payable on demand.**—Mobile Savings Bank v. McDonnell, 83 Ala. 595. **The contract of an indorser on non-commercial paper is conditional,** and does not become absolute unless the requirements are complied with or excused. Jordan v. Garnett, 3 Ala. 610; Price v. Lavender, 38 Ala. 389; Hooks v. Anderson, 58 Ala. 238; Mobile Savings Bank v. McDonnell, 83 Ala. 595. **Legal delays during the prosecution of the suit do not release** the indorser.—Hays v. Myrick, 47 Ala. 335. **If judgment obtained and defendant died before execution issued,** sufficient diligence is shown.—Kain v. Walke, 12 Ala. 184. **The maker may waive defects and irregularities in the suit** against him, which do not render the judgment void, without releasing the indorser.—Schaefer v. Adler, 14 Ala. 723. **And so, if indorsee sued under the wrong name.**—Brown v. Johnson, 42 Ala. 208. **The indorsee cannot remit so as to bring his action within the jurisdiction of a justice.**—Fulford v. Johnson, 15 Ala. 385. **The diligence required with respect to amount is governed by the amount actually necessary to discharge the instrument at maturity,** without regard to contingencies, as attorneys' fees, etc.—Davis v. Jones, 109 Ala. 418. **An action cannot be commenced against the indorser until the return of "no property" is made.**—Riddle v. Rourke, 1 Ala. 394; Woodward v. Harbin, 1 Ala. 104; s. c., 4 Ala. 534. **The liability of the indorser is not dependent on the insolvency of the maker, but on the return of "no property,"** which is conclusive.—Reese v. White, 2 Ala. 306; Bates v. Ryland, 6 Ala. 668; Weed v. Brown, 13 Ala. 449. **The omission, without excuse, for nearly two years to sue out an alias,** the original execution not having been returned, **discharges the indorser.**—Bradford v. Bishop, 14 Ala. 517; s. c., 16 Ala. 769. **The absence of the indorsee from the state does not excuse his failure to sue** to the first term.—Rathbone v. Bradford, 1 Ala. 312.

893 (1779) (2114) (1853) (1545). **Suit may be waived by written consent.**—The time for bringing the suit, as required by the preceding section, may be extended or waived by the consent of the indorser or assignor in writing signed by him.

Consent does not relieve holder from compliance with the other requirements in order to charge the indorser; he must still sue before the statute of limitations perfects a bar.—Bates v. Ryland, 6 Ala. 668; Foster v. Stafford, 14 Ala. 714; Lodor v. Gayle, 29 Ala. 412; Walker v. Wigginton, 50 Ala. 579; Thomason v. Cooper, 57 Ala. 560. **What language amounts to a waiver.** Foster v. Stafford, 14 Ala. 714; Thomason v. Cooper, 57 Ala. 560. **Waiver defined.**—Walker v. Wigginton, 50 Ala. 579, 583; Caulfield v. Finnegan, Ala. (21 So. 484).

894 (1780) (2115) (1854) (1546). **Excuse for not suing, obtaining judgment, etc.**—The holder of such indorsed or assigned contract is excused from bringing the suit, obtaining the judgment and issuing the execution thereon—

1. When the maker has no known place of residence in the state.
2. When by use of ordinary diligence such residence cannot be ascertained.

3. When a suit has been commenced in the county of the residence of the maker, and a summons to the first and next succeeding court returned not found by the proper officer.

4. When a judgment against the maker has been defeated, in whole or in part, by a defense to the merits of such contract or writing, or a set-off against any other than the indorsee or assignee.

5. When any defense, except a set-off to the merits of such contract or writing, exists, which would prevent a judgment for all or any portion of the sum due, or the value of the thing payable by such contract or writing.

6. When the maker dies before the time expires for bringing suit, or, if after suit brought, his estate is declared insolvent.

7. When, by any act or promise of the indorser, the plaintiff is induced to delay bringing such suit.

Subdivision 1.—Roberts v. Kilpatrick, 5 S. & P. 96; Woodcock v. Campbell, 2 P. 456; Ivey v. Sanderson, 6 P. 420; Bristow v. Jones, 1 Ala. 159; Hall v. Chilton, 3 Ala. 633; Miller v. McIntyre, 9 Ala. 638; Goggins v. Smith, 35 Ala. 683; Bradley v. Patton, 51 Ala. 108. **Where the maker's residence in another state is known** the holder must use due diligence to collect by demand, notice, etc.—Woodcock v. Campbell, 2 P. 456; Ivey v. Sanderson, 6 P. 420; Bristow v. Jones, 1 Ala. 159; Goggins v. Smith, 35 Ala. 683; Bradley v. Patton, 51 Ala. 108. **Excuses suit though maker temporarily here** on a visit. Goggins v. Smith, 35 Ala. 683. **Subdivision 2.**—Lindsay v. Williams, 17 Ala. 229. **Subdivision 3.**—Cavanaugh v. Tatum, 4 S. & P. 204; Pearson v. Mitchell, 2 Ala. 736. **Subdivision 4.**—Murphy v. Gee, 9 Ala. 276; Hagerthy v. Bradford, 9 Ala. 567. **Subdivision 5.**—Hagerthy v. Bradford, 9 Ala. 567. **Subdivision 6.** Bates v. Ryland, 6 Ala. 668; Kain v. Walke, 12 Ala. 184; Bishop v. Bradford, 16 Ala. 769; Walker v. Wigginton, 50 Ala. 579. **Subdivision 7.**—Caulfield v. Finnegan, Ala. (21 So. 484).

895 (1781) (2116) (1855) (1547). **Irregular indorsements or assignments require suits.**—All assignments or indorsements in writing of contracts which are not governed by the commercial law, whether regular or irregular, must be construed as within the meaning of the last three sections, unless the contrary clearly appears from such assignment or indorsement.

Irregular indorsements.—Hall v. Chilton, 3 Ala. 633; Jordan v. Garnett, 3 Ala. 610; Nesbit v. Bradford, 6 Ala. 746; Fulford v. Johnson, 15 Ala. 385; Mobile Savings Bank v. McDonnell, 83 Ala. 595.

896 (1782) (2117) (1856) (1548). **The assignor pays the costs of suit against the maker.**—The costs in the suit against the maker in such assigned or indorsed contract are recoverable in the suit against the assignor or indorser.

CHAPTER 19.

CIRCUIT COURTS.

ARTICLE 1.—JUDICIAL CIRCUITS AND TIMES AND PLACES OF HOLDING CIRCUIT COURTS; SPECIAL AND ADJOURNED TERMS. 897–917.
2.—JURISDICTION OF CIRCUIT COURTS; POWERS OF CIRCUIT JUDGES; SALARY; PENALTY FOR FAILING TO HOLD COURTS; SPECIAL JUDGES AND THEIR COMPENSATION. 918–930.
3.—CLERKS OF THE CIRCUIT COURT, THEIR QUALIFICATION, DUTIES AND POWERS; OTHER PROVISIONS RELATING TO THEIR OFFICE. 931–943.

ARTICLE 1.

JUDICIAL CIRCUITS, AND TIMES AND PLACES OF HOLDING CIRCUIT COURTS; SPECIAL AND ADJOURNED TERMS.

897 (748). **State divided into thirteen judicial circuits.**—The state is divided into thirteen judicial circuits, to be numbered and composed of counties as follows:

First circuit.—Choctaw, Clarke, Marengo and Monroe.

Second circuit.—Butler, Conecuh, Crenshaw, Escambia, Lowndes and Montgomery.

Third circuit.—Barbour, Bullock, Dale, Lee and Russell.

Fourth circuit.—Bibb, Dallas, Hale, Perry and Wilcox.

Fifth circuit.—Autauga, Chambers, Chilton, Coosa, Elmore, Macon, Randolph and Tallapoosa.

Sixth circuit.—Fayette, Greene, Lamar, Pickens, Sumter and Tuscaloosa.

Seventh circuit.—Calhoun, Clay, Cleburne, Shelby, St. Clair and Talladega.

Eighth circuit.—Cullman, Lawrence, Limestone, Madison and Morgan.

Ninth circuit.—Blount, Cherokee, DeKalb, Etowah, Jackson and Marshall.

Tenth circuit.—Jefferson, Walker and Winston.

Eleventh circuit.—Colbert, Franklin, Lauderdale and Marion.

Twelfth circuit.—Coffee, Covington, Geneva, Henry and Pike.

Thirteenth circuit.—Baldwin, Mobile and Washington.

898 (892) (749). **Circuit court to be held in each county at the court-house, etc.**—Except when otherwise provided by law, the circuit courts of the several counties shall be held at the court-house thereof.

Legislature may divide county into two jurisdictions, and provide for holding sessions of circuit court in each.—Lowery v. State, 103 Ala. 50; Triest v. Enslen, 106 Ala. 180. **A verdict in a felony case** received at judge's hotel or delivered to clerk during recess, is void.—Jackson v. State, 102 Ala. 76; Hayes v. State, 107 Ala. 1. So also are all judicial proceedings had at a time or place not authorized by law.—Cullum v. Casey, 1 Ala. 351; Weightman v. Karsner, 20 Ala. 446; Garlick v. Dunn, 42 Ala. 404; Davis v. State, 46 Ala. 80; Ex parte Branch, 63 Ala. 901.

899. First circuit; times and places of holding courts.—The circuit courts in the first judicial circuit shall be held in each year, as follows: Feb. 18, 1897, p. 1248.

1. In the county of Clarke, on the fourth Monday in March and the third Monday in September, and may continue two weeks.

2. In the county of Monroe, on the second Monday in March and the second Monday after the third Monday in September, and may continue two weeks.

3. In the county of Choctaw, on the fourth Monday after the fourth Monday in March, and the sixth Monday after the third Monday in September, and may continue two weeks.

4. In the county of Marengo, at Linden, on the second Monday after the fourth Monday in March, and the fourth Monday after the third Monday in September, and may continue two weeks; and at Demopolis on the sixth Monday after the fourth Monday in March, and the eighth Monday after the third Monday in September, and may continue two weeks.

900. Second circuit; times and places of holding courts.—The circuit courts in the second judicial circuit shall be held in each year, as follows: Feb. 18, 1895, p. 669.

1. In the county of Lowndes, on the third Monday in February and August, and may continue three weeks.

2. In the county of Crenshaw, on the second Monday in March and September, and may continue two weeks.

3. In the county of Escambia, on the fourth Monday in March and September, and may continue two weeks.

4. In the county of Conecuh, on the second Monday after the fourth Monday in March and September, and may continue three weeks.

5. In the county of Butler, on the fifth Monday after the fourth Monday in March and September, and may continue three weeks.

6. In the county of Montgomery, on the eighth Monday after the fourth Monday in March and September, and may continue until the business is disposed of.

901. Third circuit; times and places of holding courts.—The circuit courts in the third judicial circuit shall be held in each year, as follows: Feb. 11, 1897, p. 796.

1. In the county of Bullock, on the last Monday in January and July, and may continue three weeks.

2. In the county of Dale, on the third Monday after the last Monday in January and July, and may continue three weeks.

3. In the county of Lee, on the ninth Monday after the second Monday in February and August, and may continue three weeks.

4. In the county of Russell, on the sixth Monday after the second Monday in February and August, and may continue three weeks.

5. In the county of Barbour, at Clayton, on the twelfth Monday after the second Monday in February and August, and may continue two weeks, and at Eufaula, on the fourteenth Monday after the second Monday in February and August, and may continue three weeks.

Dec. 4, 1888, p. 8.

902. Fourth circuit; times and places of holding courts.—The circuit courts in the fourth judicial circuit shall be held in each year, as follows:

1. In the county of Perry, on the last Monday in February and August, and may continue three weeks.

2. In the county of Dallas, on the third Monday after the last Monday in February and August, and may continue three weeks.

3. In the county of Hale, on the sixth Monday after the last Monday in February and August, and may continue three weeks.

Feb. 13, 1895, p. 555.

4. In the county of Bibb, on the ninth Monday after the last Monday in February and August, and may continue three weeks.

Dec. 4, 1888, p. 8.

5. In the county of Wilcox, on the twelfth Monday after the last Monday in February and August, and may continue three weeks.

903. Fifth circuit; times and places of holding courts.—The circuit courts in the fifth judicial circuit shall be held in each year, as follows:

Feb. 15, 1889, p. 435.

1. In the county of Tallapoosa, at Alexander City, on the second Monday in February and August, and may continue one week.

Feb. 18, 1895, p. 1021.

2. In the county of Randolph, at Wedowee, on the third Monday in February and August, and may continue one week, and at Roanoke, on the fourth Monday in February and August, and may continue one week.

Dec. 8, 1888, p. 12.

3. In the county of Chambers, on the first Monday after the fourth Monday in February and August, and may continue two weeks.

4. In the county of Tallapoosa, at Dadeville, on the third Monday after the fourth Monday in February and August, and may continue two weeks.

5. In the county of Macon, on the fifth Monday after the fourth Monday in February and August, and may continue two weeks.

6. In the county of Coosa, on the seventh Monday after the fourth Monday in February, and may continue one week, and on the seventh Monday after the fourth Monday in August, and may continue two weeks.

7. In the county of Elmore, on the eighth Monday after the fourth Monday in February, and may continue two weeks, and on the ninth Monday after the fourth Monday in August, and may continue two weeks.

8. In the county of Autauga, on the tenth Monday after the fourth Monday in February, and may continue one week, and on the eleventh Monday after the fourth Monday in August, and may continue two weeks.

9. In the county of Chilton, on the eleventh Monday after the fourth Monday in February, and may continue two weeks, and on the thirteenth Monday after the fourth Monday in August, and may continue two weeks.

Dec. 7, 1891, p. 475.

904. Sixth circuit; times and places of holding courts.—The circuit courts in the sixth judicial circuit shall be held in each year, as follows:

1. In the county of Lamar, on the fourth Monday in February and August, and may continue two weeks.

2. In the county of Fayette, on the second Monday after the fourth Monday in February and August, and may continue two weeks.

3. In the county of Greene, on the fourth Monday after the fourth Monday in February and August, and may continue three weeks.

4. In the county of Sumter, on the seventh Monday after the fourth Monday in February and August, and may continue three weeks.

5. In the county of Pickens, on the tenth Monday after the fourth Monday in February and August, and may continue two weeks.

6. In the county of Tuscaloosa, on the twelfth Monday after the fourth Monday in February and August, and may continue six weeks.

905. Seventh circuit; times and places of holding courts.—The circuit courts in the seventh judicial circuit shall be held in each year, as follows:

1. In the county of Talladega, on the fourth Monday in January and July, and may continue two weeks. Feb. 28, 1889, p. 117.

2. In the county of Clay, on the second Monday after the fourth Monday in January and July, and may continue three weeks. Feb. 15, 1895, p. 626.

3. In the county of Cleburne, on the fifth Monday after the fourth Monday in January and July, and may continue one week. Feb. 16, 1897, p. 939.

4. In the county of Shelby, on the eighth Monday after the fourth Monday in January and July, and may continue three weeks. Feb. 28, 1889, p. 117.

5. In the county of St. Clair, on the eleventh Monday after the fourth Monday in January and July, and may continue two weeks.

6. In the county of Calhoun, on the thirteenth Monday after the fourth Monday in January and July, and may continue until the business is disposed of.

906. Eighth circuit; times and places of holding courts.—The circuit courts in the eighth judicial circuit shall be held in each year, as follows:

1. In the county of Morgan, on the first Monday in January, and may continue one week, and on the third Monday after the fourth Monday in March and September, and may continue four weeks. Nov. 27, 1896, p. 14.

2. In the county of Madison, on the first Monday in February, and the third Monday in May and November, and may continue four weeks. Feb. 16, 1897, p. 1201.

3. In the county of Lawrence, on the first Monday in March and September, and may continue two weeks. Nov. 27, 1896, p. 14.

4. In the county of Cullman, on the third Monday in March and September, and may continue two weeks.

5. In the county of Limestone, on the second Monday in January and the first Monday after the fourth Monday in March and September, and may continue two weeks.

907. Ninth circuit; times and places of holding courts.—The circuit courts in the ninth judicial circuit shall be held in each year, as follows:

Dec. 18, 1892, p. 141. 1. In the county of Blount, at Bangor, on the second Monday in December and June, and may continue two weeks.

Feb. 14, 1891, p. 659. 2. In the county of Cherokee, on the second Monday in January and July, and may continue three weeks.

Feb. 18, 1897, p. 1220. 3. In the county of DeKalb, on the third Monday after the second Monday in January and July, and may continue three weeks.

Feb. 14, 1891, p. 659. 4. In the county of Jackson, on the seventh Monday after the second Monday in January and July, and may continue four weeks.

5. In the county of Marshall, on the twelfth Monday after the second Monday in January and July, and may continue three weeks.

6. In the county of Blount, at Oneonta, on the fifteenth Monday after the second Monday in January and July, and may continue two weeks.

Feb. 21, 1893, p. 1061. 7. In the county of Etowah, on the seventeenth Monday after the second Monday in January and July, and may continue two weeks.

Provision for holding term of circuit court at Bangor not unconstitutional.—Lowery v. State, 103 Ala. 50.

908. Tenth circuit; times and places of holding courts.—The circuit courts in the tenth judicial circuit shall be held in each year, as follows:

Feb. 18, 1895, p. 625. 1. In the county of Winston, on the second Monday in February and August, and may continue one week.

2. In the county of Walker, on the third Monday in February and August, and may continue five weeks.

3. In the county of Jefferson, on the fifth Monday after the third Monday in February and August, and may continue until the business is disposed of, four weeks of which term must be held at Bessemer, at such time as the presiding judge may designate, of which he must give two weeks' notice.

Feb. 21, 1893, p. 669.

Provision for holding term of circuit court at Bessemer not unconstitutional.—Triest v. Enslen, 106 Ala. 180.

Dec. 9, 1896, p. 92. **909. Eleventh circuit; times and places of holding courts.**—The circuit courts in the eleventh judicial circuit shall be held in each year, as follows:

1. In the county of Lauderdale, on the first Monday in January and June, and may continue two weeks, and on the first Monday in March and September, and may continue four weeks.

2. In the county of Colbert, on the third Monday in January and June, and may continue two weeks, and on the first Monday in April and October, and may continue four weeks.

Feb. 12, 1897, p. 816. 3. In the county of Marion, on the first Monday after the fourth Monday in January, and may continue one week, and on the second Monday in August, and may continue two weeks.

Dec. 9, 1896, p. 92. 4. In the county of Franklin, on the first Monday in May and November, and may continue three weeks.

Dec. 11, 1894, p. 89. **910. Twelfth circuit; times and places of holding courts.**—The circuit courts in the twelfth judicial circuit shall be held in each year, as follows:

1. In the county of Pike, on the fourth Monday in January and July, and may continue five weeks.

2. In the county of Coffee, on the fifth Monday after the fourth Monday in January and July, and may continue two weeks.

3. In the county of Geneva, on the eighth Monday after the fourth Monday in January and July, and may continue two weeks. Dec. 7, 1896, p. 79.

4. In the county of Henry, at Dothan, on the tenth Monday after the fourth Monday in January, and may continue two weeks, and on the tenth Monday after the fourth Monday in July and may continue one week; at Columbia, on the twelfth Monday after the fourth Monday in January, and may continue two weeks, and on the twelfth Monday after the fourth Monday in July, and may continue one week; at Abbeville, on the fourteenth Monday after the fourth Monday in January, and may continue two weeks, and on the fourteenth Monday after the fourth Monday in July, and may continue one week.

5. In the county of Covington, on the sixteenth Monday after the fourth Monday in January and July, and may continue two weeks. Feb. 13, 1895, p. 555.

911. Thirteenth circuit; times and places of holding courts. Feb. 12, 1895, p. 533. The circuit courts in the thirteenth judicial circuit shall be held in each year, as follows:

1. In the county of Washington, on the first Monday in March and October, and may continue three weeks.

2. In the county of Baldwin, on the fourth Monday in March and October, and may continue three weeks.

3. In the county of Mobile, on the fourth Monday after the fourth Monday in March and October, and may continue ten weeks.

912 (750). **When courts to be opened.**—The courts of the several judicial circuits shall not be opened before noon of the first Monday of each term.

913 (751). **When criminal dockets to be taken up.**—The criminal dockets of such courts, unless otherwise expressly provided by law, or ordered by the court, shall be taken up, when the term of the court is for two weeks, on the second Monday of the term, and when the term is for three weeks, or more, on the third Monday of the term. Nov. 25, 1896, p. 10.

Goley v. State, 87 Ala. 57.

914 (752) (652). **Special terms.**—A special term of the circuit court may be held in any county, whenever, in the opinion of the judge of the circuit, such term is necessary; and at such special term a grand jury may be organized, causes, both civil and criminal, pending in the court, may be tried and disposed of, and any other business before the court may be transacted, as at a regular term, except that the order of business fixed by the judge must be observed; but no special term shall continue longer than two weeks.

Authority of court at special as plenary as at regular term.—Nugent v. State, 19 Ala. 540; Harrington v. State, 36 Ala. 236; Aaron v. State, 39 Ala. 684; Fields v. State, 52 Ala. 348; Floyd v. State, 55 Ala. 61; Bales v. State, 63 Ala. 30.

915 (753) (653). **Notice of special term; order of business.** Thirty days' notice of such special term, and of the order in which the business of the court will be transacted thereat, shall be given by advertisement in some newspaper in the county, or if none is published therein, in such newspaper as the judge may designate.

What sufficient showing of record that special term properly called. Grant v. State, 62 Ala. 233; Martin v. State, 77 Ala. 1.

916 (754) (661) (755) (637). **Witnesses and process.**—Witnesses must be subpœnaed to a special term, and all process relating to the business of such term made returnable to it; and executions and other process on judgments rendered at such term shall be returnable to the next regular term, if more than thirty days intervene; otherwise, to the second regular term thereafter.

917 (755) (654). **Adjourned terms.**—Whenever, at any regular term of a circuit court, there shall be a failure to dispose of all the business of the court, the presiding judge shall adjourn the court until such time as he can return and complete such business, unless, in his opinion, the public good does not require such adjournment; and an entry of the adjournment on the minutes of the court shall be notice of the same; and all witnesses and parties shall attend the adjourned term without further subpœna or notice. In the entry of such adjournment, the order in which the unfinished business will be transacted may be prescribed, and all necessary orders made for summoning jurors to serve at the adjourned term. All executions and other process on judgments rendered at the regular term shall issue as though the court had adjourned sine die; and all executions and other process on judgments rendered at the adjourned term shall be returnable to the next regular term, if more than thirty days intervene, otherwise, to the second regular term thereafter.

An adjourned term is but a prolongation of the regular term, and the court, during such adjourned term, has the same power over its records as during the regular term.—VanDyke v. State, 22 Ala. 57; Holly v. Yonge, 69 Ala. 89; Keith v. State, 91 Ala. 2. **A court may be "both** an adjourned term and a special term."—Martin v. State, 77 Ala. 1

ARTICLE 2.

JURISDICTION OF CIRCUIT COURTS; POWERS OF CIRCUIT JUDGES; SALARY; PENALTY FOR FAILING TO HOLD COURTS; SPECIAL JUDGES AND THEIR COMPENSATION.

918 (756) (657) (746) (628). **Jurisdiction of the circuit court.** The circuit court has authority—

1. To exercise original jurisdiction of all felonies and misdemeanors; of all actions for libel, slander, assault and battery, and of ejectments without regard to the amount involved; and of all other suits and actions at law when the matter or sum in controversy exceeds fifty dollars.

2. To exercise appellate jurisdiction of all civil actions cognizable before a justice of the peace, and in such other cases as may be provided by law.

3. To exercise a general superintendence over all inferior jurisdictions.

4. To punish contempts by fine, not exceeding fifty dollars, and by imprisonment, not exceeding five days.

5. To exercise such other powers, not contrary to the constitution, as are, or may be given to such court by law.

Subdivision 1.—When sum in controversy exceeds $50, but does not exceed $100, circuit court has concurrent jurisdiction with justices of the peace, by virtue of the Constitution.—Carew v. Lillienthall, 50 Ala. 44. **The sum in controversy is that claimed, not that recovered.**—Haws v. Morgan, 59 Ala. 508; Morris v. Robinson, 80 Ala. 291; R. Co. v. Hembree, 84 Ala. 182; Camp v. Marion Co., 91 Ala. 240. **Circuit court has not jurisdiction of claim for exactly $50.**—McClure v. Lay, 30 Ala. 208. **Nor when complaint in action on contract shows right of action for only a nominal sum.**—Cahuzac v. Samini, 29 Ala. 288. **Principal, interest, and damages,** when recoverable, **aggregate the plaintiff's demand,** and must be looked to on question of jurisdiction.—Hogan v. Odam, 3 Stew. 58; Hargrove v. Smith, 1 Ala. 80; Ledbetter v. Castler, 11 Ala. 149. **Court has jurisdiction under statute, of motion against sheriff for failing to return execution** for less amount than $50 the proceeding not being decreed a civil action, but one to recover penalty.—Huggins v. Ball, 19 Ala. 587. Of motion against same office for failing to return execution for less than $50 assessed by court martial under another statute, it was held that circuit court had not jurisdiction.—Nowlin v. McCally, 31 Ala. 678. **A county no more than an individual can sue for less** than jurisdictional amount.—Camp v. Marion Co., 91 Ala. 240. **Subdivision 2.—On appeal, circuit court should not give judgment beyond amount of justice's jurisdiction.**—Lykes v. Schwarz, 91 Ala. 461; Giddens v. Bolling, 92 Ala. 586. **Unless increased by interest** from rendition by justice.—Pruitt v. Stuart, 5 Ala. 112; R. & D. R. Co. v. Hutto, 102 Ala. 575; Woodrow v. Hawving, 105 Ala. 240. **Rent pending appeal,** may be also added in forcible entry and unlawful detainer cases.—Giddens v. Bolling, 92 Ala. 586 (explaining Beck v. Glenn, 69 Ala. 121). **But if no objection made in circuit court, judgment for greater amount than justice's jurisdiction may be rendered.**—Pruitt v. Stuart, 5 Ala. 112; Vaughan v. Robinson, 20 Ala. 229; Waring v. Gilbert, 25 Ala. 295; R. & D. R. Co. v. Hutto, 102 Ala. 575. **Objection that justice exceeded his jurisdiction cannot be first made in circuit court,** on appeal.—Glaze v. Blake, 56 Ala. 379 (overruling Pearce v. Pope, 42 Ala. 319); Burns v. Henry, 67 Ala. 209; Western R. Co. v. Lazarus, 88 Ala. 453; L. & N. R. Co. v. Barker, 96 Ala. 435. **Subdivision 3.—Power resides in circuit court of the county of the inferior jurisdiction.**—Dunbar v. Frazer, 78 Ala. 529; Shields v. State, 86 Ala. 584; Holcombe v. State, 99 Ala. 185. **Probate courts are such inferior jurisdictions.**—State v. Williams, 69 Ala. 311; Etheridge v. Hall, 7 P. 47. **They may be controlled by mandamus** from circuit court.—Ex parte Henderson, 43 Ala. 392; Leslie v. Tucker, 57 Ala. 483; Tally v. Grider, 66 Ala. 119; State v. Williams, 69 Ala. 311; Ex parte Pearson, 76 Ala. 521; Ramagnano v. Crook, 88 Ala. 450. **By common-law certiorari.** John v. State, 1 Ala. 95; Marion v. Chandler, 6 Ala. 899; Cawthorn v. Weisinger, 6 Ala. 714; Graham v. Abercrombie, 8 Ala. 552; Fowler v. Trewhit, 10 Ala. 622; Stout v. Ward, 10 Ala. 628; Miller v. Jones, 80 Ala. 89. **And by writ of prohibition.**—Ex parte Russell, 29 Ala. 717. **Mandamus; to probate judge** to hear habeas corpus; Ex parte Mahone, 30 Ala. 49; Ex parte Champion, 52 Ala. 311; Ex parte Jones, 94 Ala. 34; Ex parte Charleston, 107 Ala. 688. **To county court.**—Etheridge v. Hall, 7 P. 47. **To mayor's court.**—Withers v. State, 36 Ala. 252. **To justice of the peace.**—Davidson v. Washburn, 56 Ala. 596. **Certiorari; to court of roads and revenue.**—Ex parte Tarlton, 2 Ala. 35; Barnett v. State, 15 Ala. 829; Commissioners v. Thompson, 15 Ala. 134. **To justice of the peace.**—Ex parte Boothe, 64 Ala. 312; Independent Pub. Co. v. Am. Press Ass'n., 102 Ala. 475.

919 (2864) (3159) (2812) (2406). **Correction of errors; prevention of abuse of process.**—The circuit court has power after final judgment—

1. To correct any error in fact in the judgment or process, apparent upon the whole record.

2. To secure parties or privies in their rights against any oppression or abuse of execution, or other process, or upon any release, discharge, or payment after judgment.

This summary jurisdiction is exercised in lieu of writ of audita querela. Edward v. Lewis, 16 Ala. 813. **Defensive matter against judgment may be inquired into** on supersedeas and execution perpetually superseded.—Bank v. Coleman, 20 Ala. 140; Mason v. Buchanan, 62 Ala. 110; Larkin v. Mason, 71 Ala. 227; Martin v. Tally, 72 Ala. 23; Miller v. Vaughan, 73 Ala. 312. **No cause for equitable interference that sheriff threatens to levy writ of execution against** a firm on individual property; the circuit court may prevent such abuse of its process. Baldridge v. Eason, 99 Ala. 516. **Circuit court furnishes adequate remedy against excessive execution.**—Triest v. Enslen, 106 Ala. 180.

Feb. 22, 1887, p. 134.

920 (757) (655, 668) (744, 761) (626, 643). **Residence and salary of judge.**—Each circuit judge must reside in the circuit for which he is elected or appointed twelve months preceding, and at the time of his election or appointment, and during his continuance in office; and his salary shall be twenty-five hundred dollars per annum.

921 (758) (658) (747) (629). **Authority of judges.**—Such judges have authority—

1. To grant writs of certiorari, supersedeas, quo warranto, mandamus, and all other remedial and original writs which are grantable by judges at common law.

Ex parte Henderson, 43 Ala. 392; Ex parte Grant, 53 Ala. 16; Ex parte Boothe, 64 Ala. 312.

2. To grant writs of injunction and ne exeat, returnable into the courts of chancery.

3. To administer oaths and take affidavits in all cases in which oaths and affidavits are required by law.

4. To exercise such other powers as are, or may be granted them by law.

No constitutional right to jury trial in such cases.—Taliaferro v. Lee, 97 Ala. 92. **Writ when issued may not be disregarded,** although done irregularly or on insufficient petition.—Ex parte Boothe, 64 Ala. 312. **Power to issue writ vested in judge,** and may be exercised in vacation.—Ex parte Grant, 53 Ala. 16; Ex parte Henderson, 43 Ala. 392. **Certiorari lies to review proceedings of inferior tribunals** and correct errors apparent on face of record when no appeal provided for.—Lamar v. Commissioner's Court, 21 Ala. 772; Dean v. State, 63 Ala. 153; Ex parte Boothe, 64 Ala. 312; Camden v. Bloch, 65 Ala. 236; Miller v. Jones, 80 Ala. 89; Stanfill v. Court of Revenue, 80 Ala. 287; McAlilley v. Horton, 75 Ala. 491; M. & C. R. Co. v. Brannum, 96 Ala. 461; McCulley v. Cunningham, 96 Ala. 583; Independent Pub. Co. v. Am. Press Asso., 102 Ala. 475. **Certiorari and supersedeas to quash execution** issued on bond irregularly forfeited.—Taylor v. Powers, 3 Ala. 285; Del Barco v. Bank, 12 Ala. 238; Hill v. McKenzie, 39 Ala. 314; Rhodes v. Smith, 66 Ala. 174; Cobb v. Thompson, 87 Ala. 381. **Supersedeas, what may be inquired into under.**—Dunlap v. Clements, 18 Ala. 778; Bank v. Coleman, 20 Ala. 140; Thompson v. Lassiter, 86 Ala. 536; Gatchell v. Foster, 94 Ala. 622.

922 (759) (660) (751) (633). **Absence of judge adjourns the court.**—When any circuit judge fails to attend, the court stands adjourned from day to day until three o'clock in the afternoon of the third day, when it is adjourned to the next succeeding term.

Pending causes stand continued.—Ex parte Driver, 51 Ala. 41.

923 (760) (662) (756) (638). **Forfeiture for failure to hold court, or for absence from it.**—If any circuit judge fails or neglects to attend any regular term of any circuit court which he takes upon himself to hold, or, after attending, absents himself before the time fixed for final adjournment, unless the business is sooner disposed of, he forfeits the sum of twenty-five dollars for each and every day

he is thus absent or fails to attend, to be deducted by the auditor from his salary; the absence or failure of such judge to be certified to the auditor by the clerk within ten days after the term, under a penalty of one hundred dollars, to be recovered by the solicitor in the circuit court of his county, in the name of the state, on two days' notice.

924 (761) (663) (757) (639). **Exceptions to provisions of preceding section.**—The deduction provided for in the preceding section must not be made, if the judge makes an affidavit that such failure to attend, or absence was on account of sickness of himself or family, or inevitable accident, or of an epidemic or contagious disease, or well-grounded apprehension thereof.

925 (762) (665) (759) (641). **Sheriff to summon three constables or deputies to attend court.**—The sheriff of the county must summon three constables or deputies to attend at each term of the circuit court, and may, on order of the court, summon additional deputies; and should any one of them fail to attend, a conditional judgment may be entered against him of ten dollars, which must be made absolute, unless he appears at the next term and shows a good excuse for not attending.*

926 (663) (666) (760) (642). **Compensation to such constables.** Such constables or deputies attending receive each one dollar and fifty cents for each day's attendance, to be paid out of the county treasury, on the certificate of the clerk, showing the number of days they have attended.*

927 (764) (667). **Acts, etc., where kept; duties in reference to; default in duty a contempt.**—On the first day of each term of the circuit court, the sheriff, at the instance of the presiding judge thereof, must apply to the judge of probate for the session acts of the general assembly, the supreme court reports, Smith's condensed reports, and Brickell's digest, furnished by the state to each county, and the judge of probate must deliver them to the sheriff, whose duty it shall be to keep them in the court-room, conveniently arranged, for the use of the court during the term; and if the judge of probate or sheriff fails or refuses to discharge any of the duties required of him by this section, he shall be deemed guilty of a contempt of court, and shall be fined therefor, at the discretion of the presiding judge, in a sum not to exceed twenty dollars.

928. **Special judge appointed by governor when circuit judge absent or impeached.**—Whenever it shall be made known to the governor that any regular term or terms of the circuit court will not be held by any regular judge of that court, by reason of the failure of the judge to attend such term or terms, or when impeachment proceedings are pending against him, the governor may appoint and commission a person possessing the qualifications of circuit judges, as special judge to hold such regular term or terms of such court; and such special judge shall qualify by taking the oath of office prescribed by the constitution, and shall proceed to hold such court for the term or

Feb. 18, 1895, p. 1135, §1.

*As amended by joint committee.

terms thereof which he is appointed to hold; and during the time of such appointment, such special judge shall have and exercise all the powers and jurisdiction of judges of the circuit court; but his term of office shall cease and determine upon the adjournment of the term or terms of the court which he is appointed to hold, or sooner if the regular judge shall appear and assume the duty of holding such court, except that such special judge may thereafter sign bills of exceptions in cases tried before him, and to that end may make orders extending the time for signing such bills of exceptions the same as the regular judge might do. No fee shall be charged for the commission herein authorized to be issued.

Ib. §2. **929. Compensation of such special judge.**—Such special judge shall receive as compensation for his services, the sum of ten dollars per day for each day he is actually engaged in holding such court, and his actual and necessary expenses incurred therein, to be paid out of the state treasury on the approval of the governor and warrant drawn by the auditor.

930. Circuit judge reduced to half pay while place filled by another.—For each day a special judge is paid under the provisions of the preceding section, the auditor must, under such rules and regulations as he may prescribe, cause to be deducted from the salary of the circuit judge, and retained for the benefit of the state, the sum of three dollars and forty-seven cents, so that the circuit judge shall receive but one-half his usual salary for the time his place is filled by the special judge. But when the penalty prescribed by section 923 (760) of this Code is enforced, the deduction herein provided for shall not be made; nor does this section apply when the circuit judge was, during such time, engaged in holding court elsewhere.

ARTICLE 3.

CLERKS OF THE CIRCUIT COURT, THEIR QUALIFICATIONS, DUTIES AND POWERS; OTHER PROVISIONS RELATING TO THEIR OFFICE.

931 (765) (669) (764) (646). **Official bond of clerk.**—Before entering upon the performance of the duties of his office, the clerk of the circuit court must give bond, with sufficient sureties, in such sum as the circuit judge or the judge of probate of his county may require, not less than two thousand dollars, payable to the State of Alabama, and conditioned faithfully to discharge the duties of his office during the time he continues therein, or discharges any of the duties thereof; which bond must be approved by the circuit judge, or such judge of probate, and filed and recorded in the office of the judge of probate.

932 (766) (670) (766) (649). **Their offices; where kept.**—Such clerks must keep their offices at the court-house.

933 (767) (676) (771) (651). **Their authority.**—Clerks of the circuit court have authority—

1. To administer oaths and take affidavits in all cases in which

the authority to administer such oath or take such affidavit is not confined to some other officer.

2. To appoint deputies, with full power to transact all business of such clerks, such deputy first taking an oath to support the constitution and laws of this state, and faithfully to discharge the duties of deputy clerk of the court for which he acts.

3. To receive the amount of any judgment rendered in the courts of which they are clerks, either before or after the issue of execution thereon.

4. To exercise such other powers as are, or may be conferred upon them by law.

Subdivision 2.—Such deputy may take affidavit and issue attachment. Minniece v. Jeter, 65 Ala. 222. **A deputy duly appointed and acting under color and claim of office,** although not having taken oath, **is a de facto officer** whose acts are good so far as the public or third persons are concerned.—Joseph v. Cawthorn, 74 Ala. 411. But **perjury cannot be predicated on an oath administered by such de facto deputy.**—Walker v. State, 107 Ala. 5. **Subdivision 3.—Power declared.**—Murray v. Charles, 5 Ala. 678. **Clerk may not receive anything in payment but legal tender money.**—Aicardi v. Robbins, 41 Ala. 541 (overruling Haynes v. Wheat, 9 Ala. 239). . **When clerk has collected money, statute of limitations begins to run in his favor only** when he is guilty of some default respecting it.—McDonnell v. Bank, 20 Ala. 313. **Clerk has no authority to receive payment before judgment,** but he may so act after judgment with reference to money collected previous to judgment as to make it a good payment.—Governor v. Read, 38 Ala. 252; Currie v. Thomas, 8 P. 293; Dean v. Governor, 13 Ala. 526; Fitzpatrick v. Bank, 14 Ala. 533; Snedicor v. Davis, 17 Ala. 472.

934 (768) (671) (767) (650). **Their duties.**—It is the duty of clerks of the circuit court—

1. To sign and issue all summons, subpœnas, writs, executions and other processes, under the authority of the court.

2. To keep an appearance-docket of civil cases, in which must be entered all the civil actions brought to each term, the names of the parties, the character of action, the names of the attorneys by whom the same are brought, and the sheriff's return.

3. To keep a trial-docket of civil cases, in which must be entered all the civil cases standing for trial at each term, in the order in which they are brought, the names of the attorneys employed, the character of the action, and the orders which have been made in each cause at any previous term.

4. To keep a trial-docket of criminal cases, in which must be entered all the criminal cases in their order, the character of the offense, the return of the sheriff, the orders which have been made in each case at any previous term, and the names of the attorneys for the defense.

5. To keep a motion-docket for entering all motions intended to be submitted to the court.

6. To keep separate subpœna-dockets for civil and criminal cases, in which must be entered the cases in which any subpœnas are issued, the names of the witnesses, the time of the issue, and the return of the sheriff.

7. To keep an execution-docket, in which must be entered all executions issued, specifying the names of the parties, the amount of the judgment, and the day and year of its rendition, the amount of

costs, the character of the execution, the date of its issue, the person to whom delivered, and the date of such delivery, the day when returned, the return in full on the same page on which the execution is entered, and the number of the execution.

8. To keep a book, in which must be entered the minutes of each day's proceedings during the term of the court, and the orders and judgments, in the order in which they are made or rendered.

9. To record in well-bound books, within six months after the final determination of any suit or prosecution, all the proceedings relating thereto, not previously recorded under section 2644 (653) except the subpœnas, affidavits for continuance, commissions to take testimony, evidence and executions.

10. To enter on the fee-book, execution-docket and on the execution, the name of the attorney for the plaintiff in the judgment.

11. To keep and file the books and dockets and papers in relation to, and the records of all suits which have been determined in the county court, and deposited with them, as they are required to keep and file the books, dockets, papers and records of suits in the circuit court; and to issue all writs of execution, scire facias, writs of error, or other process, on the judgments of such court, returnable as if such suits had been determined in the circuit court.

12. To keep all the papers, books, dockets, and records belonging to their office, with care and security; the papers filed, arranged numbered and labeled, so as to be of easy reference; and the books, dockets and records properly lettered; and to allow parties to inspect the records free of charge.

13. To attend court during the session thereof, with all the papers belonging to the term, so filed as to be of easy reference; to keep in the court-house during such session, convenient of access, the execution-dockets for the two preceding terms; and to administer all oaths, and take all affidavits in relation to causes or proceedings pending therein.

14. To make out and deliver, on application and payment of the legal fees therefor, to any person applying for the same, a correct transcript, properly certified, of any paper or record in their offices.

15. To make out transcripts, as required by law, in all cases of appeal to the supreme court.

16. To render to the county treasurer, within ten days after each term of the court, a statement, in writing and under oath, of the fines assessed and forfeitures obtained during such term, the amount of each, and against whom each was assessed or obtained, and also what money they have received for the county, specifying from whom, on what account, and the amount in each case; and, after deducting from such amount five per cent. for their compensation, they must pay the balance to the county treasurer.

17. To keep reverse indexes of all record-books in their offices, which must always be in good and substantial, well-bound books; but they are not required to prepare any new indexes when those already in the office are sufficient.

18. To make weekly visits to the county jail as prescribed by section 1415 (900) of this Code, and on each weekly visit to inspect the record-books of the sheriff, descriptive of prisoners in jail and see that the entries are properly made, and verify each entry therein made, and report to the grand jury any failure of the sheriff to keep such record as is required of him by law. Feb. 28, 1889, p. 88, §3.

19. To perform such other duties as are, or may be required of him by law.

Subdivision 7.—Execution docket admissible to identify and unite a judgment and executions issued on it.—DeLoach v. Robbins, 102 Ala. 288.—**Subdivision 14.—When clerk's certificate to transcript sufficient.**—Clements v. Pearce, 63 Ala. 284; Cargile v. Bogan, 65 Ala. 287; Cofer v. Schening, 98 Ala. 338.

935 (769) (674) (741). **Records open to examination.**—The records of the clerk's office must be free for the examination of all persons, when not in use by him.

936 (770) (673) (740). **Recopy of books in his office.**—The clerk, deeming it necessary to recopy any books in his office, in order to secure their contents from damage or loss, must submit the same to the examination of the court of county commissioners, who, if they deem such recopy necessary, must, upon the minutes of the court, order the same to be made; and the clerk must make the same in good and substantial books; and such court must allow him a reasonable compensation therefor.

937 (771) (677) (774) (604). **When to collect sheriff's commissions.**—When any clerk receives payment of a judgment, he must collect the costs and commissions of the sheriff, if execution has issued on such judgment.

938 (772) (675) (769). **Duty of clerk when convict indicted; convict not released until bail is given.**—The clerk of any circuit court must, without delay, certify a copy of any indictment in his court against a convict sentenced to the penitentiary, or to hard labor for the county; in the former case to the governor and president of the board of inspectors, in the latter, to the hirer of the county convicts; and such convict, if pardoned for the offense for which he is sentenced, must not be discharged until he enters into a recognizance to answer such indictment at the next term of the court in which the same is pending, if the case is bailable, or is otherwise legally discharged from such indictment.

939 (773) (683). **Clerk's duty to pay over money to his successor.**—Any clerk of the circuit court, having in his hands, at the expiration of his term of office, any money held by him, subject to the further order, decree, or judgment of any court, shall, on demand, pay the same to his successor in office; and upon such payment, he shall be discharged from further liability therefor.

940 (774) (682) (780) (660). **Clerk's stationery to be paid for by the county.**—The court of county commissioners must allow to the clerk of the circuit court the amounts properly expended by him for books and stationery for the use of his office.

Stationery includes blanks for use in office, such as writs, subpœnas, witness-certificates, etc.—Commissioner's Court v. Goldthwaite, 35 Ala. 704.

941 (775) (678) (776) (656). **Committee to examine clerk's office.**—The judge of the circuit court must, in term time, as often as he thinks the public interests require, appoint in each county one or more persons, not exceeding three, to examine the office of the clerk of the circuit court of such county.

942 (776) (679, 681) (777, 779) (657, 659). **Oath and duty of such examiners.**—The persons so appointed must take and subscribe an oath, well and truly to examine the records, books and dockets of such court, and the condition of the office of the clerk generally; and must, in the vacation after such court, examine such office, books, records and dockets, and report the condition of the same to the next term of the court, in writing, specifying particularly any neglect of duty, or anything done wrongfully or corruptly in relation to such office; and for their services they shall receive such compensation as may be allowed them by the court of county commissioners.

943 (777) (680) (778) (658). **Their report to be recorded.**—The report of such examiners, when made, must be recorded in the office of the judge of probate, and shall be subject to the inspection of all persons, free of charge.

CHAPTER 20.

CITY COURTS. 944, 945.

944. Jurisdiction and powers co-extensive with circuit and chancery courts.—Unless otherwise provided by law, the city courts and the judges thereof have and exercise all the jurisdiction and powers of the circuit court and the judges thereof; and, when invested with equity jurisdiction, have and exercise all the jurisdiction and powers of the chancery court and chancellors.

945. Special judges of city and criminal courts may be appointed by the governor when necessary.—The provisions of this Code authorizing the appointment by the governor of special circuit judges, and defining their powers and duties, are applicable to city and criminal courts. The special judge of a city or criminal court shall receive as compensation for his services during the time he is engaged in holding such court, one-half of the salary of the regular judge, to be paid in the same manner and from the same source that the salary of the regular judge is paid, and deducted from his salary.

CHAPTER 21.

COLLATERAL SECURITIES; PLEDGES. 946-950.

946 (1783). **Receipt given for collaterals.**—All banking, insurance and other corporations, private bankers, brokers and other persons engaged in the business of making discounts, or lending money, or taking or receiving a collateral for a loan or discount, if demanded, must give to the borrower, or to his agent or attorney, a receipt or acknowledgment in writing, designating or describing the collateral taken or received, and stating the character of the debt, the time of its maturity, and amount, for the payment of which such collateral is intended as security. If negotiable bonds are taken or received as collateral, the receipt or acknowledgment must, if such bonds are numbered, state the series number thereof. No title to such collateral shall pass, if there be a willful neglect or refusal to give such acknowledgment or receipt.

947 (1784). **Pledges or collaterals not transferable.**—Collateral securities taken, or property pledged, to secure the payment of a debt, must not, without a transfer of the debt, be transferred or assigned otherwise than is hereinafter provided. A transfer of the debt passes to the transferee the right of the transferor in such collateral security or property pledged. A transfer or assignment of such security or property pledged, not accompanied by a transfer of the debt, is a discharge of the hypothecation or pledge, restoring the right and title of the person from whom it was received.

Original owner may affirm or disaffirm unauthorized transfer of security or property pledged—Pollak v. Janney, 100 Ala. 561.

948 (1785). **Sale of collaterals or pledges.**—On the maturity and non-payment of the debt for the security of which collateral security, or a pledge, is taken and received, the creditor or the transferee of the debt may, after having given to the debtor, or person from whom such security or pledge was received, if he reside within the county, two days' notice in writing of the intention to sell (which notice may be left at his residence or place of business, or sent through the mail, postage prepaid), make sale at public outcry of such security or pledge, and on such sale may transfer or assign the same; and such transfer or assignment shall vest in the transferee or assignee all the right and title of the person from whom such security or pledge was taken or received, and all the right and title of the creditor or his assignee or transferee. Such sale may be made by the personal representative of the creditor, or of the transferee of the debt. If the debtor or person from whom such security or pledge was received, do not reside within the county, notice of the intention to sell is not necessary.

949 (1786). **Notice and place of sale.**—Before making such sale, notice of the time and place thereof must be given for at least five

days, by advertisement in some public newspaper published in the county, or if there be not a newspaper published in the county, by posting notice at the court-house door and three other public places in the county; such notice must describe the securities or property, but, without the consent of the debtor, or person giving the security or pledge, need not state his name, nor mention nor describe the debt for which such security or pledge was taken. Such sale may be made at the court-house door, or at such other public place as may be selected at which sales at public outcry are usual.

950 (1787). **Surplus proceeds of sale.**—If on such sale, after paying the costs and expenses thereof, and the debt, there remains any balance of the proceeds of sale, the same must be paid to the debtor or person from whom such security was taken or received, or to his assignee or transferee. If on demand, after receiving the proceeds of sale, the creditor, or his transferee, or the personal representative of the creditor or transferee, fail or neglect to pay such balance, the same shall bear interest at the rate of five per cent. per month.

CHAPTER 22.

COMMISSIONERS' COURTS. 951-967.

951 (819) (739) (825) (697). **How constituted; a court of record.** There is in each county a court of record, styled the court of county commissioners, composed of the judge of probate, as principal judge, and four commissioners, who are elected at the times prescribed by law, and hold office for four years from the first day of September next after their election, and until their successors are elected and qualified.

Feb. 21, 1893, p. 1091.

An inferior court of limited jurisdiction; everything necessary to sustain jurisdiction must affirmatively appear on the face of the record.—Commissioners v. Thompson, 15 Ala. 134; s. c., 18 Ala. 694; Barnett v. State, 15 Ala. 829; Long v. Commissioners, 18 Ala. 482; Wightman v. Karsner, 20 Ala. 446; Lamar v. Commissioners, 21 Ala. 772; Molett v. Keenan, 22 Ala. 484; Commissioners v. Tarver, 25 Ala. 480; Keenan v. Commissioners, 26 Ala. 568; State v. Ely, 43 Ala. 568; State v. Falconer, 44 Ala. 696; Trammell v. Pennington, 45 Ala. 673; Commissioners v. Hearne, 59 Ala. 371; Henry v. Cohen, 66 Ala. 382; Joiner v. Winston, 68 Ala. 129. The court **can amend its record nunc pro tunc.**—Commissioners v. Hearne, 59 Ala. 371.

952 (820) (740) (826) (698). **Vacancy; how filled.**—In case of a vacancy, it is to be filled by the governor, and the person so appointed holds office for the remainder of the term of the commissioner in whose place he is appointed.

953 (821) (741) (827) (699). **Commissioners ineligible to certain offices.**—No county commissioner is eligible to or must discharge the duties, either as principal or deputy, of any office which is filled, or the vacancy in which is supplied by the court, or its members.

954 (822) (742) (828) (700). **Quorum of court.**—The court may be held by the judge of probate and two commissioners, or with

three commissioners without the judge of probate; and if as many as two commissioners fail to attend during the first two days of any term, the judge of probate may hold court.

955 (823) (743) (829) (701). **Regular terms, etc.**—Regular terms of the court are held on the second Mondays in February and August, and the first Mondays of April and November; but the time of holding such regular terms may be changed by such court to suit the public convenience, by an order, to be entered on the minutes, and due notice given thereof.

Not necessary to adjourn from day to day.—Lewis v. Intendant, 7 Ala. 85.

956 (824) (744) (830) (702). **Special terms; notice of.**—In cases where officers are to be appointed, or vacancies supplied, or any other special duty required by law to be performed, a special term must be held, by direction of the judge of probate, upon ten days' notice by advertisement in some newspaper in the county, or by posting up at the court-house door, and two other public places in the county, notice of the same.

No power to hold special terms except in cases expressly authorized by law. Wightman v. Karsner, 20 Ala. 446.

957 (825) (745) (831) (703). **Original jurisdiction of court.** The court possesses original jurisdiction in relation to the establishment, change, or discontinuance of roads, bridges, causeways and ferries, within the county, to be exercised in conformity with the provisions of this Code.

This jurisdiction is quasi legislative or governmental as well as judicial, and in its exercise the court cannot ordinarily be controlled except where private property is interfered with.—Hill v. Bridges, 6 Port. 197; Moore v. Hancock, 11 Ala. 245; Parnell v. Commissioners, 34 Ala. 278; Commissioners v. Moore, 53 Ala. 25; Commissioners v. Hearne, 59 Ala. 371; Askew v. Hale Co., 54 Ala. 639. **The court may be guided by considerations other than those presented by legal evidence,** as geographical situation, necessity, wishes and ability of the inhabitants of the neighborhood, etc.—Hill v. Bridges, 6 Port, 197; Parnell v. Commissioners, 34 Ala. 278; Commissioners v. Bowie, 34 Ala. 461; Askew v. Hale Co., 54 Ala. 639. **What is necessary to give jurisdiction** over the change or establishment of a road.—Commissioners v. Thompson, 15 Ala. 134; s. c., 18 Ala. 694; Barnett v. State, 15 Ala. 829; Molett v. Keenan, 22 Ala. 484; Commissioners v. Tarver, 25 Ala. 480; Keenan v. Commissioners, 26 Ala. 568; Commissioners v. Bowie, 34 Ala. 461; Commissioners v. Hearne, 59 Ala. 371. **Cannot transfer a ferry franchise from one to another;** has only power to establish a ferry or revoke a license. Lamar v. Commissioners, 21 Ala. 772.

958 (826) (746) (832) (704). **Authority of court.**—The court has authority—

1. To direct and control the property of the county, as it may deem expedient according to law.

2. To levy a general tax, for general, and a special tax, for particular county purposes, according to the provisions of this Code.

3. To examine, settle and allow all accounts and claims chargeable against the county.

4. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county, or appropriated for its use and benefit.

5. To make such rules and regulations for the support of the poor in the county, as are not inconsistent with any law of the state.

6. To punish for contempt by fine, not exceeding ten dollars, and imprisonment, not exceeding six hours.

7. To exercise such other powers as are or may be given by law.

Subdivision 1.—Court is not entrusted with all the authority and jurisdiction given to the county.—Commissioners v. Moore, 53 Ala. 25. **Subdivision 2.—No authority** to levy taxes on escaped railway property unless specially conferred by statute.—Perry Co. v. S. M. & M. R. Co., 58 Ala. 546. **Subdivision 3.—In the examination and allowance of claims** the action of the court is executive or administrative, not judicial.—Commissioners v. Moore, 53 Ala. 25; Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576; State v. Rogers, 107 Ala. 444. **As to auditing and allowance.**—See section 1416 (901). **As to presentation and suits against county.**—See section 13 (2574). **Subdivision 5.—Its powers in relation to the poor** are judicial and extensive.—Henry v. Cohen, 66 Ala. 382. **Subdivision 7.—No control over the fine and forfeiture fund.** State v. Stone, 69 Ala. 206.

959 (827) (747) (833) (705). **Proceedings to be recorded by judge.**—The judge of probate must record the proceedings of the court, make all necessary orders, and issue all process necessary to sustain its jurisdiction, or maintain its authority.

960 (828) (748) (834) (706). **Proceedings if judge absent.** When a court is held without the attendance of the judge of probate, a special clerk must be appointed for such term, who must be paid by the judge of probate.

961 (829) (749) (835) (707). **Proceedings if court divided.**—In all matters, where the court is divided, the same must be determined by the judge of probate.

962 (830) (750). **Publication of receipts and disbursements.** It shall be the duty of the court of county commissioners to make semi-annual publications, on the first days of January and July of each year, showing the receipts and expenditures of money for the county, specifying particularly the sources from which received, and the purposes for which expended.

963 (831) (752). **Books and material for county offices; where bought; when payment refused.**—Books, stationery and other material for the use of a county office, must be bought from a person residing and doing business in this state, if such purchase can be made at a price not exceeding that at which it can be made without the state; and if such purchase is not so made, there shall be no payment therefor out of the county treasury; and upon application for payment or allowance, any person has the right to show that such purchase was made in violation of this section.

964 (655) (561) (654). **Of record-books destroyed.**—If the books of record of any county, or a part thereof, be destroyed by an armed force, or by fire, or by the violence of nature, it is the duty of the court of county commissioners to purchase such blank books as may be necessary to supply them.

965 (832) (751). **Copy of field-notes.**—The court of county commissioners is authorized to contract with the secretary of state, at an amount not greater than six and a half cents per hundred words, for certified copies of the field-notes of the original government surveys of all the lands in the county, to be made in a book of proper size, to be furnished by the court; and such book shall be deposited

in the office of the judge of probate, free to inspection, and making of copies of said field-notes by all citizens of the state; and when the same is completed and delivered to the judge of probate, the court of county commissioners must draw a warrant on the county treasurer for the amount due the secretary of state, which shall be a preferred claim against such county.

966 (833) (753). **Laws applicable to courts of like jurisdiction.** All general laws, now in force in this state, or which may be hereafter enacted, in reference to the several courts of county commissioners, shall apply to all similar courts, by whatever name, with like jurisdiction, unless otherwise specially provided.

967 (834) (739) (825) (697). **Compensation of commissioners.** The commissioners are entitled to two dollars and fifty cents per day for each day of actual service rendered, five cents per mile for traveling to and from the sittings of the court, and such ferriage or toll as they may have paid in such traveling, to be paid by the county treasurer on the certificate of the judge of the court.

CHAPTER 23.

COMMISSIONERS OF DEEDS. 968.

968 (64) (63) (65) (52). **Appointment of commissioners in other states.**—The governor may appoint commissioners in the other states and territories of the United States, to take and certify depositions, to receive the acknowledgment and take the proof of conveyances of property within this state, and the proof of wills executed by persons without the state, devising or bequeathing property within this state. Commissioners appointed under this section shall hold office for three years.

Courts take judicial notice of appointment.—Keller v. Moore, 51 Ala. 340. Alabama form of acknowledgment must be followed.—Keller v. Moore, 51 Ala. 340; E. T. V. & G. R. Co. v. Davis, 91 Ala. 615.

CHAPTER 24.

CONGRESSIONAL DISTRICTS. 969, 970.

969 (29) (29) (34) (31). **State divided into congressional districts.**—The state is divided into nine congressional districts, as follows: The first district shall be composed of the counties of Choctaw, Clarke, Marengo, Mobile, Monroe and Washington. The second district shall be composed of the counties of Baldwin, Butler, Conecuh, Crenshaw, Covington, Escambia, Montgomery, Pike and

As amended Feb. 13, 1891, p. 627.

Wilcox. The third district shall be composed of the counties of Barbour, Bullock, Coffee, Dale, Geneva, Henry, Lee and Russell. The fourth district shall be composed of the counties of Calhoun, Chilton, Cleburne, Dallas, Shelby and Talladega. The fifth district shall be composed of the counties of Autauga, Chambers, Clay, Coosa, Elmore, Lowndes, Macon, Randolph and Tallapoosa. The sixth district shall be composed of the counties of Fayette, Greene, Lamar, Marion, Pickens, Sumter, Tuscaloosa and Walker. The seventh district shall be composed of the counties of Cherokee, Cullman, DeKalb, Etowah, Franklin, Marshall, St. Clair and Winston. The eighth district shall be composed of the counties of Colbert, Jackson, Lauderdale, Lawrence, Limestone, Madison and Morgan. The ninth district shall be composed of the counties of Bibb, Blount, Hale, Jefferson and Perry.

970 (30) (30) (36). **One representative for each district, and by whom chosen.**—Each district is entitled to one representative in the congress of the United States, who shall be chosen by the qualified electors of the district.

CHAPTER 25.

CONSTABLES. 971–980.

971 (843) (762) (846) (715). **Constables; election, term, etc.** There is one constable for each election precinct in each county in the state, elected as provided by this Code, who holds office for four years from the first day of September next after his election, and until his successor is elected and qualified.

Feb. 21, 1893, p. 1091.

972 (844) (763) (847) (716). **Vacancy, how filled.**—Vacancies in the office of constable are filled by appointment of the governor, and the person appointed holds office for the unexpired term, and until his successor is elected and qualified.

973 (845) (301) (316) (271). **Notice of vacancy.**—When a vacancy in any election precinct is occasioned by the death, or removal from such precinct, of the constable thereof, notice thereof must be given to the judge of probate by the justice of such precinct residing the nearest to such constable, specifying the cause of such vacancy and the name of such constable; and the judge of probate must thereupon notify the governor.

974 (846) (764) (848) (717). **Bond.**—Before entering on the duties of his office, he must give bond, with surety, in the sum of one thousand dollars, conditioned and payable as prescribed by law, which bond is to be approved by the judge of probate, and filed and recorded in his office.

Martin v. Hall, 72 Ala. 587.

975 (847) (765) (849) (718). **Conservator of the peace.**—Every constable is a conservator of the peace within his county.

976 (848) (766) (850) (719). **Duties.**—His duties are—

1. To attend the terms of the circuit court of the county when summoned by the sheriff for that purpose.

2. To execute and return all summons, executions and other process, to them directed by any lawful authority.

3. To pay over moneys collected by virtue of his office to the person entitled thereto.

4. To attend the regular term of the justices' courts in his precinct.

5. To perform such other duties as are, or may be required of him by law.

977 (849) (767) (851) (720). **Removal from precinct vacates office.**—He vacates his office by removal from the election precinct, and is liable to a penalty of forty dollars for acting as constable after such removal, to be recovered before any justice of the county in which he resides, by any person suing for the same; one half to the use of such person, and the other half to the use of the county.

978 (850) (768) (852). **Special constables; when appointed by justice.**—When the office of constable is vacant, or the constable is interested in a cause pending before a justice of the peace or notary public exercising the jurisdiction of a justice of the peace, or in case of emergency, the justice or notary must appoint a suitable person to act as constable, without bond; and the person so appointed must perform the same duties and is liable to the same pains and penalties as constables; but such special constable is not authorized to levy or collect executions.

Street v. McClerkin, 77 Ala. 580; Floyd v. State, 79 Ala. 39.

979. How executions and attachments served when office of constable vacant, etc.—When the office of constable is vacant, or the constable is interested in the cause, or in case of emergency, the execution or attachment must be executed by any constable of the county in whose hands the process may be placed, or may be executed by the sheriff as in other cases.

980 (851) (3653) (3256) (2810). **Liability of constable and sureties.**—The constable and sureties on his bond are responsible for moneys received by him, in virtue of his office, upon any summons, attachment, or execution issued by a justice, whether the same is received before or after judgment, or before or after the return day of the execution.

Return may be contradicted by parol evidence.—Craven v. Higginbotham, 83 Ala. 429; Thorn v. Kemp, 98 Ala. 417. **Voluntary bond admissible** and binding, unless execution denied by sworn plea, or consideration impeached. Bryan v. Kelly, 85 Ala. 569.

CHAPTER 26.

CONVEYANCES AND LOANS.

ARTICLE 1.—WHO MAY MAKE CONVEYANCES FOR THE ALIENATION OF LANDS; HOW MADE. 981–984.

2.—REGISTRATION, ACKNOWLEDGMENT AND PROBATE. 985–1004.

3.—PROTECTION TO CREDITORS AND PURCHASERS AGAINST DORMANT CONVEYANCES. 1005–1018.

4.—GENERAL PROVISIONS RELATING TO THE CONSTRUCTION OF CONVEYANCES. 1019–1063.

5.—MORTGAGES OF UNPLANTED CROPS. 1064.

6.—SATISFACTION OF MORTGAGES AND VENDORS' LIENS. 1065–1068.

7.—PERFECTING IMPERFECT TITLES. 1069–1072.

ARTICLE 1.

WHO MAY MAKE CONVEYANCES FOR THE ALIENATION OF LANDS; HOW MADE.

981 (1788) (2144) (1534) (1265). **Who may convey lands by deed or will.**—All persons of the age of twenty-one years, and not under a legal incapacity, may alien their lands, and any interest therein, whether immediate or future, certain or contingent, by instrument in writing, or by their last will, under the regulations prescribed by law.

Deed of non compos mentis void.—Kennedy v. Marrast, 46 Ala. 161. **Presumption of sanity**; burden of proof.—Pike v. Pike, 104 Ala. 642. **Rules for determining whether an instrument be a deed or a will.**—Gillham v. Mustin, 42 Ala. 365; Jordan v. Jordan, 65 Ala. 301; Rice v. Rice, 68 Ala. 216; Trawick v. Davis, 85 Ala. 342; Sharp v. Hall, 86 Ala. 110; Crocker v. Smith, 94 Ala. 295; Abney v. Moore, 106 Ala. 131.

982 (1789) (2145) (1535) (1266). **Conveyances of land to be in writing; how executed.**—Conveyances for the alienation of lands must be written or printed, or partly written and partly printed, on parchment or paper, and must be signed at their foot by the contracting party, or his agent having a written authority; or, if he is not able to sign his name, then his name must be written for him, with the words "his mark" written against the same, or over it; the execution of such conveyance must be attested by one witness, or, where the party cannot write, by two witnesses who are able to write, and who must write their names as witnesses.

Exclusive method of conveyance.—Hendon v. White, 52 Ala. 597; Carlisle v. Carlisle, 78 Ala. 542. **Partly written and partly printed**; rule of construction.—Thornton v. S. & B. R. Co., 84 Ala. 109; Slayton v. Blount, 93 Ala. 575. **Signed at the foot.**—Harrison v. Simons, 55 Ala. 510; Carlisle v. Carlisle, 78 Ala. 542; Winston v. Hodges, 102 Ala. 304. **Signature may be written by another** by direction and in the presence of grantor.—Lewis v. Watson, 98 Ala. 479. **Agent must sign name of principal** by himself as agent; must have written authority.—Jones v. Morris, 61 Ala. 518; Taylor v. A. & M. Asso., 68 Ala. 229; Standifer v. Swann, 78 Ala. 88. **Signing by mark.**—Weil v. Pope, 53 Ala. 585 (overruling O'Neal v. Robinson, 45 Ala. 526); Robinson v. O'Neal, 56 Ala. 541; Sikes v. Shows, 74 Ala. 382; Doe v. Richardson, 76 Ala. 329; Carlisle v. Campbell, 76 Ala. 247; Johnson v. Davis, 95 Ala. 293. **If part only of signers are named in the body of the instrument,** those omitted are not grantors;

but if none are named, all are grantors.—Bradford v. Dawson, 2 Ala. 203; Williams v. Jones, Ib. 314; Hendon v. White, 52 Ala. 597; Harrison v. Simons, 55 Ala. 510; Hammond v. Thompson, 56 Ala. 589; Madden v. Floyd, 69 Ala. 221; Blythe v. Dargin, 68 Ala. 370; Gaston v. Weir, 84 Ala. 193; Fite v. Kennamer, 90 Ala. 470; Sheldon v. Carter, 90 Ala. 380; Davidson v. Ala. Iron & Steel Co., 109 Ala. 383. **Attested or acknowledged.**—Hendon v. White, 52 Ala. 597; Weil v. Pope, 53 Ala. 585; Harrison v. Simons, 55 Ala. 510; Robinson v. O'Neal, 56 Ala. 541; Lord v. Folmar, 57 Ala. 615; Bank v. Jones, 59 Ala. 123; Wilson v. Glenn, 62 Ala. 28; Clements v. Pearce, 63 Ala. 284; Goodlett v. Hansell, 66 Ala. 151; Dugger v. Collins, 69 Ala. 324; Coker v. Ferguson, 70 Ala. 284; Sikes v. Shows, 74 Ala. 382; Doe v. Richardson, 76 Ala. 329; Webb v. Mullins, 78 Ala. 111; Carlisle v. Carlisle, 78 Ala. 542; Reynolds v. Caldwell, 80 Ala. 232; Welsh v. Coley, 82 Ala. 363; Caperton v. Hall, 83 Ala. 171. See also citations to sections 996 (1802) and 997 (1803). **Sheriff's deed must be attested or acknowledged.**—Lord v. Folmar, 57 Ala. 615; Stubbs v. Kohn, 64 Ala. 186; Eureka v. Brown, 103 Ala. 140. **A tax deed must be acknowledged.**—Jackson v. Kirksey, 110 Ala. 547. **Deed of resale must be attested or acknowledged.**—Scott v. Griggs, 49 Ala. 185. **Witness must write his own name as a witness,** and with the knowledge and consent of grantor.—Harrison v. Simons, 55 Ala. 510; Goodlet v. Hansell, 56 Ala. 346; Stewart v. Beard, 69 Ala. 470; Carlisle v. Carlisle, 78 Ala. 542; Sparks v. Woodstock, 87 Ala. 294. **Grantee incompetent as a witness.**—Coleman v. State, 79 Ala. 49. **Defective acknowledgment may operate as attestation of one witness.**—Merritt v. Phenix, 48 Ala. 87; Sharpe v. Orme, 61 Ala. 263; Rogers v. Adams, 66 Ala. 600; Carlisle v. Carlisle, 78 Ala. 542; Torrey v. Forbes, 94 Ala. 135; Jones v. Hagler, 95 Ala. 529; N. C. & St. L. R. Co. v. Hammond, 104 Ala. 191. **Destruction or cancellation of deed, after delivery,** or return to grantor, ineffectual to reinvest title.—Mallory v. Stodder, 6 Ala. 801; King v. Crocheron, 14 Ala. 822; Gimon v. Davis, 36 Ala. 589; Kimball v. Greig, 47 Ala. 230; Reavis v. Reavis, 50 Ala. 60; Carithers v. Lay, 51 Ala. 390; Smith v. Cockrell, 66 Ala. 64; Brady v. Huff, 75 Ala. 80; Stapp v. Wilkinson, 80 Ala. 47; Bailey v. Campbell, 82 Ala. 342; Hollingsworth v. Walker, 98 Ala. 543; Whisenant v. Gordon, 101 Ala. 250. **Assignment of conveyance must contain words of conveyance, and be attested or acknowledged to convey legal title.**—Graham v. Newman, 21 Ala. 497; Sanders v. Cassady, 86 Ala. 246. **Instrument not properly executed as a deed may be good as contract to convey, or color of title.**—Pollard v. Maddox, 28 Ala. 321; L. & N. R. Co. v. Boykin, 76 Ala. 560; Standifer v. Swann, 78 Ala. 88; Welsh v. Coley, 82 Ala. 363; Caperton v. Hall, 83 Ala. 171; Sparks v. Woodstock I. Co., 87 Ala. 294; McInerny v. Irvin, 90 Ala. 275; Florence v. Warren, 91 Ala. 533; Torrey v. Forbes, 94 Ala. 135; Hollis v. Harris, 96 Ala. 288; Eureka v. Brown, 103 Ala. 140. **Effect of interlineation.**—Sharpe v. Orme, 61 Ala. 263; Webb v. Mullins, 78 Ala. 111.

983 (2694) (2948) (2599) (2198). **Seal not necessary to enable grantee to sue.**—A seal is not necessary to convey the legal title to land to enable the grantee to sue at law. Any instrument in writing signed by the grantor, or his agent having a written authority, is effectual to transfer the legal title to the grantee, if such was the intention of the grantor, to be collected from the entire instrument.

Not retroactive.—Wisdom v. Reeves, 110 Ala. 418. **Remedial and liberally construed.**—Webb v. Mullen, 78 Ala. 111. **Does not dispense with other requisite formalities;** operation and effect of seal is retained.—Goodlett v. Hansell, 56 Ala. 346; Jones v. Morris, 61 Ala. 518; Webb v. Mullins, 78 Ala. 111. **Agent with written authority; ratification.**—Jones v. Morris, 61 Ala. 518; Taylor v. A. & M. Asso., 68 Ala. 229; Standifer v. Swann, 78 Ala. 88. **Intention controls.**—Brewton v. Watson, 67 Ala. 121; Webb v. Mullins, 78 Ala. 111; Tatum v. Tatum, 81 Ala. 388; Potts v. Coleman, 86 Ala. 94; Wisdom v. Reeves, 110 Ala. 418.

984 (1790) (2146) (1536) (1267). **Acknowledgment dispenses with necessity of witnesses.**—The acknowledgment, hereinafter provided for, operates as a compliance with the requisitions of the second preceding section upon the subject of witnesses.

Effect of acknowledgment after delivery.—Hendon v. White, 52 Ala. 597; Scott v. Griggs, 49 Ala. 185. (See also citations to sections 982 and 996.)

ARTICLE 2.

REGISTRATION, ACKNOWLEDGMENT AND PROBATE.

985 (1791) (2147) (1537) (1268). **Record of conveyances.**—Conveyances of property, required by law to be recorded, must be recorded in the office of the judge of probate.

986 (1792) (2148) (1538) (1269). **Books kept for recording, and mode of recording.**—Judges of probate are to procure, at the expense of their counties, large and well-bound books, in which must be recorded, in a fair hand, word for word, conveyances of property, with the acknowledgments, proofs, schedules, plats, surveys, etc., belonging thereto; and at the foot, or in the margin of the record of each conveyance, the day of the month and year of the delivery of the same for record must be specified. The judge making the record of any conveyance must certify on the same when it was received and recorded, and in what book and page the same is recorded, and must deliver it to the party entitled thereto, or his order, on the payment of the fees of registration; but the judge of probate may refuse to indorse "filed" on any conveyance, or to record the same, until such fees of registration are paid.

Conveyance not affected by mistake in copying or failure to index.—Mims v. Mims, 35 Ala. 23; Sanders v. Knox, 57 Ala. 80; Turner v. McFee, 61 Ala. 468; Seibold v. Rogers, 110 Ala. 438. **True time of filing** may be shown by parol.—Jordan v. Mead, 12 Ala. 247. **Recording an entirety** and fee provided is for the whole service.—Tillman v. Wood, 58 Ala. 578.

987 (1793) (2149) (1539) (1270). **Delivery operates as record.** The conveyance is operative as a record from the day of the delivery to the judge; and any one delivering a conveyance for registration may require a receipt for the same, describing it by date, parties thereto and property conveyed.

Delivery operates as record.—Heflin v. Slay, 78 Ala. 180; Fouche v. Swain, 80 Ala. 151; Leslie v. Hinson, 83 Ala. 266; Seibold v. Rogers, 110 Ala. 438. **Filing for record may operate as delivery to grantee, if such the intention.** Ellsberry v. Boykin, 65 Ala. 336; Alexander v. Alexander, 71 Ala. 295; Sheffield v. Neill, 87 Ala. 158; Lewis v. Watson, 98 Ala. 479; Elston v. Comer, 108 Ala. 76; Wells v. Am. Mortg. Co., 109 Ala. 430. **Effect of mistake in recording or failure to index.**—Mims v. Mims, 35 Ala. 23; Sanders v. Knox, 57 Ala. 80; Turner v. McFee, 61 Ala. 468.

988 (1794) (2150) (1540) (1271). **Access to record, and certified copies.**—Such judge must permit all persons to have free access to such books during office hours, and furnish transcripts therefrom, with certificates, when required, upon the payment of lawful fees.

989 (1795) (2151) (1541) (1272). **Penalty for neglect, and how enforced.**—If any judge of probate neglects or refuses to perform any of the duties required by this article, he is liable to a suit for damages to the party injured; and also to a penalty of two hundred dollars, which may be sued for by the county treasurer for the use of the county, or in his own name by the party aggrieved, for the joint use of himself and the county.

990 (1796) (2152) (1542) (1273). **Real property recorded where land lies.**—Conveyances of real property must be recorded in the county in which such property is situate.

991 (1797) (2153) (1543) (1274). **Record of conveyance operates as notice.**—The recording in the proper office of any conveyance of property which may be legally admitted to record, operates as a notice of the contents of such conveyance, without any acknowledgment or probate thereof.

Notice only of instruments the record of which is authorized by law.—McCain v. Wood, 4 Ala. 258; Stewart v. Kirkland, 19 Ala. 162; Fash v. Ravesies, 32 Ala. 451; Monroe v. Hamilton, 60 Ala. 226. **Instruments protected.**—Reed v. Smith, 14 Ala. 380; Twelves v. Nevill, 39 Ala. 175; Dudley v. Witter, 46 Ala. 664; Pierce, v. Jackson, 56 Ala. 599; Taylor v. A. & M. Asso., 68 Ala. 229; Mayer v. Taylor, 69 Ala. 403; Whittleshoffer v. Strauss, 83 Ala. 517; Heflin v. Slay, 78 Ala. 180; O'Neal v. Seixas, 85 Ala. 80; Hudmon v. DuBose, 85 Ala. 446; Mobile Savings Bank v. McDonnell, 87 Ala. 736. **Lease of standing timber.** Milliken v. Faulk, 111 Ala. 658. **Instruments not protected.**—McCain v. Wood, 4 Ala. 258; Stewart v. Kirkland, 19 Ala. 162; Fash v. Ravesies, 32 Ala. 451; Bailey v. Timberlake, 74 Ala. 221, declared dictum; O'Neal v. Seixas, 85 Ala. 80. **Notice of what rights and claims.**—Fenno v. Sayre, 3 Ala. 458; Minell v. Reed, 26 Ala. 730; Monroe v. Hamilton, 60 Ala. 226; Lehman v. Collins, 69 Ala. 127. **To whom record is notice.**—DuBose v. Young, 10 Ala. 365; Steele v. Adams, 21 Ala. 534; Jones v. Parks, 22 Ala. 446; Gimon v. Davis, 36 Ala. 589; declaring Center v. B. & M. Bank, 22 Ala., 743 dictum; Sanders v. Knox, 57 Ala. 80; Mobile Savings Bank v. McDonnell, 87 Ala. 736; Caldwell v. Pollak, 91 Ala. 353. **Registration notice although instrument not acknowledged or probated.**—Merritt v. Phenix, 48 Ala. 87; Bickley v. Keenan, 60 Ala. 293.

992 (1798) (2154) (1544) (1275). **When self-proving; certified copy evidence.**—Conveyances of property, whether absolute or on condition, which are acknowledged or proved according to law, and recorded within twelve months from their date, or prior to the fifteenth day of December, 1895, may be received in evidence in any court without further proof; and if it appears to the court that the original conveyance has been lost or destroyed, or that the party offering the transcript has not the custody or control thereof, the court must receive a transcript, duly certified, in the place of such original. Dec. 14, 1894, p. 167.

When self-proving.—Hart v. Ross, 57 Ala. 518; s. c., 64 Ala. 96; Parsons v. Woodward, 73 Ala. 348; Goree v. Wadsworth, 91 Ala. 416; Robinson v. Cahalan, 91 Ala. 479; Florence v. Warren, 91 Ala. 533. **When not.**—Keeler v. Moore, 51 Ala. 340; Sharpe v. Orme, 61 Ala. 263; Baucum v. George, 65 Ala. 259; Boykin v. Smith, 65 Ala. 294; Dugger v. Collins, 69 Ala. 324; Coker v. Ferguson, 70 Ala. 284; Roney v. Moss, 76 Ala. 491; England v. Hatch, 80 Ala. 247; Tranum v. Wilkinson, 81 Ala. 408; Campbell v. O'Neal, 81 Ala. 476; Florence v. Warren, 91 Ala. 533. **When original record, or certified copy, admissible in evidence.**—Huckabee v. Shepherd, 75 Ala. 342; Jones v. Hagler, 95 Ala. 529; Farrow v. N. C. & St. L. Ry., 109 Ala. 448. **Ancient deeds.**—White v. Hutchings, 40 Ala. 253; Beard v. Ryan, 78 Ala. 37; England v. Hatch, 80 Ala. 247; Allison v. Little, 85 Ala. 512; Wisdom v. Reeves, 110 Ala. 418. **Applies to mortgage of personal property.**—Patterson v. Jones, 89 Ala. 388. **And to corporations.**—Jinwright v. Nelson, 105 Ala. 399. **Unrecorded or defectively executed deed;** when admissible to prove boundaries.—McInerny v. Irvin, 90 Ala. 275; Alexander v. Savage, Ib. 383; Ala. State Land Co. v. Kyle, 99 Ala. 474; Gist v. Beaumont, 104 Ala. 347; Postal Tel. Co. v. Brantley, 107 Ala. 683; Higdon v. Kennamer, 112 Ala. 351. **Execution and contents of lost deed; how proved.**—Shorter v. Sheppard, 33 Ala. 648, Potts v. Coleman, 86 Ala. 94; Elyton Land Co. v. Denny, 108 Ala. 553.

993 (1799) (2155) (1545) (1276). **Officers authorized to take acknowledgments, etc., in this state.**—Acknowledgments and proofs of conveyances may be taken by the following officers within this state: Judges of the supreme and circuit courts and the clerks of such courts, chancellors, registers in chancery, judges of the courts of probate, justices of the peace and notaries public.

Officer acts judicially.—Griffith v. Ventress, 91 Ala. 366; American F. L.

Mtg. Co. v. James, 105 Ala. 347; Cheney v. Nathan, 110 Ala. 254. **Certificate to unsigned deed void; grantor must appear before officer.**—Cheney v. Nathan, 110 Ala. 254. **Seal of notary not necessary within the state.**—Harrison v. Simons, 55 Ala. 510. **Certificate prima facie proof of character of officer.**—Holleman v. DeNyse, 51 Ala. 95. **Officer cannot change or amend certificate after delivery.**—Carlisle v. Carlisle, 78 Ala. 542; Cox v. Holcomb, 87 Ala. 589 declared dictum; Griffith v. Ventress, 91 Ala. 366; Hodges v. Winston, 95 Ala. 514. **Officer must act in his county.**—Edinburgh etc. Co. v. Peoples, 102 Ala. 241; American Mtg. Co. v. King, 105 Ala. 358; N. E. Mtg. Sec. Co. v. Payne, 107 Ala. 578. **Clerk of probate court must act in name of judge.** Halso v. Seawright, 65 Ala. 431; Shelton v. Aultman, 82 Ala. 315; Pioneer etc. Co. v. Barclay, 108 Ala. 155. **Applies to corporations.**—Jinwright v. Nelson, 105 Ala. 399; Mickle v. Montgomery, 111 Ala. 415.

994 (1800) (2156) (1546) (1277). **Before whom taken in other states or foreign countries.**—Acknowledgments and proofs of conveyances may be taken within the United States, and beyond the State of Alabama, by judges and clerks of any federal court, judges of any court of record in any state, notaries public, or commissioners appointed by the governor of this state; beyond the limits of the United States, such acknowledgments and proofs may be taken by the judge of any court of record, mayor, or chief magistrate of any city, town, borough, or county, notaries public, or by any diplomatic, consular, or commercial agent of the United States.

Alabama form must be followed.—Keller v. Moore, 51 Ala. 340; Evans v. Richardson, 76 Ala. 329; Campbell v. O'Neal, 81 Ala. 476; E. T. V. & G. R. Co. v. Davis, 91 Ala. 615. **Commissioner of deeds.**—Keller v. Moore, 51 Ala. 340; E. T. V. & G. R. Co. v. Davis, 91 Ala. 615. **Clerk of a state court beyond the state has no authority.**—Evans v. Richardson, 76 Ala. 329; Campbell v. O'Neal, 81 Ala. 476. **Justice of the peace ex officio notary, authorized.**—Goree v. Wadsworth, 91 Ala. 416. **Seal of notary self proving.**—Carhart v. Clark, 31 Ala. 396; Hart v. Ross, 57 Ala. 518; Goree v. Wadsworth, 91 Ala. 416. **Applies to corporations.**—Jinwright v. Nelson, 105 Ala. 399; Mickle v. Montgomery, 111 Ala. 415.

995 (1801) (2157) (1547) (1278). **Power of attorney; how proved or acknowledged.**—Powers of attorney, or other instruments conferring authority to convey property, or to enter satisfaction of mortgages or other liens, may be proved or acknowledged, and recorded, in the same manner, and must be received as evidence to the same extent, as conveyances.

Goree v. Wadsworth, 91 Ala. 416; Jinwright v. Nelson, 105 Ala. 399.

996 (1802) (2158) (1548) (1279). **Form of acknowledgment of conveyance.**—The following is the form of acknowledgment to be used in this state, on conveyances of every description admitted to record:

"The State of———, } I (name and style of the officer), hereby
——— county. } certify that —— ——, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date. Given under my hand, this —— day of ———, A. D. ———

A. B., Judge," etc. (or as the case may be.)

When sufficient.—Carter v. Doe, 21 Ala. 72; Sharpe v. Orme, 61 Ala. 263; Coker v. Ferguson, 70 Ala. 284; Abney v. DeLoach, 84 Ala. 393; Goree v. Wadsworth, 91 Ala. 416; Orr v. Blackwell, 93 Ala. 212. **When insufficient.**—Merritt v. Phenix, 48 Ala. 87; Keller v. Moore, 51 Ala. 340; Boykin v. Smith, 65 Ala. 294; Rogers v. Adams, 66 Ala. 600; Coker v. Ferguson, 70 Ala. 284; Roney v. Moss,

76 Ala. 491; Carlisle v. Carlise, 78 Ala. 542; Campbell v. O'Neal, 81 Ala. 476; E. T., V. & G. R. Co. v. Davis, 91 Ala. 615; Jones v. Hagler, 95 Ala. 529; Davidson v. Ala. Iron & Steel Co., 109 Ala. 383; Jackson v. Kirksley, 110 Ala. 547. **Insufficient acknowledgment may operate as the attestation of one witness.**—See citations to section 982 (1789). **Literal compliance not required.** Sharpe v. Orme, 61 Ala. 263; Gates v. Hester, 81 Ala. 357. **Effect when attacked; conclusiveness.**—Holleman v. DeNyse, 51 Ala. 95; Miller v. Marx, 55 Ala. 322; Barnett v. Proskauer, 62 Ala. 486; Rogers v. Adams, 66 Ala. 600; Smith v. McGuire, 67 Ala. 34; Moog v. Strang, 69 Ala. 98; Van Cleave v. Wilson, 73 Ala. 387; Scott v. Simons, 70 Ala. 352; Downing v. Blair, 75 Ala. 216; Shelton v. Aultman, 82 Ala. 315; American F. L. Mtg. Co. v. James, 105 Ala. 347, modifying Giddens v. Bolling, 99 Ala. 319, and Grider v. American F. L. Mtg. Co., 99 Ala. 281; Jinwright v. Nelson, 105 Ala. 399; Cheney v. Nathan, 110 Ala. 254.

997 (1803) (2159) (1549) (1280). **Form of probate of conveyance.**—The form of a probate of a conveyance is as follows:

"The State of ———, } I (name and style of the officer), hereby
——— county. } certify that —— ——, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that —— ——, the grantor, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor, and of the other witness, and that such other witness subscribed his name as a witness in his presence. Given under my hand, this —— day of ———, A. D.——

A B., Judge," etc. (or as the case may be.)

Hines v. Chancey, 47 Ala. 637; Harrison v. Simons, 55 Ala. 510; Hart v. Ross, 57 Ala. 518; Campbell v. O'Neal, 81 Ala. 476.

998 (1804) (2160) (1550) (1281). **Conveyance to be proved or acknowledged in order to obtain benefit of registration.**—All conveyances admitted to record on proof must be attested by two witnesses, and the proof or acknowledgment must comply substantially with the foregoing forms, or the conveyances lose the privileges conferred by section 992 (1798).

See citations to two preceding sections.

999 (1806) (2162) (1553) (1283). **Mortgages, etc., of personal property; where recorded.**—Conveyances of personal property to secure debts, or to provide indemnity, must be recorded in the county in which the grantor resides, and also in the county where the property is at the date of the conveyance; and if before the lien is satisfied the property is removed to another county, the conveyance must be again recorded within three months from such removal, in the county to which it is removed.

Property removed to another county.—Wilkinson v. King, 81 Ala. 156; Polak v. Davidson, 87 Ala. 551; Malone v. Bedsole, 93 Ala. 41. **Effect of recording.**—Benedict v. Renfroe, 75 Ala. 121; Howell v. Carden, 99 Ala. 100; Cooper v. Berney Nat. Bank, 99 Ala. 119; Siebold v. Rogers, 110 Ala. 438.

1000 (1807) (2163) (1554) (1284). **Incumbrances on personal property brought to the state; where recorded.**—Whenever any personal property is subject to any lien, incumbrance, mortgage, or trust for the security of debts, at the time of its removal to this state, the writing evidencing the lien, incumbrance, mortgage, or trust must be recorded in the county into which it is brought, and remains, within three months of the arrival of such property.

Johnson v. Hughes, 89 Ala. 588.

1001 (1808) (2164) (1555) (1285). **Record of conveyance of personal property brought into state by tenant for life, etc.**—Whenever any person, having an estate for life or years in personal property, removes to this state with such property, the conveyance creating such estate must be recorded in the county to which it was brought, within twelve months thereafter; and if such property is removed to another county, then in such county within four months after its removal thereto; or such property must be taken to vest absolutely in such person, as to purchasers and creditors without notice.

Twelves v. Nevill, 39 Ala. 175.

1002 (1809) (2165) (1556) (1286). **Choses in action not personal property.**—Things in action are not included in the words "personal property" in this article.

1003 (1878) (2231) (1623) (1353). **Patents may be recorded and copies evidence.**—Patents from this state or the United States to lands in this state may be recorded in the office of the judge of probate of the county in which the lands lie; and a certified copy of such record is evidence in any court of this state.

Feb. 18, 1895, p. 814.

1004. Deeds of assignment for the benefit of creditors must be recorded.—All deeds of assignment executed by debtors for the benefit of creditors shall, as soon as executed, be filed and recorded in the office of the judge of probate of the county in which the property is situated, and such deeds are operative in all respects as other deeds from the day of the delivery to the judge.

ARTICLE 3.

PROTECTION TO CREDITORS AND PURCHASERS AGAINST DORMANT CONVEYANCES AND LOANS.

1005 (1810) (2166) (1557) (1287). **Conveyances of realty securing debts contemporaneously executed; when recorded; effect of failure.**—Conveyances of unconditional estates and mortgages, or instruments in the nature of a mortgage, of real property, to secure any debt created at the date thereof, are void as to purchasers for a valuable consideration, mortgagees and judgment creditors, having no notice thereof, unless recorded within thirty days from their date.

Who within protection of statute.—Ohio Ins. Co. v. Ledyard, 8 Ala. 866; Daniel v. Sorrells, 9 Ala. 436; Center v. P. & M. Bank, 22 Ala. 743; DeVendell v. Doe, 27 Ala. 156; Fash v. Ravesies, 32 Ala. 451; Gimon v. Davis, 36 Ala. 589; Pepper v. George, 51 Ala. 190; Saffold v. Wade, 51 Ala. 214; Gafford v. Stearns, 51 Ala. 434; Betz v. Mullin, 62 Ala. 365; Wood v. Lake, 62 Ala. 489; Lehman v. Shook, 69 Ala. 486; Watt v. Parsons, 73 Ala. 202; Tutwiler v. Montgomery, 73 Ala. 263; Chadwick v. Carson, 78 Ala. 116; O'Neal v. Seixas, 85 Ala. 80; declaring Bailey v. Timberlake, 74 Ala. 221, dictum; King v. Paulk, 85 Ala. 186; Fitzgerald v. Williamson, Ib. 585; Paulk v. King, 86 Ala. 332; Troy v. Walter, 87 Ala. 233; Mobile Savings Bank v. McDonnell, 87 Ala. 736; Robertson v. Durden, 89 Ala. 500; Caldwell v. Pollak, 91 Ala. 353; McGhee v. Imp. & T. Nat. Bank, 93 Ala. 192; Motley v. Jones, 98 Ala. 443; Steiner v. Clisby, 95 Ala. 91; Buford v. Shannon, 95 Ala. 205; Winston v. Hodges, 102 Ala. 304; Miller v. Griffin, 102 Ala. 610; Milliken v. Faulk, 111 Ala. 658. **Possession constructive notice.**—Smith v. Zurcher, 9 Ala. 208; McCaskle v. Amarine, 12 Ala. 17; Ste

v. Adams, 21 Ala. 534; Wood v. Lake, 62 Ala. 489; Hendricks v. Kelly, 64 Ala. 388; Sawyers v. Baker, 66 Ala. 292; Brunson v. Brooks, 68 Ala. 248; Pique v. Arendale, 71 Ala. 91; Bernstein v. Humes, 71 Ala. 260; McCarthy v. Nicrosi, 72 Ala. 332; Watt v. Parsons, 73 Ala. 202; Tutwiler v. Montgomery, 73 Ala. 263; King v. Paulk, 85 Ala. 186; Paulk v. King, 86 Ala. 332; Troy v. Walter, 87 Ala. 233; Robertson v. Durden, 89 Ala. 500; Caldwell v. Pollak, 91 Ala. 353. **Must be a change of possession.**—King v. Paulk, 85 Ala. 186; Fitzgerald v. Williamson, 85 Ala. 585; Paulk v. King, 86 Ala. 332; Troy v. Walter, 87 Ala. 233; Caldwell v. Pollak, 91 Ala. 353; Motley v. Jones, 98 Ala. 443; Griffin v. Hall, 111 Ala. 601; s. c. Ala. (22 So. 156). **And the possession must be "open, visible, exclusive, and unambiguous,** not liable to be misconstrued or misunderstood."—Wells v. American Mort. Co., 109 Ala. 430. See also citations to section 991.

1006 (1811) (2167) (1558) (1288). **Conveyances of realty securing pre-existing debts; when recorded; effect of failure.**—All other conveyances of real property, mortgages, or deeds of trust, to secure any debts, other than those specified in the preceding section, are inoperative and void, as to purchasers for a valuable consideration, mortgagees, and judgment creditors, without notice, unless the same have been recorded before the accrual of the right of such purchasers, mortgagees, or judgment creditors.

See citations to preceding section.

1007 (1812) (2168) (1559) (1289). **Defeasance of absolute conveyance also to be recorded.**—The two preceding sections include absolute conveyances of real property defeasible by a defeasance or other instrument, in which case such defeasance or instrument must be recorded, according to its character, within the time limited in the two preceding sections, or it is void as to purchasers for a valuable consideration, mortgagees and judgment creditors of the original grantee without notice.

1008 (1813) (2169) (1560) (1290). **Remainders, after estate for life in realty; when and as to whom void.**—All wills and conveyances, creating estates in lands in remainder or reversion, or upon a condition, after an estate for life or lives, are inoperative and void, as against the creditors of the tenant for life or lives in possession, after a possession of five years by such tenant, unless the will or conveyance be recorded within five years from the entry and possession of such tenant.

1009 (1814) (2170) (1561) (1291). **Conveyances of personalty securing debts, etc.; when recorded; effect of failure.**—Conveyances of personal property to secure debts, or to provide indemnity, are inoperative against creditors and purchasers without notice, until recorded, unless the property is brought into this state subject to such incumbrances, in which case three months are allowed for the registration of the conveyance; and if such property is removed to a different county from that in which the grantor resides, the conveyance must be recorded in such county within three months from the removal, or it ceases to have effect after such three months against creditors or purchasers of the grantor without notice.

What conveyance within.—Michan v. Wyatt, 21 Ala. 813; Hardaway v. Semmes, 38 Ala. 657; Rowland v. Plummer, 50 Ala. 182; Pierce v. Jackson, 56 Ala. 599; Dudley v. Abner, 52 Ala. 572; Sumner v. Woods, 52 Ala. 94; s. c., 67 Ala. 139; Fairbanks v. Eureka Co., 67 Ala. 109; Benedict v. Renfroe, 75 Ala. 121; Cooper v. Berney Nat. Bank, 99 Ala. 119; Howell v. Carden, 99 Ala. 100.

Who protected.—DuBose v. Young, 10 Ala. 365; Jones v. Parks, 22 Ala. 446; Centre v. P. & M. Bank, 22 Ala. 743; Holman v. Lock, 51 Ala. 287. **Brought into this state.**—Johnson v. Hughes, 89 Ala. 588. **Removed to a different county.** Wilkinson v. King, 81 Ala. 156; Pollak v. Davidson, 87 Ala. 551; Malone v. Bedsole, 93 Ala. 41.

1010 (1815) (2171) (1562) (1292). **Defeasance of absolute conveyances also to be recorded.**—The preceding section includes absolute conveyances of personal property, defeasible by a defeasance or other instrument; and in such case the defeasance must be recorded according to the provisions of such section, or the same is void as to creditors and purchasers from the grantee without notice.

1011 (1816) (2172) (1563) (1293). **Marriage settlements; when recorded; effect of failure.**—Personal property conveyed in consideration of marriage, when the possession remains with the husband, or the husband and wife, must be taken as the property of the husband, in favor of purchasers without notice, and creditors, unless such conveyance is recorded in the county of the husband's residence, within twelve months after such possession commenced in this state; and if the husband removes to another county, within four months after such removal.

1012 (1817) (2173) (1564) (1294). **Loans in writing, remainders, etc., in personalty void, unless recorded within three years.**—All loans in writing, wills, or conveyances creating estates in personal property, on condition, in reversion, or remainder, or in which the use is separated from the right, other than the conveyances hereinbefore in this article specified, and under which possession is suffered to remain for three years with the party entitled to the estate or use, vest an absolute estate in the person so having possession for such number of years, as to creditors and purchasers of such person, unless such loan, will, or conveyance is recorded within such time in the county where such property is.

Myers v. Peek, 2 Ala. 648; Gressett v. Agee, 14 Ala. 354; Butler v. Jones, 80 Ala. 436; Weinstein v. Freyer, 93 Ala. 257.

1013 (1818) (2174) (1565) (1295). **Loans of personalty for three years; effect of, unless suit brought.**—All loans of personal property, not in writing, vest an absolute estate in the person in possession under such loan, as to purchasers and creditors of such person, after three years from the commencement of such loan, unless within that time the lender commence an action at law, in good faith, for the recovery of the property.

Myers v. Peek, 2 Ala. 648; Gressett v. Agee, 14 Ala. 354; Brainard v. McDevitt, 21 Ala. 119; Montgomery v. Kirksey, 26 Ala. 172; Carew v. Love, 30 Ala. 577; Durden v. McWilliams, 31 Ala. 206; s. c., 36 Ala. 345; Butler v. Jones, 80 Ala. 436; Carr v. Lester, 90 Ala. 349.

1014 (1819) (2175) (1566) (1296). **Conveyances of personalty to minors; effect of failure to record for three years.**—All conveyances of personal property in favor of minor children, except by will, where the custody, control and visible possession thereof is suffered to remain by the donor with the father or mother of such children, vest an absolute estate in such father or mother so in pos-

session, in favor of the purchasers from, and creditors of, such father or mother, without notice, unless the conveyance is recorded within three years after such possession commenced in this state, in the county of the residence of such father or mother.

1015 (1820) (2176) (1567) (1297). **Parol gifts of personal property; when void.**—Parol gifts of personal property are inoperative, until the custody, control, management and use of the property passes from the donor to the donee, and is possessed by such donee, or his agent; when the donee is a minor living with his parents, or either of them, the possession of the father, or parent with whom he is living, must be considered the possession of the child.

Smith v. Wiggins, 3 S. 221; Sims v. Sims, 8 P. 449; McCutchen v. McCutchen, 9 P. 650; Sewall v. Glidden, 1 Ala. 52; Durett v. Sewall, 2 Ala. 669; Walton v. Tims, 7 Ala. 470; Pope v. Randolph, 13 Ala. 214; Phillips v. McGrew, 13 Ala. 255; Easly v. Dye, 14 Ala. 158; Hunley v. Hunley, 15 Ala. 91; Jones v. Deyer, 16 Ala. 221; Bryant v. Ingraham, 16 Ala. 116; Thomas v. DeGraffenreid, 17 Ala. 602; Stallings v. Finch, 25 Ala. 518; Ivey v. Owen, 28 Ala. 641; Ragsdale v. Norwood, 38 Ala. 21; Gillespie v. Burleson, 28 Ala. 551; Bates v. Vary, 40 Ala. 421; Goree v. Walthall, 44 Ala. 161; Haygood v. Marlowe, 51 Ala. 478; Dacus v. Streety, 59 Ala. 183; Huddleston v. Huey, 73 Ala. 215; Walker v. Crews, 73 Ala. 412; Brantley v. Cameron, 78 Ala. 72; Boyett v. Potter, 80 Ala. 476; McHugh v. O'Connor, 91 Ala. 243; Wheeler v. Glasgow, 97 Ala. 700; Foreman v. Weil, 98 Ala. 495; Jones v. Weakley, 99 Ala. 441.

1016 (1821). **Contracts for conditional sale of railroad rolling-stock.**—Contracts for the conditional sale of railroad equipment or rolling-stock, by the terms of which the vendor retains the title until payment of the purchase-money, and the purchaser obtains possession, are void against the judgment creditors of the purchaser without notice, or purchasers from him for a valuable consideration without notice, unless such contracts are in writing, and, within three months after the making thereof, recorded in the office of the judge of probate of the county in which such corporation may have its principal office or place of business; and if it has not in this state a principal office or place of business, then in the office of the secretary of state; and, in addition, all cars or engines so sold must have thereon, plainly marked, the name of the vendor.

1017. Conditional sales, leases, etc., to be recorded.—All other contracts for the conditional sale of personal property, by the terms of which the vendor retains the title until payment of the purchase-money and the purchaser obtains possession of the property, and all contracts for the lease, rent or hire of personal property, by the terms of which the property is delivered to another on condition that it shall belong to him whenever the amount paid shall be a certain sum, or the value of the property, the title to remain in the other party until such sum or value shall have been paid, are, as to such condition, void against purchasers for a valuable consideration, mortgagees and judgment creditors without notice thereof, unless such contracts are in writing and, within thirty days after the date thereof, recorded in the office of the judge of probate of the county in which the party so obtaining possession of the property resides, and also in the county in which such property is delivered and remains; and if, before the payment of the purchase-money or the

sum or value stipulated, the property is removed to another county, the contract must be again recorded, within three months from the time of such removal, in the county to which it is removed; and if any such property is brought into this state while subject to such condition, the contract of sale, lease, hire or rent must, within three months thereafter, be recorded in the county into which the property is brought and remains.

1018 (1822). **Such contract, or a certified copy thereof, may be received in evidence.**—Such contract, when the execution thereof has been acknowledged or proved before an officer having authority to take and certify the acknowledgment of conveyances, and when such contract has been duly recorded, must be received in evidence without other proof of execution; and if the original of such contract is lost or destroyed, or the party offering in evidence a certified transcript has not the custody or control thereof, a certified transcript from the record thereof must be received in evidence without other proof of the execution of the original.

ARTICLE 4.

GENERAL PROVISIONS RELATING TO THE CONSTRUCTION OF CONVEYANCES.

1019 (1823) (2177) (1568) (1298). **Attornment of tenant dispensed with.**—Every conveyance of an estate in any hereditament, corporeal or incorporeal, is good and effectual without attornment of the tenant; but no tenant who has paid his rent without notice of such conveyance is liable therefor.

Otis v. McMillan, 70 Ala. 46; Comer v. Sheean, 74 Ala. 452; American F. L. Mtg. Co. v. Turner, 95 Ala. 272.

1020 (1824) (2178) (1569) (1299). **All conveyances of lands construed as fees unless expressly limited.**—Every estate in lands is to be taken as a fee simple, although the words necessary to create an estate of inheritance are not used, unless it clearly appears that a less estate was intended.

Whorton v. Moragne, 62 Ala. 201; Patton v. Beecher, 62 Ala. 579; Wolffe v. Loeb, 98 Ala. 426; Moore v. Lee, 105 Ala. 435.

1021 (1825) (2179) (1570) (1300). **Fee tail equivalent to fee simple.**—Every estate in real or personal property in fee tail, now or hereafter created, becomes an estate in fee simple, and the person in whom such a conditional fee vests has the same power over the estate as in case of pure and absolute fees.

Simmons v. Augustin, 3 P. 69; Darden v. Burnes, 6 Ala. 362; Fellows v. Tann, 9 Ala. 999; Williams v. Graves, 17 Ala. 62; Nimmo v. Stewart, 21 Ala. 682; Vanzant v. Morris, 25 Ala. 285; Powell v. Glenn, 21 Ala. 458; Martin v. McRee, 30 Ala. 116; Williams v. McConico, 36 Ala. 22; Robertson v. Johnston, 36 Ala. 197; Varner v. Young, 56 Ala. 260; Patton v. Beecher, 62 Ala. 579; May v. Ritchie, 65 Ala. 602; Smith v. Greer, 88 Ala. 414; Wikle v. McGraw, 91 Ala. 631; Slayton v. Blount, 93 Ala. 575; Sullivan v. McLaughlin, 99 Ala. 60.

1022 (1826) (2180) (1571) (1301). **A contingent remainder in lands is equivalent to an executory devise.**—No estate in lands can be created by way of contingent remainder; but every estate created

by any will or conveyance, which might have taken effect as a contingent remainder, has the same properties and effect as an executory devise.

Vesting and failure of contingent remainders.—Gindrat v. Western Ry., 96 Ala. 162. Remainders discussed.—Smaw v. Young, 109 Ala. 528.

1023 (1827) (2181) (1572) (1302). **Remainder limited after death without heirs or issue; how construed.**—Where a remainder in real or personal property is limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the word "heirs," or "issue," must be construed to mean heirs or issue living at the death of the person named as ancestor.

1024 (1828) (2182) (1573) (1303). **Birth of posthumous child.** Where a future estate is limited to "heirs," "issue," or "children," posthumous children are entitled to take the estate in the same manner as if born before the death of the parent. Any future estate depending upon the death of a person without heirs, issue, or children, is defeated by the birth of a posthumous child of such person capable of taking by descent.

When posthumous children excluded.—Moore v. Lee, 105 Ala. 435.

1025 (1829) (2183) (1574) (1304). **The rule in Shelley's case abolished.**—Where a remainder created by a deed or will is limited to the heirs, issue, or heirs of the body of a person to whom a life-estate in the same property is given, the persons who, on the termination of the life estate, are the heirs, issue, or heirs of the body of such tenant for life, are entitled to take as purchasers by virtue of the remainder so limited to them.

Machen v. Machen, 15 Ala. 373; Lenoir v. Rainey, 15 Ala. 667; Hamner v. Smith, 22 Ala. 433; Williamson v. Mason, 23 Ala. 488; McVay v. Ijams, 27 Ala. 238; Martin v. McRee, 30 Ala. 116; Mason v. Pate, 34 Ala. 379; Roberts v. Ogbourne, 37 Ala. 174; May v. Ritchie, 65 Ala. 602; Robinson v. LeGrand, 65 Ala. 111; McQueen v. Logan, 80 Ala. 304; Ohmer v. Boyer, 89 Ala. 273; Sullivan v. McLaughlin, 99 Ala. 60.

1026 (1830) (2184) (1575) (1305). **Tenant for life, etc., not to defeat a remainder dependent on his estate.**—No estate or interest of any person can be defeated, discontinued, or extinguished by the act of any third person having a possessory or ulterior interest, except in the cases especially provided by this Code.

Thrasher v. Ingram, 32 Ala. 645; Smith v. Cooper, 59 Ala. 494; Pope v. Pickett, 65 Ala. 487; s. c., 74 Ala. 122; Otis v. McMillan, 70 Ala. 46; Pendley v. Madison, 83 Ala. 484; Woodstock v. Fullenwider, 87 Ala. 584; Bass v. Bass, 88 Ala. 408; Gindrat v. Western Ry., 96 Ala. 162; McMichael v. Craig, 105 Ala. 382; McLeod v. Bishop, 110 Ala. 640.

1027 (1831) (2185) (1576) (1306). **Uses, trusts, etc., for mere benefit of third persons; how operative.**—No use, trust, or confidence can be declared of any land, or of any charge upon the same, for the mere benefit of third persons; and all assurances declaring any such use, trust, or confidence must be held and taken to vest the legal estate in the person or persons for whom the same is declared; and no estate or interest can vest thereby in any trustee.

Horton v. Sledge, 29 Ala. 478; You v. Flinn, 34 Ala. 409; Tindal v. Drake, 51 Ala. 574; Schaffer v. Lavretta, 57 Ala. 14; Patton v. Beecher, 62 Ala. 579; Bercy v. Lavretta, 63 Ala. 374; McBrayer v. Cariker, 64 Ala. 50; Jones v. Reese,

65 Ala. 134; Wilkinson v. May, 69 Ala. 33; Gasson v. Ladd, 77 Ala. 223; Webb v. Crawford, 77 Ala. 440; Loeb v. McCullough, 78 Ala. 533; Connell v. Cole, 89 Ala. 381; Gindrat v. Western Ry., 96 Ala. 162.

1028 (1832) (2186) (1577) (1307). **Certain trusts may be created vesting legal title in trustee.**—Nothing in the preceding section contained shall prevent the conveyance of real or personal property, or the issues, rents and profits thereof, to another in trust for the use of the grantor, or of a third person, or his family, or for any other lawful purpose; but in such case the legal title vests in the trustee.

See citations to preceding section.

1029 (1833) (2187) (1578) (1308). **If perpetuity not created, lands conveyed for such terms as parties choose.**—Lands may be conveyed, within the limits fixed by law, so as to avoid perpetuities, and subject to such other restrictions as are imposed by this Code, for such terms as the owner thinks proper; and courts are enjoined to give effect in such cases to the intention and meaning of the parties.

Holifield v. Robinson, 79 Ala. 419; s. c., 79 Ala. 423.

1030 (1834) (2188) (1579) (1309). **Time for which lands conveyed to certain persons; perpetuity forbidden.**—Lands may be conveyed to the wife and children, or children only, severally, successively and jointly; and to the heirs of the body of the survivor, if they come of age, and in default thereof, over; but conveyances to other than the wife and children, or children only, cannot extend beyond three lives in being at the date of the conveyance, and ten years thereafter.

Simmons v. Augustin, 3 P. 69.

1031 (1835) (2189) (1580) (1310). **Trusts for accumulation merely; limitation upon extent.**—No trust of estate for the purpose of accumulation only can have any force or effect for a longer term than ten years, unless when for the benefit of a minor in being at the date of conveyance, or if by will, at the death of the testator; in which case the trust may extend to the termination of such minority.

1032 (1836) (2190) (1581) (1311). **Lease limited to twenty years.** No leasehold estate can be created for a longer term than twenty years.

Void only as to excess.—Robertson v. Hayes, 83. Ala. 290.

1033 (1837) (2191) (1582) (1312). **No survivorship between joint tenants.**—When one joint tenant dies before the severance, his interest does not survive to the other joint tenants, but descends and vests as if his interest had been severed and ascertained.

Parsons v. Boyd, 20 Ala. 112; Gayle v. Johnston, 80 Ala. 395; Chandler v. Jost, 81 Ala. 411; Powers v. Robinson, 90 Ala. 225.

1034 (1838) (2192) (1583) (1313). **Warranties by tenant for life.** All warranties by any tenant for life are void as against those in remainder or reversion.

Pope v. Pickett, 65 Ala. 487; s. c., 74 Ala. 122.

1035 (1839) (2193) (1584) (1314). **When covenants of warranty implied.**—In all conveyances of estates in fee, the words, "grant,"

"bargain," "sell," or either of them, must be construed, unless it otherwise clearly appears from the conveyance, an express covenant to the grantee, his heirs and assigns, that the grantor was seized of an indefeasible estate in fee simple, free from incumbrances done or suffered by the grantor, except the rents and services that are reserved; and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by the express words of such conveyance; and the grantee, his heirs, personal representatives and assigns may, in any action, assign breaches, as if such covenants were expressly inserted.

Extent of warranty.—Roebuck v. Duprey, 2 Ala. 535; Gee v. Pharr, 5 Ala. 586; Andrews v. McCoy, 8 Ala. 920; Stewart v. Anderson, 10 Ala. 504; Claunch v. Allen, 12 Ala. 159; Griffin v. Reynolds, 17 Ala. 198; Jones v. Reese, 65 Ala. 134; Derrick v. Brown, 66 Ala. 162; Wilkinson v. Searcy, 74 Ala. 243; Parker v. Parker, 93 Ala. 80; Kyle v. McKenzie, 94 Ala. 236; Heflin v. Phillips, 96 Ala. 561. **Operates to vest in grantee after acquired title.**—Tillotson v. Kennedy, 5 Ala. 407; Chapman v. Abrahams, 61 Ala. 108; Chambers v. Ringstaff, 69 Ala. 140; Parker v. Marks, 82 Ala. 548; Hargrove v. Melbourne, 86 Ala. 270; Swann v. Gaston, 87 Ala. 569; Prewitt v. Ashford, 90 Ala. 294; Olds v. Marshall, 93 Ala. 138. **But not if acquired by adverse possession.**—Abbott v. Page, 92 Ala. 571. **Measure of damages for breach of warranty.**—Bibb v. Freeman, 59 Ala. 612; Kingsbury v. Milner, 69 Ala. 502; Clark v. Zeigler, 79 Ala. 346; s. c., 85 Ala. 154; Mobile, etc., Ry. Co. v. Gilmer, 85 Ala. 422; Copeland v. McAdory, 100 Ala. 553; Sayre v. Sheffield, etc., Co., 106 Ala. 440.

1036 (1840) (2194) (1585) (1315). **Writings importing to be sealed, so considered.**—All writings which import on their face to be under seal are to be taken as sealed instruments, and have the same effect as if the seal of the parties was affixed thereto.

Carter v. Penn, 4 Ala. 140; Moore v. Leseur, 18 Ala. 606; Blackwell v. Hamilton, 47 Ala. 470.

1037 (1841) (2195) (1586) (1316). **Livery of seizin dispensed with.**—Livery of seizin is not necessary in any conveyance of lands, and the property and possession of the grantor pass as fully by his conveyance as if seizin had been formally delivered.

Horton v. Sledge, 29 Ala. 478; Patton v. Beecher, 62 Ala. 579; Pope v. Pickett, 65 Ala. 487.

1038 (1842) (2196) (1587) (1317). **Conveyance of greater estate by tenant for life, or years, passes his estate.**—A conveyance made by a tenant for life or years, purporting to convey a greater interest than he possesses, or can lawfully convey, does not work a forfeiture of his estate, but passes to the grantee all the estate which the tenant could lawfully convey.

Lyde v. Taylor, 17 Ala. 270; Jones v. Haskins, 18 Ala. 489; Price v. Price, 23 Ala. 609; Thrasher v. Ingram, 32 Ala. 645; Smith v. Cooper, 59 Ala. 494; Pope v. Pickett, 65 Ala. 487; s. c., 74 Ala. 122; Woodstock v. Fullenwider, 87 Ala. 584; Gindrat v. Western Ry., 96 Ala. 162; McMichael v. Craig, 105 Ala. 382.

1039 (1843) (2197) (1588) (1318). **Responsibility of payer for money paid to trustee.**—In all cases in which a payment has been or may be made to a trustee authorized to receive the same, the person making such payment is not responsible for its application according to the trusts, nor can any right or title derived from such trustee, in consideration of such payment, be impeached on account of any misapplication of the same, unless it be made to appear that

the person making such payment colluded with the trustee, or knew of his intention to waste or mismanage the funds.

1040 (1844) (2198) (1589) (1319). **Power to sell lands in mortgage follows assignment of debt.**—Where a power to sell lands is given to the grantee in any mortgage, or other conveyance intended to secure the payment of money, the power is part of the security, and may be executed by any person, or the personal representative of any person, who, by assignment or otherwise, becomes entitled to the money thus secured.

Graham v. Newman, 21 Ala. 497; Lewis v. Wells, 50 Ala. 198; McGuire v. Van Pelt, 55 Ala. 344; Buell v. Underwood, 65 Ala. 285; Sloan v. Frothingham, 65 Ala. 593; Wildsmith v. Tracy, 80 Ala. 258; Sanders v. Cassady, 86 Ala. 246; Martinez v. Lindsey, 91 Ala. 334; Johnson v. Beard, 93 Ala. 96; Hartley v. Matthews, 96 Ala. 224; Ward v. Ward, 108 Ala. 278.

1041 (1845) (2199) (1590) (1320). **Trusts in lands; how created; exception.**—No trust concerning lands, except such as results by implication or construction of law, or which may be transferred or extinguished by operation of law, can be created, unless by instrument in writing, signed by the party creating or declaring the same, or his agent or attorney lawfully authorized thereto in writing.

A part of the statute of frauds.—Patton v. Beecher, 62 Ala. 579. **Must be construed with sections 1042 (1846) and 1043 (1847).**—Preston v. McMillan, 58 Ala. 84. **Express trust must be in writing.**—Patton v. Beecher, 62 Ala. 579; Rose v. Gibson, 71 Ala. 35; Bibb v. Hunter, 79 Ala. 351; Edwards v. Rogers, 81 Ala. 568; White v. Farley, 81 Ala. 563; Shelby v. Tardy, 84 Ala. 327; Anthe v. Heide, 85 Ala. 236; Mosley v. Mosley, 86 Ala. 289; Manning v. Pippen, 86 Ala. 357; s. c., 95 Ala. 537; Houston v. Farris, 93 Ala. 587; Talleson v. Blackstack, 95 Ala. 510; Moore v. Campbell, 102 Ala. 445; Smith v. Hall, 103 Ala. 235. **What circumstances and evidence sufficient to raise resulting trust.** Foster v. Trustees, 3 Ala. 302; Caple v. McCollum, 27 Ala. 461; Danforth v. Herbert, 33 Ala. 497; Robison v. Robison, 44 Ala. 227; Glenn v. Glenn, 47 Ala. 204; Carithers v. Lay, 51 Ala. 390; Tilford v. Torrey, 53 Ala. 120; Rhea v. Tucker, 56 Ala. 450; Patton v. Beecher, 62 Ala. 579; Harden v. Darwin, 66 Ala. 55; Parks v. Parks, 66 Ala. 326; Lewis v. Building Asso., 70 Ala. 276; Bates v. Kelly, 80 Ala. 142; Carter v. Challen, 83 Ala. 135; Shelby v. Tardy, 84 Ala. 327; Anthe v. Heide, 85 Ala. 236; Stickney v. Adler, 91 Ala. 198; Olds v. Marshall, 93 Ala. 138; Hodges v. Verner, 100 Ala. 612; Beadle v. Seat, 102 Ala. 532; Kimbrough v. Nelms, 104 Ala. 554; Thompson v. Hartline, 105 Ala. 263; Schurer v. Agee, 106 Ala. 139; Waller v. Jones, 107 Ala. 331. **What insufficient.**—Fry v. Hamner, 50 Ala. 52; Riley v. Pierce, 50 Ala. 93; Lee v. Browder, 51 Ala. 288; Carleton v. Rivers, 54 Ala. 467; Chambers v. Richardson, 57 Ala. 85; Preston v. McMillan, 58 Ala. 84; Chapman v. Abrahams, 61 Ala. 108; Lehman v. Lewis, 62 Ala. 129; Patton v. Beecher, 62 Ala. 579; Coles v. Allen, 64 Ala. 98; McVey v. Parker, 64 Ala. 493; Morgan v. Morgan, 68 Ala. 80; Whaley v. Whaley, 71 Ala. 159; Rose v. Gibson, 71 Ala. 35; Mobile Life Ins. Co. v. Randall, 71 Ala. 220; Kelly v. Karsner, 72 Ala. 106; Stringfellow v. Ivie, 73 Ala. 209; McCall v. Rogers, 77 Ala. 349; Bibb v. Hunter, 79 Ala. 351; Reynolds v. Caldwell, 80 Ala. 232; Edwards v. Rogers, 81 Ala. 568; White v. Farley, 81 Ala. 563; Shelton v. Aultman, 82 Ala. 315; Shelby v. Tardy, 84 Ala. 327; Mosley v. Mosley, 86 Ala. 289; Winston v. Mitchell, 87 Ala. 395; Burke v. Andrews, 91 Ala. 360; Houston v. Farris, 93 Ala. 587; Piedmont Land Co. v. Piedmont Foundry Co., 96 Ala. 389; Lewis v. Mohr, 97 Ala. 366; Jordan v. Garner, 101 Ala. 411; Milner v. Stanford, 102 Ala. 277; Heinz v. White, 105 Ala. 670. **Constructive trusts.** Friestone v. Friestone, 49 Ala. 128; Patton v. Beecher, 62 Ala. 579; repudiating Barrell v. Hanrick, 42 Ala. 60; Wimbish v. Building Asso., 69 Ala. 575; Pearce v. Gamble, 72 Ala. 341; Williams v. Jones, 77 Ala. 294; Morris v. Hanson, 78 Ala. 230; Cameron v. Cameron, 82 Ala. 392; Penny v. Jackson, 85 Ala. 67; Winston v. Mitchell, 87 Ala. 395; Brock v. Brock, 90 Ala. 86; Houston v. Farris, 93 Ala. 587; St. Louis Brewing Asso. v. Austin, 100 Ala. 313. **Trusts excepted from the operation of the statute.** 1. Arising from parol contracts valid under the statute of frauds.—Heflin v. Milton, 69 Ala. 354; Spies v. Price, 91 Ala. 166; Manning v. Pippen, 95 Ala. 537. 2. **Arising ex maleficio**; fraud must have entered into the procurement of the conveyance; subsequent fraud

insufficient.—Kennedy v. Kennedy, 2 Ala. 571; Patton v. Beecher, 62 Ala. 579; repudiating Barrell v. Hanrick, 42 Ala. 60; Rose v. Gibson, 71 Ala. 35; Whaley v. Whaley, 71 Ala. 159; Kelly v. Karsner, 72 Ala. 106; White v. Farley, 81 Ala. 563; Manning v. Pippen, 86 Ala. 357; Brock v. Brock, 90 Ala. 86. 3. **Arising from parol agreement** that an absolute conveyance should be held as a mortgage; agreement to re-convey will be enforced.—McKinstry v. Conely, 12 Ala. 682; Parish v. Gates, 29 Ala. 254; Patton v. Beecher, 62 Ala. 579; Mitchell v. Williams, 80 Ala. 16; Edwards v. Rogers, 81 Ala. 568; Cosby v. Buchanan, 81 Ala. 574; Perdue v. Bell, 83 Ala. 396; Mosley v. Mosley, 86 Ala. 289; Peagler v. Stabler, 91 Ala. 308; Adams v. Pitcher, 92 Ala. 474; Jordan v. Garner, 101 Ala. 411; Milner v. Stanford, 102 Ala. 277. **Statute of limitations.**—James v. James, 55 Ala. 525; Hastie v. Aiken, 67 Ala. 313; Nettles v. Nettles, 67 Ala. 599; Pearce v. Gamble, 72 Ala. 341; Whetstone v. Whetstone, 75 Ala. 495; McCarthy v. McCarthy, 74 Ala. 546; Holt v. Wilson, 75 Ala. 58; Wilson v. Holt, 91 Ala. 204; Manning v. Pippen, 95 Ala. 537; Beadle v. Seat, 102 Ala. 532; Thompson v. Hartline, 105 Ala. 263.

1042 (1846) (2200) (1591) (1321). **Trusts void as to parties without notice.**—No such trusts, whether implied by law, or created or declared by the parties, can defeat the title of creditors, or purchasers for a valuable consideration, without notice.

Bona fide purchasers for value without notice.—Dudley v. Witter, 46 Ala. 664; Bartlett v. Varner, 56 Ala. 580; Preston v. McMillan, 58 Ala. 84; Patton v. Beecher, 62 Ala. 579; Rogers v. Adams, 66 Ala. 600; Creswell v. Jones, 68 Ala. 420; Walker v. Elledge, 65 Ala. 51; Wimbish v. Building Asso., 69 Ala. 575; Mobile Life Ins. Co. v. Randall, 71 Ala. 220; McCall v. Rogers, 77 Ala. 349; Bates v. Kelly, 80 Ala. 142; Anthe v. Heide, 85 Ala. 236; Stickney v. Adler, 91 Ala. 198; Ross v. Parks, 93 Ala. 153; Lewis v. Mohr, 97 Ala. 366. **Creditors must have a lien, to be protected.**—Robison v. Robison, 44 Ala. 227; Dickerson v. Carroll, 76 Ala. 377; Carter v. Challer, 83 Ala. 135; Berney v. Pinckard, 87 Ala. 577.

1043 (1847) (2201) (1592) (1322). **Record of declaration of trust notice to all persons.**—When a trust is created or declared by any such instrument in writing, the recording thereof in the county where the lands lie is equivalent to actual notice to every person claiming under a conveyance made, or lien created after such recording.

See citations to preceding section.

1044 (1848) (2202) (1593) (1323). **On death of trustee estate not to pass to his heirs, etc.**—Upon the death of a sole or surviving trustee of an express trust, the trust estate does not descend to his heirs, or pass to his personal representatives.

McDougald v. Carey, 38 Ala. 320; Allison v. Little, 85 Ala. 512.

1045 (1849) (2203) (1594) (1324). **Reservation of right of revocation; effect of.**—When the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor must be taken as the absolute owner of the estate conveyed, as to the rights of creditors and purchasers.

Alford v. Alford, 96 Ala. 385.

1046 (1850) (2204) (1595) (1325). **Power of disposition to owner of particular estate; effect of.**—When an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate is changed into a fee absolute, as to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power is not executed, or the lands sold for the satisfaction of debts, during the continuance of such particular estate.

Flinn v. Davis, 18 Ala. 132; Weathers v. Patterson, 30 Ala. 404; Denson v.

Mitchell, 26 Ala. 360; Alford v. Alford, 56 Ala. 350; Jones v. Wilson, 60 Ala. 332; Balmar v. Lohman, 79 Ala. 63; Adams v. Mason, 85 Ala. 452; Pendley v. Madison, 83 Ala. 484; Hood v. Bramlett, 105 Ala. 660; Wells v. Am. Mortg. Co., 109 Ala. 430.

1047 (1851) (2205) (1596) (1326). **Effect of power of disposition in one not holder of particular estate.**—When a like power of disposition is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate which may be limited thereon; but absolute in respect to creditors and purchasers.

Hood v. Bramlett, 105 Ala. 660; Wells v. Am. Mtg. Co., 109 Ala. 430.

1048 (1852) (2206) (1597) (1327). **When, in such case, donee takes fee.**—In all cases where such absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the donee of the power, he is entitled to an absolute fee.

Adams v. Mason, 85 Ala. 452; Hood v. Bramlett, 105 Ala. 660; Wells v. Am. Mtg. Co. 109 Ala. 430.

1049 (1853) (2207) (1598) (1328). **Absolute power of disposition defined.**—Every power of disposition is deemed absolute, by means of which the donee of such power is enabled in his lifetime to dispose of the entire fee for his own benefit; and where a general and beneficial power to devise the inheritance is given to a tenant for life or years, it is absolute within the meaning of the last two sections.

Hood v. Bramlett, 105 Ala. 660; Wells v. Am. Mtg. Co., 109 Ala. 430.

1050 (1854) (2208) (1599) (1329). **What powers may be reserved.** The grantor in any conveyance may reserve to himself any power beneficial, or in trust, which he may lawfully grant to another.

1051 (1855) (2209) (1600) (1330). **Conveyance under power good to extent of power.**—No disposition by virtue of a power is void in law or equity, on the ground that it is more extensive than was authorized by the power; but every estate or interest thus created is valid, so far as the same is embraced by the power.

1052 (1856) (2210) (1601) (1331). **Power executed as conveyances.**—No power of disposing of real estate can be executed, except by an instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under such power, if the person executing the power were the actual owner.

1053 (1857) (2211) (1602) (1332). **Power under will; how executed.**—When a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be by will, duly executed as wills of real estate are required by law.

1054 (1858) (2212) (1603) (1333). **Execution of power, when directed to be executed by insufficient instrument.**—When the donor of a power has directed it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but may be executed by an instrument sufficient to pass such estate.

1055 (1859) (2213) (1604) (1334). **When disposition is directed to be made among several.**—When a disposition under a power is

directed to be made by, between, or among several persons, without specifying the sum or share to be allotted to each, all the persons designated are entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportion as the trustee of the power may think proper, the distribution or apportionment made by such trustee cannot be impeached in law or equity, on the ground that it is unsubstantial, illusory, or nominal.

Hatchett v. Hatchett, 103 Ala. 556.

1056 (1860) (2214) (1605) (1335). **Division of fund on death of trustee having a discretion.**—If the trustee of a power, with the right of selection, dies, leaving the power unexecuted, its execution may be decreed in equity for the equal benefit of all the persons designated as the objects of the trust.

1057 (1861) (2215) (1606) (1336). **When consent of third person required, how expressed.**—When the consent of a third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed; or must be certified in writing thereon; in the first case, the instrument, and in the second, the writing must be signed by the party whose consent is required.

March v. England, 65 Ala. 275; Gindrat v. Montgomery Light Co., 82 Ala. 596; Sheldon v. Carter, 90 Ala. 380.

1058 (1862) (2216) (1607) (1337). **Disposition among children; grandchildren may take under power.**—When a disposition under an appointment or a power is directed to be made to or among the children of any person, without restricting it to any particular children, it may be exercised in favor of the grandchildren or other descendants of such person.

Collins v. Toomer, 69 Ala. 14; Russell v. Wright, 98 Ala. 652; Smaw v. Young, 109 Ala. 528; Thorington v. Thorington, 111 Ala. 237; Thorington v. Hall, 111 Ala. 323.

1059 (1863) (2217) (1608) (1338). **Powers; when irrevocable.** Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it is contained or reserved in the instrument creating the power.

1060 (1864) (2218) (1609) (1339). **Sale of lands devised to executors to be sold, or when power of sale given them.**—When lands are devised to several executors, or a naked power given them by will to sell, the survivor or survivors, and the acting executor or executors, when any one or more of them resigns, or refuses to act, or is removed by a court of competent authority, and also an administrator with the will annexed, has the same interest in, and power over such lands for the purpose of making sale thereof, as the executors named in such will might have had.

Patton v. Crew, 26 Ala. 426; Perkins v. Lewis, 41 Ala. 649; Anderson v. McGowan, 42 Ala. 280; s. c., 45 Ala. 462; Tarver v. Haines, 59 Ala. 335; Mitchell v. Spence, 62 Ala. 450; Ex parte Dickson, 64 Ala. 188; Robinson v. Allison, 74 Ala. 254; Watson v. Martin, 75 Ala. 506; Werborn v. Austin, 77 Ala. 381.

1061 (1865) (2219) (1610) (1340). **Joint power executed by sur-**

vivor in case of death.—When a power is vested in several persons, and, previous to the execution, one or more of such persons die, it may be executed by the survivor or survivors.

Gindrat v. Montgomery Light Co., 82 Ala. 596.

1062 (1866) (2220) (1611) (1341). **What powers liable to claims of creditors.**—Every special and beneficial power is liable in equity to the claims of creditors, and the execution of the same may be decreed for their benefit.

1063 (1867) (2221) (1612) (1342). **Not to extend to simple power of attorney.**—The provisions of this article in relation to powers do not extend to a simple power of attorney to convey lands in the name, and for the benefit of the owner.

ARTICLE 5.

MORTGAGES OF UNPLANTED CROPS.

Feb. 23, 1889, p. 45.

1064. When mortgage of unplanted crops conveys legal title. A mortgage of unplanted crops of agricultural products, executed on or after the first day of January of the year in which such crops are grown, conveys the legal title thereto in all respects as if such crops were already planted.

Hooper v. Payne, 94 Ala. 223, 226; Ballard v. Mayfield, 107 Ala. 396; Keyser v. Maas, 111 Ala. 390.

ARTICLE 6.

SATISFACTION OF MORTGAGES AND VENDORS' LIENS.

1065 (1868). **Partial payment of mortgage debt entered.**—A mortgagee, or the assignee or transferee of a debt secured by mortgage, who has received partial payment, if the mortgage is of record, must, on the request in writing of the mortgagor, or of a judgment creditor, or other creditor of the mortgagor having a lien or claim on the property mortgaged, or of a purchaser from the mortgagor, enter on the margin of the record of the mortgage the date and amount of such partial payment or payments. If, for thirty days after such request, the mortgagee, or the transferee or assignee fails to make such entry, he forfeits to the party making such request two hundred dollars.

Manner of serving request.—Loeb v. Huddleston, 105 Ala. 257. **A notice to "release" a part of mortgaged property is insufficient.**—Perryman v. Smith, 105 Ala. 573. See citations to succeeding section.

1066 (1869) (2222, 2223) (1613, 1614) (1343, 1344). **Full payment or satisfaction of mortgage debt entered.**—If a mortgage which is of record has been fully paid or satisfied, the mortgagee, or the transferee or assignee of the mortgagee, who has received payment or satisfaction, must, on the request in writing of the mortgagor, or of a judgment, or other creditor of the mortgagor having

a lien or claim on the property mortgaged, or of a purchaser from the mortgagor, enter the fact of payment or satisfaction on the margin of the record of the mortgage. Such entry operates a release of the mortgage, and is a bar to all suits thereon at law or in equity. If for two months after such request, the mortgagee, or assignee or transferee fails to make such entry, he forfeits to the party making the request two hundred dollars, unless there is pending, or there is instituted a suit within that time, in which the fact of payment or satisfaction is or may be contested.*

Statute constitutional.—Gay, Hardie & Co., v. Rogers, 109 Ala. 624. **Penal and strictly construed.**—Groons v. Hannon, 59 Ala. 510; Janatt v. McCabe, 75 Ala. 325; Scott v. Field, 75 Ala. 419. **The request is essentially a notice, but no particular form is necessary.**—Jordan v. Mann, 57 Ala. 595; Steiner v. Snow, 80 Ala. 45; Loeb v. Huddleston, 105 Ala. 257; Perryman v. Smith, 105 Ala. 573. **Request must be in writing.**—Jarrett v. McCabe, 75 Ala. 325; Scott v. Field, 75 Ala. 419; Loeb v. Huddleston, 105 Ala. 257. **An agent or attorney may make request.**—Bell v. Wilkinson, 65 Ala. 477. **Request need not be made of each member of a partnership.**—Renfro v. Adams, 62 Ala. 302. **But each of several mortgagors must sign it.**—Jarratt v. McCabe, 75 Ala. 325. **Failure to satisfy need not be willful or intentional.**—Renfro v. Adams, 62 Ala. 302; Walker v. English, 106 Ala. 369. **Physical or mental inability which will excuse failure to cancel.**—Renfro v. Adams, 62 Ala. 302; Walker v. English, 106 Ala. 369. **Mortgagee is not liable to penalty if he has transferred mortgage before request.**—Harris v. Swanson, 67 Ala. 486. **Pendency of suit; character of suit to bar recovery.**—Scott v. Field, 75 Ala. 419. **Record, and transcript of record, of mortgage, admissible in evidence.**—Steiner v. Snow, 80 Ala. 45; Loeb v. Huddleston, 105 Ala. 257; Horton v. Barlow, 108 Ala. 417; Gay, Hardie & Co. v. Rogers, 109 Ala. 624. **Pleading; parties; evidence.** Petty v. Dill, 53 Ala. 641; Harris v. Swanson, 62 Ala. 299; Williams v. Bowdin, 68 Ala. 126; Jarratt v. McCabe, 75 Ala. 325; Scott v. Field, 75 Ala. 419; Steiner v. Snow, 80 Ala. 45; Loeb v. Huddleston, 105 Ala. 257; Gay, Hardie & Co. v. Rogers, 109 Ala. 624.

1067 (1870). Payment of mortgage debt revests title.—The payment of a mortgage debt, whether the mortgage is of real or personal property, divests the title passing by the mortgage.

Statute made no change in the rule as to personal property.—Slaughter v. Swift, 67 Ala. 494; Jackson v. Scott, 67 Ala. 99; Burns v. Campbell, 71 Ala. 271; Marcus v. Robinson, 76 Ala. 550; Askew v. Steiner, 76 Ala. 218. **Mortgage executed prior to statute within its influence.**—Abbett v. Page, 92 Ala. 571. **Tender is equivalent to payment.**—Maxwell v. Moore, 95 Ala. 166. **Payment will defeat action to recover mortgaged property.**—Foster v. Smith, 104 Ala. 248. **Partial payment does not operate to revest title to any part of property.**—Lampley v. Knox, 92 Ala. 625. **Mortgagor may still file bill to cancel paid mortgage** as cloud on title.—Kelly v. Martin, 107 Ala. 479.

1068. Vendor receiving payment of purchase-money recited in conveyance must enter fact on record of conveyance.—When a vendor's or other lien is reserved in any conveyance, which is of record, of real or personal property to secure the payment of the purchase-money recited in such conveyance, upon the payment in full of such purchase-money, the grantor, or his executor, administrator or other person in whom the ownership of such lien is vested at the time of the payment of such purchase-money must, on the request in writing of the grantee, his executor, administrator or assigns, enter the fact of payment on the margin of the record of such conveyance. Such entry operates a release of such lien and is a bar to all suits thereon at law or in equity. If for two months after such request, the grantor, or his executor, administrator or

Dec. 14, 1894, p. 205.

*"Two" inserted in lieu of "three" (months) by joint committee.

other person in whom the ownership of such lien is vested at the time of such payment, fails to make such entry, he forfeits to the party making the request two hundred dollars, unless there is pending, or there is instituted a suit within that time, in which the fact of payment or satisfaction is or may be contested.*

ARTICLE 7.

PERFECTING IMPERFECT TITLES.

1069 (1871) (2224) (1615) (1345). **Written contracts for conveyance; how executed on death of party.**—In all cases of written agreements, or contracts for the conveyance of lands in this state, where the person executing the same dies before the execution of the conveyance, the personal representative of such person may execute such conveyance according to the forms prescribed by law for the conveyance of real estate, to the person to whom such agreement or contract was made, his heirs, or assigns.

Does not apply where chancery would not decree specific performance. Lacy v. Simpson, Minor, 33. **Pleading, parties and evidence in suits to compel conveyances.**—Samuels v. Findley, 7 Ala. 635; Crim v. Townsend, 9 Ala. 403; Driver v. Hudspeth, 16 Ala. 348; Prince v. Bates, 19 Ala. 105.

1070 (1872) (2225) (1616) (1346). **Judge of probate may compel representatives to convey.**—If the personal representative refuses to execute the conveyance in the case provided for in the preceding section, he may be compelled so to do, by application to the judge of probate of the county in which letters testamentary or of administration were granted.

1071 (1873) (2226) (1617) (1347). **Application; contents and notice; conveyance coerced by imprisonment.**—Such application must be by petition, describing the contract or agreement, the lands to be conveyed, and stating the names of the heirs of the contracting party, which of them are of full age, and which minors; and the judge of probate must give notice of such petition by publication in some newspaper published in his county, and the county in which the lands lie; or, if none is published therein, the paper published in the place nearest to the county-site of such county, once a week for three successive weeks; and if, on the hearing of such application, it appears that such agreement or contract was fairly made, and the consideration or conditions of the same paid or performed, such judge must decree the conveyance to be executed by the personal representative of the party so contracting, according to the terms thereof; and such personal representative, failing to execute such conveyance in conformity with such decree, must be imprisoned until he executes the same; either party having the right to appeal, as on other final judgments and decrees of the probate court.

1072 (1874) (2227) (1618) (1348). **Notice given to guardians of minors.**—In all cases in which minor heirs are interested in such

*"Two" inserted in lieu of "three" (months) by joint committee.

application, notice thereof must be given to the guardian; and if there is no guardian, the judge must appoint a guardian ad litem to protect their interest.

CHAPTER 27.

CORONERS. 1073-1084.

1073 (923) (852) (935) (800). **Coroners; election, term, etc.** A coroner for each county is elected by the qualified voters thereof, who holds office for four years from the first day of September next after his election, and until his successor is elected and qualified. Feb. 21, 1893, p. 1091, §4.

1074. Vacancy, how filled.—Vacancies in the office of coroner are filled by appointment of the governor, and the person appointed holds office for the unexpired term, and until his successor is elected and qualified.

1075 (924) (853) (937, 938) (802, 803). **Bond.**—Before entering on the duties of his office he must give bond, with surety, in the sum of two thousand dollars, payable and conditioned as prescribed by law, which bond is to be approved by the judge of probate and filed and recorded in his office.

1076 (925) (854). **Duty to hold inquests.**—It is the general duty of the coroner to hold inquests, and perform other duties as required by law.

1077 (926) (855) (939) (804). **When to discharge duties of jailer.**—The coroner is keeper of the jail when the sheriff is imprisoned.

1078 (927) (856) (940) (805). **When to discharge duties of sheriff.**—He must discharge the duties of the sheriff—

1. When the office of sheriff is vacant, and until his successor is qualified.
2. When the sheriff is imprisoned.
3. In cases to which the sheriff is a party.
4. In such cases as he is directed by the judge of probate.

1079 (928) (857) (941) (806). **When sheriff interested, coroner acts.**—When the sheriff is interested in any cause or proceeding, such interest not appearing on the face thereof, the judge of probate may, on a proper showing by affidavit, direct the coroner to execute the summons, writ, or other process, in such cause or proceeding.

1080. Official acts valid though process directed to any sheriff, etc.—The validity of his official acts cannot be questioned upon the ground that the process is directed to any sheriff, or that it does not show a necessity for the coroner to act, or other ground going to the form of the process.

1081 (931) (860) (944) (809). **Additional bond; failure to give vacates office; vacancy certified.**—When the coroner is required to

discharge the duties of sheriff, the judge of probate may, in his discretion, require him to give an additional bond. If the coroner fails, for ten days after such requisition, to give such additional bond, his office is vacated, and the judge of probate must certify the vacancy to the governor.

1082 (932) (861) (946) (811). **Liability for neglect of duty.** For the failure to perform any duty, or the improper or neglectful performance of such duty, or for any wrongful act committed under color of office by the coroner, or the special coroner, while discharging the duties of sheriff, such coroner and his sureties, and such special coroner, are liable to the same penalties, forfeitures and judgments given by law against sheriffs in like cases, to and upon the same proceedings and remedies as are given by law against sheriffs and their sureties.

1083 (929) (858) (942) (807). **Special coroner; when and by whom appointed.**—The judge of probate has authority to appoint a special coroner—

1. When the coroner has not qualified or the office is vacant, and the emergency requires such officer.

2. When the coroner is absent from the county, having no deputy therein.

3. When the coroner is imprisoned.

4. When the sheriff and coroner are both parties, or both interested.

1084 (930) (859) (943, 944) (808, 809). **Duties of special coroner.**—A special coroner must discharge the duties of sheriff in such cases as the coroner is required, and also when the sheriff and coroner are imprisoned, and, on the direction of the judge of probate, when they are both parties, or both interested.

CHAPTER 28.

CORPORATIONS.

ARTICLE 1.—BANKS AND BANKING. 1085–1098.
2.—INSURANCE COMPANIES; LIFE, ACCIDENT, FIRE, MARINE. 1099–1115.
3.—MUTUAL AID ASSOCIATIONS. 1116–1121.
4.—BUILDING AND LOAN ASSOCIATIONS. 1122–1138.
5.—MINING, QUARRYING AND MANUFACTURING COMPANIES. 1139–1155.
6.—RAILROAD COMPANIES. 1156–1187.
7.—STREET-RAILWAY COMPANIES. 1188–1204.
8.—MACADAMIZED, TURNPIKE AND OTHER TOLL-ROAD COMPANIES. 1205–1243.
9.—TELEGRAPH COMPANIES. 1244–1246.
10.—NAVIGATION COMPANIES. 1247–1250.
11.—CORPORATIONS NOT SPECIALLY PROVIDED FOR. 1251–1260.
12.—GENERAL PROVISIONS. 1261–1286.
13.—CHARTER FEES REQUIRED OF DOMESTIC CORPORATIONS. 1287–1290.
14.—DISSOLUTION OF BUSINESS CORPORATIONS. 1291–1301.
15.—CORPORATIONS NOT OF A BUSINESS CHARACTER. 1302–1315.
16.—CONDITIONS UPON WHICH FOREIGN CORPORATIONS ARE PERMITTED TO DO BUSINESS IN THE STATE. 1316–1324.

ARTICLE 1.

BANKS AND BANKING.

1085 (1521). **Banks of deposit and discount.**—Corporations for the purpose of carrying on the business of banking, without the issue of bills or notes for circulation, may be formed upon the terms and conditions, and with the capacity and powers in this article expressed.

1086 (1522). **Number of corporators; amount of capital.**—No such corporation must be formed without at least three stockholders, or without a capital subscribed in good faith of at least fifty thousand dollars, of which not less than twenty per cent., and, in no case, less than twenty-five thousand dollars, must be actually paid by the subscribers for stock before the filing of the declaration hereinafter mentioned.

1087 (1523). **Declaration filed in office of judge of probate.**—The subscribers for stock, desiring to form such corporation, must file in the office of the judge of probate of the county in which it is proposed the corporation shall be located, and have its principal place of business, a declaration in writing, signed by each of them, stating their names and residences; the name and style of the proposed corporation; the location and principal place of business thereof; the amount of the capital stock, and the number of shares into which it is divided; the purposes and nature of the business of the proposed corporation, with any other matters which they may deem it desirable to state; such declaration must be accompanied by the affidavit of the subscribers, verified before the judge of probate, that

twenty-five thousand dollars of the capital has been actually paid by the subscribers, and that the same is in fact held, and is to be used solely for the business and purposes of the corporation.

1088 (1524). **Certified copy of declaration and affidavit to be filed in office of secretary of state.**—The declaration and affidavit having been filed and recorded in the office of the judge of probate, on the request of any one or more of the subscribers, the judge of probate must make and certify, under the seal of his office, a full and complete transcript thereof, which must be filed in the office of the secretary of state; and upon the filing and record thereof in his office, the secretary must issue to the subscribers, their associates and successors, a certificate of incorporation, under the seal of the state, certifying that the transcript of the declaration and affidavit, certified by the judge of probate, is of file and record in his office, and that the subscribers, their associates and successors, are a body politic and corporate, under the name and style designated in the declaration, such corporation being located and having its principal place of business at the place designated in the declaration, and that such corporation has the capacity and powers conferred, and is subject to the duties and liabilities imposed by law; and must record such certificate; and thereafter such corporation must be deemed fully organized.

1089 (1525). **Powers of corporation.**—Such corporation, when organized, has power—

As amended Feb. 19, 1889, p. 36.

1. To have succession by its corporate name for the period of thirty years.

2. To sue and be sued.

3. To use a common seal, if deemed necessary, and at pleasure to alter the same.

As amended Dec. 8, 1892, p. 7.

4. To appoint such officers and agents as the business of the corporation requires, removing them at pleasure, prescribe their duties, and fix their compensation, and may fix and locate offices, agents and agencies at pleasure in the state, other than the principal place of business.

5. To make such by-laws as may be necessary for the management of its property, the regulation of its affairs, the creation and preservation of a lien on the shares of any stockholder for any indebtedness or liability he may incur to the corporation, and such regulations as are deemed proper for the transfer of its stock.

6. To hold, purchase, dispose of, and convey such real and personal property as may be necessary for its uses and business.

7. To discount bills, notes, or other evidences of debt; to receive and pay out deposits, with or without interest; to receive on special deposit money, or bullion, or foreign coins, or stocks, or bonds, or other securities; to buy or sell foreign or domestic exchange, gold and silver bullion, or foreign coins, bonds, stocks, bills of exchange, or other negotiable paper; to lend money upon personal security, or upon pledges of bonds, stocks, or negotiable securities; to take and

receive security by mortgage, or otherwise, on property, real or personal.

Classes of deposits.—Alston v. State, 92 Ala. 124; Reeves v. State, 95 Ala. 31, 39.

8. To increase or decrease the capital stock in the manner hereinafter provided; but such corporation shall not have power or capacity to issue bills or notes in any form for circulation as money.

1090 (1526). **Board of directors.**—The business of the corporation is under the management and control of a board of directors, members of the corporation, holding and owning shares of the capital stock in good faith, who must exercise such powers as are delegated to them by the stockholders, or by the by-laws of the adoption of the stockholders; and the board must not consist of less than three members, to be elected by the stockholders at such time and place, and for such term, as may be appointed by the by-laws.

1091 (1527). **Capital stock may be increased or decreased.**—The capital stock of the corporation may be increased to a sum not exceeding five hundred thousand dollars, or may be decreased to a sum not less than fifty thousand dollars at a meeting of the stockholders called for the special purpose, of which notice for thirty days must be given each stockholder personally, if his residence be known, and by publication for four consecutive weeks in some newspaper published at the location or principal place of business of the corporation; and such increase or decrease must not be made except upon the vote of the stockholders holding the larger amount in value of the capital stock. If at such meeting the stockholders holding the larger amount in value of the capital stock vote for such increase or decrease, the proceedings of the meeting must be reduced to writing, and entered on the books or minutes of the corporation; and a copy thereof, verified by the certificate of the president or cashier, must be filed and recorded in the office of the judge of probate of the county in which the declaration is of file and record; and a copy thereof, duly certified by such judge, must be filed and recorded in the office of the secretary of state.

Decrease of capital stock by surrender of part of shares not binding on creditors.—Glenn v. Hatchett, 91 Ala. 316; Cooper v. Frederick, 9 Ala. 733.

1092 (1528). **Existing banks or loan associations may reorganize under this article.**—Any banking corporation or loan association, which has been or may be organized under any law of this state, may be reorganized and do business under the provisions of this article, upon complying with the conditions following:

1. The majority in value of the holders of the shares of such corporation shall express their wish so to do by a written paper signed by them, or expressed by vote or resolution at an election or meeting of the stockholders, to be held upon ten days' notice thereof, by publication in some newspaper published in the county wherein its business is carried on.

2. Thereupon the president and directors shall file in the office of the judge of probate of the county wherein the new corporation pro-

poses to carry on its business, the original of such paper, or copy of such resolution, and a certificate signed by them, wherein shall be stated the name to be assumed by the corporation, the city, town, or village, and county wherein its business is to be carried on, the amount of its capital stock, the number of shares into which it is divided, the par value thereof, and their market value according to the last preceding sale which may have been made thereof, the cash value of its assets and securities, and the nature thereof, and the amount and description of its debts and liabilities; which certificate shall be verified by the oath of the president and cashier or secretary of said corporation. If it appear to the judge of probate that such corporation is solvent, that its capital is not of less value than par, and, in the aggregate, of not less value than fifty thousand dollars, the judge shall cause record to be made of the papers and documents so produced, and certify a copy thereof to the secretary of state, who shall cause the same to be recorded in his office, and issue a certificate of incorporation, as is provided in section 1088 (1524) and from and after the issue of such certificate, the former corporation must be deemed dissolved, and the corporation, as reorganized, must be deemed a corporation, having the powers and capacity in this article expressed; but such dissolution and reorganization must not be deemed to affect the pre-existing liabilities of such corporation.

Operation and effect.—Bibb v. Hall, 101 Ala. 79.

Feb. 28, 1887, p. 98.

1093. Those having capital of less than fifty thousand dollars may increase and reorganize.—Any banking corporation or loan association organized under the laws of this state, whose original capital stock is less than fifty thousand dollars, may increase its capital stock to not less than fifty thousand dollars and reorganize as provided in the two preceding sections; and upon such increase and reorganization such corporation or association shall be deemed a corporation organized under the provisions of this article.

1094 (1529). **Certificates of deposit not to be reissued.**—No certificate of deposit, issued by the corporation for any special deposit for which interest is to be paid, must be reissued, but, on the return thereof, must be canceled.

1095 (1530). **Deposits by married women or minors.**—A married woman or minor may make, in her or his own name, a deposit of her or his earnings or savings in any bank; and such deposit may be general or special, and shall be paid only to such married woman or minor, or upon her or his order, and not to the husband of such married woman, or to the parents or guardian of such minor.

Deposit by husband in name of wife.—Sayre v. Weil, 94 Ala. 486.

1096 (1196) (1429) (1176) (939). **How foreign bank must exercise privilege of banking.**—No foreign corporation invested with the privilege of banking must exercise the same by agent in this state, except by the exclusive use of gold and silver coin, and national bank-notes, or other currency of the United States.

Wray v. Tuskegee Ins. Co., 34 Ala. 58; Morris v. Hall, 41 Ala. 519.

1097 (1197) (1430) (1178) (941). **Notes and bills void.**—If any corporation, or agent, violates the provisions of this article, or attempts to evade the same in the discount of any bill or note, such bill or note is void.

1098 (1198) (1431) (1179). **Counterfeits may be defaced.**—Any person may deface, by crossing with ink or otherwise, any bank-note that may be presented to him in payment of debts, or to be changed or exchanged, if the same is counterfeit; but should it be found, on a more careful examination, that a bank-note so defaced is a genuine note, the person defacing such note shall, if required by the holder, redeem the same, and if he fails or refuses, on application being made for that purpose,* he may be sued for the amount thereof before any court having jurisdiction.

ARTICLE 2.

INSURANCE COMPANIES; LIFE, ACCIDENT, FIRE, MARINE.

1099 (1531). **Corporations for insurance.**—Corporations for the insurance of lives, or for the insurance of persons or property against accident, or for insurance against fire, or against the perils and risks of the sea or of navigable streams, may be formed upon the terms and conditions, and with the powers and capacity in this article expressed.

1100 (1532). **Number of stockholders; amount of capital stock.** As amended Feb. 28, 1887, p. 85, §1. No such corporation must be formed without at least three stockholders, or without a capital stock, fully paid up in cash, of one hundred thousand dollars, no portion of which shall be represented by stock notes, or loans on the stock of such company as collateral.

Definition of capital stock.—Commercial Fire Ins. Co. v. Board of Rev., 99 Ala. 1. No implied power to change capital.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325; Glenn v. Hatchett, 91 Ala. 316.

1101 (1533). **Declaration filed in office of judge of probate.** The subscribers to the capital stock, proposing to form such corporation, must file in the office of the judge of probate of the county in which the proposed corporation is to be located, and have its principal place of business, a declaration in writing, signed by each of them, stating their names and residences, the name and style of the proposed corporation, the proposed location or principal place of business thereof, the purposes of the corporation, and the nature of its business, the amount of the capital stock, and the number of shares into which it is divided, and any other matters they may deem it desirable to state, accompanied by an affidavit, verified before the judge of probate, that at least one hundred thousand dollars of the capital stock has been actually paid by the subscribers, and is in good faith held and to be used solely for the purposes, and in the business of the corporation; which declaration and affidavit must be recorded by the judge of probate.*

Office of declaration; if more is introduced than is provided for, it is surplusage.—Grangers' L. H. & I. Ins. Co. v. Kamper, 73 Ala. 325.

*As amended by joint committee.

1102 (1534). **Certified transcript filed in the office of secretary of state.**—The judge of probate, on the request of any one or more of the subscribers, must make and certify, under the seal of his office, a full and complete transcript of the record of such declaration and affidavit, which must be filed and recorded in the office of the secretary of state; and upon the filing and record thereof, the secretary must issue to the subscribers, their associates, and successors, a certificate of incorporation, under the seal of the state, certifying therein that they are a body politic and corporate, under the name and style designated in the declaration, having the location or principal place of business in the declaration designated, with the powers and capacity conferred, and subject to the duties and liabilities imposed by law; and must record such certificate; and thereafter such corporation must be deemed duly organized.

Definition of charter.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

1103 (1535). **Powers of corporation.**—Such corporation, when organized, and any such company heretofore organized, has the power—

1. To have succession by its corporate name for a period not exceeding thirty years.*

2. To sue and be sued; and if deemed necessary, to have a common seal, and to alter the same at pleasure.

3. To hold, purchase, dispose of, and convey such real and personal property as may be necessary for its uses and purposes.

4. To appoint such officers and agents as the business of the corporation may require, prescribe their duties, fix their compensation, and remove them at pleasure.

5. To make such by-laws for the management of the property, the regulation of the affairs, the transfer of the stock of the corporation, and the creation and preservation of a lien on the shares of stockholders for any indebtedness contracted with, or liability incurred to it, as may be deemed necessary.

6. To carry on the business of life-insurance, or of accident-insurance, or of life-insurance and insurance against accidents to the person combined, or of fire-insurance, or of marine insurance, or of fire and marine insurance combined, or of either, and insurance against accidents to property, as may be expressed in the declaration.

7. To invest their money in real or personal property, stocks, or choses in action, and to sell the same; to lend money, discount bills, and secure the payment thereof.†

Application to corporations organized before the enactment of the statute. Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102. **Subdivision 7.—Does not authorize the investment of its capital in subscription to the capital stock of another corporation.**—Commercial Fire Ins. Co. v. Board of Rev., 99 Ala. 1; Lanier Lumber Co. v. Rees, 103 Ala. 622.

1104 (1536). **Renewal of incorporation.**—An incorporation under this article may be renewed according to the provisions hereinbefore

*As amended by joint committee.

†Banking feature stricken out by joint committee.

made, with the consent of a majority in value of the stockholders, expressed at a meeting of the stockholders called for that purpose.

No implied power to change capital stock; statute must be strictly followed.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325; Glenn v. Hatchett, 91 Ala. 316.

1105 (1537). **Increase or decrease of capital stock.**—The capital stock of such corporation may be increased to a sum not exceeding five hundred thousand dollars, or decreased to a sum not less than one hundred thousand dollars, by a vote of the persons holding the larger amount in value of the stock, at a meeting of the stockholders called for that purpose, of which thirty days' notice must be given each stockholder personally whose residence is known, and by publication for four consecutive weeks in some newspaper published in the county; if at such meeting the persons holding the larger amount in value of the stock vote for the proposed increase or decrease, the proceedings of the meeting must be reduced to writing and entered on the books or minutes of the corporation, and a copy thereof, verified by the certificate of the president or secretary, must be filed and recorded in the office of the judge of probate in which the declaration is of file and record; and the judge must make and certify, under his seal of office, a transcript thereof to the secretary of state, who must file and record the same in his office.

1106 (1538). **Corporations may adopt or abandon mutual plan of transacting business.**—Any corporation, now organized for carrying on the business of insurance in any of its forms, or which may be hereafter organized under this article, may adopt the mutual plan or principle of allowing policy-holders, or parties insured to participate in the profits, or, having adopted such plan or principle, may abandon it, by the consent of a majority in value of the holders of the capital stock, at a meeting called for that purpose, of which thirty days' notice must be given personally to each stockholder, whose residence is known, and by publication for four consecutive weeks in some newspaper published at the location or principal place of business of the corporation; if, at such meeting a majority in value of the holders of the capital stock vote for the adoption or abandonment of the mutual plan or principle, they may also vote such change in the name of the corporation as they may deem desirable. The proceedings of such meeting must be reduced to writing and entered on the books or minutes of the corporation, and a copy thereof, verified by the certificate of the president or secretary, must be filed and recorded in the office of the judge of probate in which the declaration is of file and record; and the judge must certify a transcript of the record to the secretary of state, who must file and record the same in his office; and thereafter the corporation must conduct its business according to such vote, and by the name adopted.

1107 (1539). **Stockholders' or directors' meetings may be held without the state.**—By the consent in writing of all the holders of the capital stock residing in this state, obtained before each such meeting, and filed and recorded in the office of the judge of probate

in which the declaration is of file and record, or of the county in which the corporation has its principal place of business, a copy whereof, certified by such judge under the seal of his office, must be filed and recorded in the office of the secretary of state, a corporation organized under this article, or any insurance corporation heretofore organized under the laws of this state, may hold meetings of the stockholders, or of the directors, at such place without the state as may be designated by the by-laws of the corporation, of the adoption of the stockholders; but such corporation must keep an agent in this state, residing at its location or principal place of business, with whom must be deposited copies of the proceedings of such meetings; and must file in the office of the judge of probate of the county in which the consent of the stockholders residing in this state is of file and record, and in the office of the secretary of state, a certificate of the president, stating the name of such agent, and a like certificate, as there may, for any cause, be a change of such agent; and copies of such proceedings of such meetings, certified by such agent, or the copies thereof filed with him, are admissible in evidence in all legal proceedings against such corporation; and service of process upon such agent, in any suit or proceeding against such corporation, must be deemed and taken as service on the corporation.

1108 (1540). **Principal place of business within this state required.**—All corporations organized under the provisions of this article must have and keep an agent at the principal place of business designated in the declaration, on whom process may be served for the corporation in any and all proceedings against it.

Feb. 28, 1887, p. 85, §§1, 2.

1109. Capital required; statements to auditor.—All insurance companies doing business as such in this state, whether chartered by the state, or admitted from other states, must have an actual capital, fully paid up in cash, of not less than one hundred thousand dollars, no portion of which must be represented by stock notes, or loans on the stock of the company or companies as collateral; and must make annual sworn statements to the auditor of their assets, condition, business of the previous year, in premiums, losses and expenses, in the state and as a whole.

1110 (1541) (2012). **Consolidation of insurance corporations.** Any two or more insurance corporations, incorporated under the laws of this state, may unite and consolidate their capital stock, property and business in the manner hereinafter provided.

1111 (1542) (2013). **How proposal adopted; entry on minutes.** Such consolidation shall be made on the recommendation of the board of directors of each of the corporations proposed to be consolidated, when adopted by a vote of the persons holding the larger amount in value of the capital stock of each corporation. Such recommendation shall be submitted in writing by the board of directors to the meeting of stockholders, and, with the vote of the stockholders thereon, shall be entered on the minutes.

1112 (1543). **How consolidation consummated.**—When a proposal for consolidation has been thus adopted, the consolidation

shall be carried out by an agreement in writing, sealed with the corporate seals, and signed by the president of the contracting corporations, reciting that such agreement is made with the consent of the stockholders of each of the corporations, given as provided above, and stating the terms and conditions of such consolidation. This agreement must be recorded in the office of the judge of probate of the county in which such corporations are located; or, if they be located in different counties, in the office of the judge of probate of each county, and a certified copy filed with the secretary of state; upon the filing of such certified copy in the office of the secretary of state, and his certificate thereof, the consolidation is complete.

1113 (1544) (2015). **Name and charter of new corporation, and changes in stock, etc.**—On such consolidation, the parties may, by their agreement of consolidation, adopt the name and charter of either corporation as the name and charter of the consolidated corporation, and may make such changes and provisions, as to the amount of stock and the number of directors of the consolidated corporation, as they may think proper.

1114 (1545) (2016, 2017). **Property, rights and liabilities of new corporation; pending suits.**—The corporation, so formed by consolidation, shall be entitled to all the property and rights of each of the corporations so uniting, and liable to the debts and obligations of each of them. Suits pending for or against either of such original corporations at the time of consolidation are not abated, and shall not be delayed thereby, but shall proceed in the name of the consolidated corporation.

1115 (1546) (2018). **Dissimilar corporations cannot consolidate.** Nothing in the five preceding sections shall be construed to authorize the consolidation of insurance corporations of dissimilar character.

ARTICLE 3.

MUTUAL AID ASSOCIATIONS.

1116 (1547). **What are mutual aid associations.**—All associations, whether voluntary or incorporated under the laws of this or any other state, doing in this state a business limited to the issuing of certificates to, or agreeing with their members, upon the birth of any child, upon marriage, decease, sickness, or upon any physical disability of such member, to pay money or render aid to him, or to others dependent on him, or beneficiary designated by him, which money or aid is derived from donations, or from fees, dues and assessments, are subject to the provisions of this article only.

1117 (1548). **Report to auditor.**—Every such association shall, on or before the first day of March of each year, file with the auditor a report of their operations during the year ending the thirty-first day of December next preceding, including a statement of the number of existing members, the number who have become members

during such year, the number whose membership has terminated and the cause thereof, the total receipts and the sources thereof, and the total expenditures and the objects thereof. This report shall be upon blank forms provided by the auditor, and shall be verified by the affidavit of an officer of the association. These reports, or their substance, shall be published in the auditor's annual report, and the auditor shall receive from each such association, at the time its report is filed, a sum equal to one dollar for each one hundred members, or fraction thereof, not exceeding twenty-five dollars from any one association. No other charge shall be made by the auditor upon such association and no deposit of securities with him shall be required. Any association, refusing or neglecting to make such report and payment, may, upon the suit of any citizen, be enjoined by a court having jurisdiction from carrying on business until such report and payment, and until the costs of suit are paid.

1118 (1549). **Principal office and service of process; auditor's license.**—Every such association, before commencing business in this state, shall, by an instrument under the hands of its president and secretary, filed in the auditor's office, designate some place as the principal office of such association in this state, and some person residing at that place as the person upon whom service of legal process and papers may be made as upon such association. If the person so designated removes from such place, or dies, another shall be appointed in his stead within thirty days. Notice of any change of office or agent shall be filed with the auditor within thirty days thereafter. Upon failure to comply with any of the provisions of this section, the association shall cease to do business in this state until compliance. No such association shall commence to do business in this state until it has received from the auditor a license, a duplicate whereof shall remain on file in the auditor's office.

1119 (1550). **Visitation.**—Every such association shall be subject to visitation, and its books and papers to inspection by the auditor, or such person as he may designate. If the auditor is, at any time, of the opinion that such association should be restrained from doing business, he shall report such opinion, with the facts upon which it is based, to the attorney-general, whose duty it is, if he thinks the facts warrant the report, to apply to the judge of the circuit in which is the principal place of business of the association for an order requiring the officers of the association to show cause at a reasonable time and place within the circuit, why the association should not be restrained from continuing business. The association shall be entitled to a trial by jury of the facts stated in the report.

1120 (1551). **Life-insurance companies, Masons and like orders not affected.**—Nothing in the four preceding sections shall be construed to apply to any corporation, incorporated under the life-insurance laws of this or any other state or country, or to any secret or benevolent society, such as Masons, Odd Fellows, Knights of Pythias, or like orders.

1121 (1552). **Exemptions.**—The interest of resident members of

such associations therein, and of resident beneficiaries provided for thereby, is exempt from all process for the collection of debts, or the enforcement of liabilities.

ARTICLE 4.

BUILDING AND LOAN ASSOCIATIONS.

1122 (1553). **May be incorporated.**—Three or more persons, associating as a building and loan association, may become a body politic and corporate in the mode, and with the powers and capacity in this article expressed; and such corporation may continue for twenty years.

1123 (1554). **Mode of incorporation.**—Such persons must file in the office of the judge of probate of the county in which it is proposed the association shall have its principal place of business, a declaration in writing, signed by each of them, stating—

1. The name and style under which it is proposed to incorporate such association.

2. The amount of the capital stock, and the number of shares into which it is divided.

3. The names and residences of the associates or subscribers to the declaration, and the principal place of business of the corporation.

4. The purposes of the corporation and the nature of its business, and such other matters as they may deem desirable.

Cahall v. Citizens' Mut. B. Asso., 61 Ala. 232; Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

1124 (1555). **Record of declaration; certificate of incorporation.** The judge of probate must record such declaration, and must issue to the subscribers, their associates and successors a certificate of incorporation, under the seal of his office, stating therein the filing and record of such declaration, the name and style of such corporation, the location or principal place of business thereof, and that the subscribers, their associates and successors are a body politic and corporate; and thereafter such corporation must be deemed duly organized.

1125 (1556) (1943, 2019) (1767) (1481). **Powers of such corporation.**—Such corporation has power—

1. To have succession by its corporate name for the period expressed in the declaration, not exceeding twenty years.

2. To sue and be sued; and, if deemed necessary, to have a common seal, and the same at pleasure to alter or change.

3. To hold, purchase, dispose of, and convey such real or personal property as may be necessary for the uses and business of the corporation.

4. To appoint and remove, at pleasure, such officers and agents as the business of the corporation may require, prescribing their duties, and fixing their compensation; and to make all needful rules and

regulations and by-laws for the transaction of its business, and the management and control of its affairs.

5. To levy monthly contributions from the shareholders, not to exceed one dollar per share in any one month.

6. To compel payment, and compliance with all lawful orders by fines and forfeitures.

7. To acquire real estate, to erect buildings, and the same to let to any shareholder of the corporation, or to sell to such shareholder on such terms as may be fixed by its by-laws.

8. To aid shareholders in the erection or improvement of houses by loans of the funds of the association, on such security as may be fixed by the by-laws.

9. When funds are on hand, to lend the same to any shareholder of the corporation, on such security, and on such terms and conditions as may be prescribed by the by-laws; but the security shall be a mortgage on real estate sufficient to protect the association.

10. To secure the payment of installments and loans, and a compliance with all the terms on which loans are purchased, by mortgages with power of sale on real estate, and the same to foreclose, in case of default, by a public sale to the highest bidder, and by conveyance to the purchaser; and such purchaser need not be a shareholder.

11. In determining the amount of the capital stock of the association, each share shall be valued at fifty dollars.

Subdivision 3.—Cahall v. Citizens Mut. B. Asso., 61 Ala. 232. **Subdivision 4.**—Rules and regulations.—Montgomery Mut. B. & L. Asso. v. Robinson, 69 Ala. 413; Sec. L. Asso. v. Lake, 69 Ala. 456; s. c., 72 Ala. 207; Southern B. & L. Asso. v. Anniston L. & T. Co., 101 Ala. 582. **Subdivision 6.**—Southern B. & L. Asso. v. Anniston L. & T. Co., 101 Ala. 582. **Subdivision 7.**—Cahall v. Cit. Mut. B. Asso., 61 Ala. 232. **Subdivision 10.**—Southern B. & L. Asso. v. Anniston L. & T. Co., 101 Ala. 582. A loan secured by mortgage is not ultra vires, although in contravention of the by-laws.—Kelly v. M. B. & L. Asso., 64 Ala. 501. A mortgage in form a lease, is good.—Mobile B. & L. Asso. v. Robertson, 65 Ala. 382.

Feb. 6, 1889, p. 31.

1126. Increase of capital stock.—The capital stock of building and loan associations, incorporated under the general laws of this state, may be increased to a sum not exceeding two million dollars by the vote of the persons holding the larger amount in value of the capital stock at a meeting of the stockholders called for that purpose, of which meeting, and the purpose for which it is called, thirty days' notice must be given by publication for four consecutive weeks in some newspaper published in the town or city in which the corporation is located; and if at such meeting the persons holding the larger amount in value of the stock vote for such increase the proceedings of the meeting must be reduced to writing, signed by the president or other head of the corporation, and filed and recorded in the office of the judge of probate of the county in which the corporation has its principal place of business. In determining the amount of the increased capital stock of all building and loan associations incorporated prior to the Code of 1876, each share shall be valued at not less than forty nor more than fifty dollars.

Feb. 7, 1893, p. 665, §1.

1127. Hypothecation of securities.—No building and loan association, not organized under the laws of this state prior to February

7th, 1893, shall pledge, hypothecate or transfer any note, bond, mortgage or securities which the association may obtain for money loaned or otherwise.

1128. The name "building and loan association" defined.—The name "building and loan association" as hereafter used in this article shall include all corporations, societies, organizations or associations doing business in this state, under a building and loan charter or engaged in a building and loan business. Feb. 12, 1897, p. 845, §1.

1129. Annual report, with answers to certain questions, to be filed with the auditor.—On or before the first day of March in each year, every building and loan association doing business in this state, and governed by this article, shall file with the auditor of the state, a detailed report of its affairs and operations for the year ending the thirty-first of December, immediately preceding, and such report shall be verified under oath by the president and secretary, or by three directors of the association, and shall contain answers to the following questions: 1. The date when the association was incorporated and the par value of each share of stock. 2. Number of shares sold during the year. 3. Number of shares canceled or withdrawn during the year. 4. Number of shares in force at the end of the year. 5. A detailed statement of total receipts and disbursements, showing from what source received, and to what source applied. 6. A statement of the assets and liabilities at the end of the year. The following items shall constitute the assets of a building and loan association: 1. Money actually loaned. 2. Accrued interest and premium fines and forfeitures. 3. Furniture and fixtures. 4. Real estate. 5. Taxes and insurance advanced. 6. Solvent credits. 7. Such other legitimate assets as the association may acquire in the course of its business. 8. Cash on hand, as shown by books and official certificate of designated depositories. 9. File a copy of its by-laws and published literature, which shall be free from ambiguity and not misleading in its nature. Ib. §2.

1130. Fee to be paid on filing report; penalty for failure to report, etc.—Each association shall pay to the auditor of the state ten dollars on the filing of each report. If an association shall willfully fail to furnish to the auditor of the state any report required by this article, at the time so required, it shall, in the discretion of the auditor, forfeit the sum of twenty-five dollars per day for every day such report shall be delayed or withheld, and the auditor of the state may maintain action in his name as such auditor, to recover such penalty, and the same shall be paid into the treasury of the state for the benefit of the state. Ib. §3.

1131. Non-resident associations must file statement and pay fee before doing business here.—Non-resident building and loan associations having not less than one hundred thousand dollars in assets shall, before doing any business in this state, obtain a license from the auditor, by complying with the following: 1. Such associations shall file with the auditor a certified copy of its charter or articles of incorporation, and by-laws, showing its mode of business. Ib. §4.

2. File a detailed report of its actual condition as provided for in the second preceding section. 3. Pay the auditor twenty-five dollars as a fee for filing the papers mentioned in this section.

Shahan v. Tethero, Ala. (21 So. 951).

Ib. §9. **1132. Unlawful to do business for unlicensed foreign association; penalty.**—No officer, director or agent of any foreign building and loan association, shall in this state solicit subscriptions of stock to such association, or sell or knowingly cause to be sold, or issued to a resident of this state, any stock of an association, until said association has complied with the provisions of the three preceding sections. Any violation shall be deemed a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars nor more than fifty dollars.

Ib. §5. **1133. Associations may impose fines and penalties not to exceed two per cent., etc.**—Such associations may by their by-laws, impose fines and penalties upon their members for default or delay in payment, when same are due, of installments upon their loans, the interest, premium and charges thereon, and upon the shares of stock of such members, and the same may be secured and collected by mortgage, in addition to the amount of interest, premium and other charges allowed by law, but such fines shall not exceed two per cent. per month of such arrearages.

Ib. §8. **1134. Premium upon loans must be fixed by by-laws, not to exceed twelve per cent. including interest.**—The premium to be charged upon any loan must be fixed by the by-laws, but such premium and the interest on the loan taken together shall not exceed one per cent. per month on the amount actually loaned or advanced.

Ib. §6. **1135. On foreclosure of mortgage all payments made on debt and value of stock pledged to be credited.**—Upon foreclosure or sale under power given in any mortgage of land by a member to such association it shall credit, as of the date made, upon the entire debt claimed by the association all payments made upon such debt, whether of principal, premiums or interest, and the stock pledged for such loan shall be credited on the said loan at its actual value, and such stock thereby canceled; and upon forfeiture of stock of a member borrowing from such association, upon security of his stock only, such loan shall be credited with the actual value of such stock.

Ib. §8. **1136. Shares of stock one year old must have definite withdrawal value, etc.**—All shares of stock in said association, upon which all dues and charges for one year or more have been paid, shall have a definite withdrawal value, which shall be set out in the by-laws of said association and shall not be less than eight per cent. per annum thereon for the average time such dues have been paid, less fines and penalties and a proportionate share of expenses and losses sustained.

Feb. 11, 1893, p. 666, §7. **1137. Officers to give bond.**—All of the officers of the home office of any building and loan association governed by this article and doing business in this state, who handle any of the funds of such association, shall give sufficient bonds for the faithful performance

of their duties as the board of directors may require, and no such officer shall be deemed qualified to enter upon the discharge of the duties of his office until his bond is approved by the board of directors.

1138. **Foreign associations; requirements.**—When by the laws of any other state, territory or foreign government, any taxes, penalties, fines, license fees, deposits of money or securities, or other obligations, requirements or prohibitions, are imposed on building and loan associations of this state, doing business in such other state, territory or foreign government, or upon their agents therein, so long as such laws shall continue in force, the same obligations, requirements and prohibitions of whatever kind shall be imposed on all building and loan associations of such other states, territories or foreign governments, doing business in this state, and upon their agents here. But this section shall not apply to building and loan associations which had established branches or agencies in this state prior to February 7th, 1893. Id. 98.

ARTICLE 5.

MINING, QUARRYING AND MANUFACTURING COMPANIES.

1139 (1557). **Corporations formed.**—Two or more persons, associating for the purpose of mining, quarrying, or manufacturing, may form themselves into a corporation, in the mode, and having the capacity and powers in this article expressed.

1140 (1558). **Declaration filed in court of probate; contents.**—The persons so associating must file in the office of the judge of probate of the county in which it is proposed such corporation shall have its principal place of business, a declaration in writing, signed by each of them, stating the names and residences of the subscribers, the name and style of the proposed corporation, the amount of its capital stock, and the number of shares into which it is divided, the general purposes of the corporation, and the nature of the business proposed, and the proposed principal place of business of the corporation, with such other matters as they may deem it desirable to state.

Office of declaration; surplusage.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

1141 (1559). **Commission issued by judge of probate.**—On the filing of the declaration, the judge of probate must issue to two or more of the subscribers, a commission authorizing them, as commissioners, to open books of subscription to the capital stock of the proposed corporation, at such time and place, and upon such notice as they may appoint.

1142 (1560). **Subscriptions for stock.**—All subscriptions to or for the capital stock must be payable in money; but the commissioners may receive subscriptions payable in money, the subscriber having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated neces-

sary labor for the corporation, at the reasonable value of such services or labor; or in property, at the reasonable value thereof, the corporation has capacity to acquire and hold; the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation.

Does not prevent a sale of bonds, secured by mortgage on corporate property, for less than their par value.—Nelson v. Hubbard, 96 Ala. 238. See citations to Constitution, Art. XIV., §6.

1143 (1561). **Organization of corporation.**—Fifty per cent. of the capital stock having been subscribed in good faith by subscribers of whose solvency the commissioners are satisfied, they shall call the subscribers together, at such time and place as they may appoint, for the election of a board of directors and other officers, and the further organization of the proposed corporation; a majority in value of the subscribers being present in person or by proxy at such time and place, they must elect a board of directors from the subscribers, consisting of not less than three nor more than nine members, and such other officers as they may deem necessary; the directors holding office for a term of twelve months thereafter, and until their successors are elected and qualified; and shall designate an officer of their election, or some person of their appointment, to receive from the commissioners the subscriptions for stock. Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money, without the privilege of discharge in services, or labor, or property, the payment in cash of twenty per cent. thereof; and of the subscribers whose subscriptions are payable in money, with the privilege of discharging the same in stipulated service, or labor, or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or the transfer or conveyance of the property, at such times as the board of directors may appoint; the proceedings of the meeting of the subscribers must be reduced to writing, and must be signed by them, and delivered to the commissioners, who must return and file the same in the office of the judge of probate; and the officer or person, to whom the subscriptions for stock have been delivered, must make a copy thereof, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received payment in cash of twenty per cent., and from which he has received contracts in writing, as hereinbefore specified. Upon the filing of such papers, the judge of probate must issue to the subscribers, their associates, and their successors, a certificate stating that they are duly organized as a corporation, under the name and style, and for the purposes expressed in the declaration, having the power, capacity and authority conferred by law.

Creditors may demand bona fide compliance.—Nelson v. Hubbard, 96 Ala. 238.

1144 (1562). **Powers of corporation.**—When duly organized such corporation has power—

1. To have succession by the corporate name for the period expressed in the declaration; and if a period of time be not expressed, perpetually.

2. To sue and be sued; and if deemed necessary, to have a corporate seal, and the same to alter at pleasure.

3. To hold, purchase, dispose of, and convey such real and personal property, as the nature of its business, and the purposes for which it is formed may require.

4. To appoint such officers and agents as may be deemed necessary for the transaction of its business, and the management and control of its affairs and property.

5. To make all needful by-laws, rules and regulations for the transaction of its business, the management and control of its affairs, and the uses and disposition of its property; and for the transfer of its stock, and for the creation and preservation of a lien upon the shares of its stockholders for the payment of any debt or liability they may incur to the corporation.

6. To carry on the business, or accomplish the purposes expressed in the declaration.

7. To borrow money, and to mortgage, or otherwise convey or pledge its property, real or personal, and its franchises, to secure the payment of the money so borrowed, or any other debt contracted by it; but it has not power to borrow a sum exceeding its capital stock, or at a rate of interest exceeding eight per cent., payable semi-annually; nor must such mortgage, conveyance, or pledge be made otherwise than by the consent of the holders of the larger part in value of the capital stock, expressed by vote at a meeting of the stockholders called for that purpose, of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice is given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in the newspaper published nearest to the place of business of the corporation.

Subdivision 3.—Corporations empowered to manufacture lime and barrels cannot carry on a general mercantile business.—Chewacla Lime Wks. v. Dismukes, 87 Ala. 344. **Foreign corporation may do any business authorized by its charter unless prohibited by a local law.**—Hall v. Tanner, 91 Ala. 363. **Subdivision 6.—A corporation chartered to manufacture and repair machinery cannot act as agent.**—Westinghouse Mach. Co. v. Wilkinson, 79 Ala. 312. **One chartered to manufacture, repair and operate machinery and to do such other business as is generally done by machine-shops and foundries, cannot engage in the business of manufacturing and selling ice.**—Simmons v. Troy Iron Wks., 92 Ala. 427. **Subdivision 7.—Includes power to pledge bonds of corporation of greater face value than the debts, as collateral for debts already owing or presently contracted.**—Nelson v. Hubbard, 96 Ala. 238. **Corporation prohibited from contracting debts without written consent of directors is not bound as indorser on a note, the consent not having been given.**—Westinghouse Mach. Co. v. Wilkinson, 79 Ala. 312. **Ratification of unauthorized transfer of notes as collateral.**—Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102. **For the benefit of stockholders; if disregarded, creditors cannot complain.**—Barrett v. Pollak, 108 Ala. 390; Ala. S. & I. Co. v. McKeever, 112 Ala. 134. **Has no reference to product of the business;** refers only to corpus of the corporate property.—Ala. S. & I. Co. v. McKeever, 112 Ala. 134.

1145 (1563). **Additional powers.**—Such corporation, when duly organized, has, in addition, power to locate, construct and operate

to and from its mines, furnaces, mills, factories, quarries or other works, railways, tramways, canals, tunnels, underground passages, or roads, or to acquire by purchase railways, tramways, canals, tunnels, underground passages, or roads, whereby a connection may be made to and with the principal place of its business, its mines, furnaces, mills, factories, quarries, or other works, and any public highway, turnpike, macadamized, plank, or other graded road, or railroad, or navigable waters, or to or with its mines, ore-beds, coking or cooling grounds, or timber lands; or canals or aqueducts to and from its mills or factories, or furnaces, or quarries, or any waters or watercourses; and such corporation has also power to transport, as a common carrier, persons or property on any railroad, or other road, or on any canal, or aqueduct, constructed or purchased by it, taking reasonable compensation. If necessary in the construction of such canals, aqueducts, railways, tramways, tunnels, underground passages, or roads, the corporation has power to condemn lands, or an interest or easement therein, or thereunder private property, for a way and right of way, in the mode prescribed by law, such way and right of way not exceeding one hundred feet in width throughout the whole length of such canal, aqueduct, railway, tramway, tunnel, underground passage, or road; and without the consent of the owner of the land, the same must not be constructed through the yard, garden, orchard, stable-lot, gin-house, barn, or through the curtilage of a dwelling-house; and such corporation has power to erect, at such place as may be deemed convenient for its uses, depots, or other buildings, or structures, or wharves; and may purchase, hire, or charter vessels or boats for the transportation of its products or property; and may aid in the construction of railroads, or in the establishment of lines of vessels or boats, running to and from such depots, or other buildings, or structures or wharves; but the owner of any land which may be taken under the provisions of this section, shall have the right to have all his property, of like kind with that transported by the corporation, carried by such corporation over or upon such canal, railway or tramway, upon the payment of a just and reasonable compensation for such carriage.*

A corporation with **enumerated powers is private.**—Wolfe v. Underwood, 91 Ala. 523. Such corporation has the right to construct a necessary railway and condemn land therefor.—London v. Sample Lumber Co., 91 Ala. 606.

1146 (1564). **Crossing public roads, streets, navigable waters.** In the construction of its railways, tramways, or roads, the corporation may cross any public road or highway, but must place such road or highway in a condition satisfactory to the proper authorities of the county having control thereof; and may, with the consent of the proper authorities of a town or city, and upon such terms and conditions as may be agreed on with such authorities, use or cross the streets of such town or city, and may cross any navigable streams, but must not impair the navigation thereof.

1147 (1565). **Consolidation of mining, quarrying, or manufac-**

*As amended by joint committee

turing corporations.—Any two or more mining, quarrying, or manufacturing corporations may unite and consolidate their capital stock, property, and business in the manner hereinafter provided.

Electric light companies are manufacturing corporations.—Beggs v. Edison E. I. Co., 96 Ala. 295.

1148 (1566). **How proposal adopted; entry on minutes.**—Such consolidation shall be made on the recommendation of the board of directors of each of the corporations proposed to be consolidated, when adopted by a vote of the persons holding the larger amount in value of the capital stock of each corporation. Such recommendation shall be submitted in writing by the board of directors to the meeting of stockholders, and, with the vote of the stockholders thereon, shall be entered on the minutes.

1149 (1567). **How consolidation consummated.**—When a proposal for consolidation has been thus adopted, the consolidation shall be carried out by an agreement in writing, sealed with the corporate seals, and signed by the presidents of the contracting corporations, reciting that such agreement is made with the consent of the stockholders of each of the corporations, given as provided above, and stating the terms and conditions of such consolidation. This agreement must be recorded in the office of the judge of probate of the county in which such corporations are located; or if they be located in different counties, in the office of the judge of probate in each county; and upon the filing of such agreement as above provided, the consolidation is complete.

1150 (1568). **Name and charter of new corporation; changes.** On such consolidation, the parties may, by their agreement of consolidation, adopt the name and charter of either corporation as the name and charter of the consolidated corporation, and may make such changes and provisions, as to the amount of stock, and the number of directors of the consolidated corporation, as they may think proper.

1151 (1569). **Property, rights and liabilities of new corporation; pending suits.**—The corporation so formed by consolidation shall be entitled to all the property and rights of each of the corporations so uniting, and liable to the debts and obligations of each of them. Suits pending for or against either of such original corporations, at the time of consolidation, are not abated, and shall not be delayed thereby, but shall proceed in the name of the consolidated corporation.

1152 (1570). **Board of directors; election; powers.**—A board of directors, consisting of such number as may be prescribed by the by-laws, must be elected annually by the stockholders, and must hold office for a term of twelve months, and until their successors are elected and qualified; vacancies occurring in the board must be filled by the remaining directors; and the management of the property and business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents and servants, removing them at pleasure, fixing their compensation, and

prescribing their duties, and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders.

1153 (1571). **Stockholders meet annually.**—The stockholders must meet annually at such time and place, and on such notice as may be prescribed by the by-laws.

1154 (1572). **Increase of capital stock.**—The capital stock of the corporation may be increased to a sum not exceeding ten million of dollars, by the vote of the persons holding the larger amount in value of the capital stock, at a meeting of the stockholders called for that purpose, of which meeting, and the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks, in some newspaper published in the town or city in which the corporation is located; and if at such meeting the persons holding the larger amount in value of the stock vote for such increase, the proceedings of the meeting must be reduced to writing, signed by the president, or chief executive officer of the corporation, and filed and recorded in the office of the judge of probate of the county; each stockholder is entitled to a preference in taking of the increased stock an amount in proportion to the amount of the original stock he may own.

Provisions are for the benefit of stockholders and may be waived.—Nelson v. Hubbard, 96 Ala. 238. No implied power to change amount of capital stock. Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325; Glenn v. Hatchett, 91 Ala. 316. See citations to Const., Art. XIV., §6.

Feb. 21, 1893, p. 722.

1155. Provisions applicable to corporations organized under special charter.—Any corporation organized under any special charter for mining, quarrying, or manufacturing, may exercise, in addition to the rights and powers conferred under its special charter, all the rights, powers and privileges of corporations organized for mining, quarrying, or manufacturing under this article.

ARTICLE 6.

RAILROAD COMPANIES.

1156 (1573) (1821). **Corporation may be formed.**—A corporation for the construction, building, and operation of a railroad may be formed in the mode, having the powers and capacity, and subject to the duties and liabilities in this article expressed; such corporation consisting of not less than seven members, who are stockholders.

[De facto corporations; legal existence cannot be assailed collaterally.—Lehman v. Warner, 61 Ala. 455; Cen. A. & M. Asso. v. Ala., etc. Ins. Co., 70 Ala. 120; Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214; Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102.

1157 (1574). **Declaration filed in office of secretary of state.** Any number of persons, not less than seven, desiring to form a corporation for the purpose of constructing, building, and operating a railroad, must file in the office of the secretary of state a declaration in writing, signed by each of them, stating—

1. The names and residences of the subscribers.

2. The name and style of the proposed corporation, the terminal, and such other points along the line of the proposed railroad as they may deem proper.

3. The amount of the capital stock of the proposed corporation, and the number of shares into which it is divided.

4. Any other matter they may deem it desirable to state.

Office of declaration; surplusage.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

1158 (1575) (1822). **Secretary of state issues commission.** Upon the filing of the declaration, the secretary of state must issue to three or more of the subscribers a commission, constituting them commissioners to open books of subscription to the capital stock of the proposed corporation.

1159 (1576) (1823). **Notice and place of opening subscription books.**—The commissioners must, within ninety days after the date of their appointment, open books of subscription to the capital stock of the corporation, by giving thirty days' notice in some newspaper published in each of the counties through which the railroad is proposed to be built, of the time and place for the opening of the books of subscription in each of such counties; and if no newspaper is published in any of the counties, the notice giving the time and place of opening the books of subscription for that county shall be published in some newspaper in some other county on the line of the proposed railroad, and also by posting a written notice at the court-house of such county.

1160 (1577) (1824). **Subscription for stock.**—All subscriptions to or for the capital stock must be payable in money; but the commissioners may receive subscriptions payable in money, the subscribers having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor, or in property the corporation has capacity to acquire and hold, or in lands in any county through which such railroad may run, at the reasonable value thereof, the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation.

Certificates issued on fictitious increase of stock are void.—Beitman v. Steiner, 98 Ala. 241. Fraud as a defense to action on subscription.—Bibb v. Hall, 101 Ala. 79. (See also citations to section 1254, and Constitution, Art. XIV., §6.)

1161 (1578) (1825, 1826, 1827). **Organization; certificate of incorporation.**—Ten per cent. of the proposed capital stock having been subscribed in good faith by subscribers, of whose solvency the commissioners are satisfied, they shall call the subscribers together, at such time and place as they may appoint, for the election of a board of directors and other officers, and the further organization of the proposed corporation; a majority in value of the subscribers being present in person or proxy at such time and place, they must elect a board of directors from the subscribers, consisting of not less

than seven, nor more than eleven members, and such other officers as they may deem necessary; the directors holding office for a term of twelve months thereafter, and until their successors are elected and qualified; and shall designate an officer of their election, or some person of their appointment, to receive from the commissioners the subscriptions for stock. Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money without the privilege of discharge in services, or labor, or property, the payment in cash of two per cent. thereof; and of the subscribers whose subscriptions are payable in money, with the privilege of discharging the same in stipulated services or labor, or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or to the transfer or conveyance of the property, at such time as the board of directors may appoint; the proceedings of the meeting of the subscribers must be reduced to writing, must be signed by them, acknowledged before, and certified by a judge of probate under the seal of his office, and delivered to the commissioners, who must return and file the same in the office of the secretary of state; and the officer or person to whom the subscriptions for stock have been delivered, must make a list of the subscribers, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received money, the aggregate of the money received, where it is deposited, and from which of the subscribers he has received contracts in writing, as hereinbefore specified. Upon the filing of such papers, the secretary of state must issue to the subscribers to the declaration, their associates and successors, a certificate of incorporation under the seal of the state, stating that they are duly organized as a corporation under the name and style designated in the declaration, having the powers, capacity, and authority conferred by law; and thereafter such corporation must be deemed duly organized.

1162 (1579). **Record kept by secretary of state.**—After the issue of the certificate of incorporation, the secretary of state must record, consecutively, the declaration, the proceedings of the meeting of subscribers as certified by the judge of probate, the verified list of the subscribers, and the affidavit thereto, and the certificate of incorporation; and for such record he is entitled to demand and receive fifteen cents for each hundred words, and for the certificate of incorporation a fee of two dollars.

Certified transcript of certificate admissible in evidence.—Willingham v. State, 104 Ala. 59.

1163 (1580). **Powers of the corporation.**—When duly organized, the corporation has power—

1. To have succession by its corporate name for the period expressed in the declaration, or, if no period be expressed, perpetually.

2. To sue and be sued, to have a common seal, and to alter the same at pleasure.

3. To hold, purchase, dispose of, and convey such real and personal property as its uses and business may require.

4. To make all needful rules, regulations and by-laws for the transaction of its business and the management of its affairs.

5. To appoint such officers and agents as it may deem necessary, and the nature of its business may require, prescribing their duties, fixing their compensation, and removable at pleasure.

6. To provide for the transfer of its stock, and to make such by-laws as may be deemed necessary for the creation and preservation of a lien upon the stock of shareholders for all indebtedness or liabilities they may incur to or with the corporation.

7. To cause such examination and surveys for its proposed railroad to be made, as may be necessary to the selection of the most advantageous route, and, for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to liability for all damages which shall be done thereto.

8. To acquire and hold, by gift or purchase, or in payment of subscriptions for stock, or by condemnation in the mode prescribed by law, such lands as may be necessary for a way and right of way, not exceeding one hundred feet in width throughout the entire length of the road, with the right to cut down and remove all such trees and undergrowth outside thereof as might, by falling upon or shading the roadway, injure the same.

9. To acquire and hold, by gift or purchase, or in payment of subscriptions for stock, such other lands, or any interest therein, as may be necessary in making heavy excavations, or embankments, or for the purpose of wasting materials from earth excavations, or for borrowing earth or other materials for the construction of embankments, or for the protection and safety of the roadway.

10. To acquire and hold, by gift or purchase, or in payment of subscriptions for stock, lands for building depots, side-tracks, machine-shops, car-factories and other buildings necessary and incident to its business.

11. To consolidate with any railroad corporation now existing, or which may hereafter be organized under the laws of this state, in the mode, and under the conditions and terms hereinafter prescribed.

12. To purchase or lease, or to aid in the construction of any railroad connecting with its own road.

13. To increase or decrease its capital stock in the mode, and upon the terms and conditions hereinafter prescribed.

14. To borrow money for the purpose of building, or constructing, or operating its road, or for the payment of debts contracted for such purpose, or to secure the payment of debts contracted in the building, constructing, operating, or maintaining its road, and in carrying on the business thereof, or in the acquisition of property for its uses, by mortgage or deed of trust of its franchises, and its property, real or personal; and for money borrowed, or for any of its debts, may make and issue negotiable bonds, or bills of exchange, or promissory notes in any form, or other proper evidences thereof.

Subdivision 3.—Unless specially authorized a railroad can only hold such land as is necessary for its operation and construction.—Morgan v. Donovan, 58 Ala. 241; Wilks, v. G. P. R. Co., 79 Ala. 180. **Subdivision 5.—Ratification of unauthorized acts of agent.**—Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102. **Subdivision 8.—Conditions under which one railroad may condemn a part of the right of way of another.**—E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; A. & C. R. Co. v. J. G. & A. R. Co., 82 Ala. 297; M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 501; M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 520. **Right to hold franchise, granted prior to Constitution,** to lay track through the streets of a city and load and unload cars there.—Mobile v. L. & N. R. Co., 84 Ala. 115. **Subdivision 12.—If the deed to a right of way does not state its width** it will be presumed to convey the statutory width.—A. M. Ry. Co. v. Brown, 98 Ala. 647.

1164 (1581) (1842). **Right to cross navigable streams; to use, cross, or change public roads.**—The corporation is authorized, in the construction of its road, to cross navigable streams or waters, but in the erection and construction of bridges, trestles, or other structures, must not impair the navigation of such streams or waters; and the corporation is also authorized to use, or to cross, or to change public roads, when necessary in the building, construction, or maintenance of its roadway or track, but must place the public road used, or crossed, or changed, in a condition satisfactory to the authorities of the county having control thereof; but where practicable the track of the railroad must go under or over the public roadway.

Duty to erect highway-bridge over railroad at a safe elevation.—L. & N. R. Co. v. Hall, 87 Ala. 708. **The duty of putting crossings in order is a corporate duty** and proceedings must be against the corporation.—M. & G. R. Co. v. Commissioners, 97 Ala. 105.

As amended Dec. 12, 1892, p. 93.

1165 (1582) (1842). **Crossing or intersection of other railroads or street-railways.**—The corporation has authority to cross or intersect any railroad or street-railway, and if such crossing or intersection cannot be made by contract or agreement with the corporation, association or person having and controlling the railroad or street-railway to be crossed, or with which an intersection is to be made, either party may proceed, in accordance with the provisions of article 1, chapter 42 of this Code, and all other laws relating to the condemnation of lands for public uses, the provisions of which are hereby made applicable, to have an assessment and ascertainment of the damages which may accrue to such corporation or person by reason of such crossing or intersection. The notice required by section 1714 (3209) may be served on any agent of such railroad corporation in the county where the proceedings are instituted.

As amended Feb. 8, 1891, p. 970.

1166 (1583) (2008). **Consolidation of railroad corporations.** Whenever the lines of any two or more railroads, or contemplated railroads, chartered under the laws of this or any other state, which, when completed, may admit the passage of burden or passenger cars over any two or more of such roads continuously without break or interruption, such companies are authorized, before or after completion, to consolidate themselves into a single corporation, in the manner following: The directors of such corporations may enter into an agreement, under the corporate seal of each for consolidation, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of

the directors thereof, which shall not exceed thirteen, the time and place of holding the first election of directors, the number of shares of capital stock in the new corporation, the amount of each share, the manner of converting the shares of capital stock in each corporation into shares in the new corporation, the manner of compensating stockholders in each of the two or more corporations who refuse to convert their stock into the stock of the new corporation, with such other details as they shall deem necessary to protect such consolidation; and such new corporation shall possess all the powers, rights and franchises conferred upon the two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this article. The stockholders in either of such corporations, who shall refuse to convert their stock into the stock of the new corporation, shall be paid par* value for each of their shares held by them, if they shall so require, previous to the consolidation being consummated. Such agreement of the directors shall not be deemed to be the agreement of the two or more corporations until after it has been submitted to the stockholders of each of the corporations separately at a meeting thereof, to be called upon a notice of at least thirty days, specifying the time and place of such meeting and the object thereof, to be addressed to each stockholder, when his place of residence is known, and deposited in the post-office, and published for at least three successive weeks in one newspaper in one of the cities or towns in which each of such corporations has its principal office of business, and has been sanctioned by such stockholders by a vote of at least two-thirds in amount of the stockholders present at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. When such agreements of the directors have been so sanctioned by each of the meetings of the stockholders separately, after being submitted to such meetings in the manner above mentioned, then such agreement shall be deemed to be the agreement of the two or more corporations: *Provided*, that every such new corporation so formed shall keep an office in the State of Alabama, and be in all respects subject to the laws of the State of Alabama as a domestic corporation.

After consolidation an action may be brought against the new company for damages inflicted by one of the old ones.—Warren v. M. & M. R. Co., 49 Ala. 582. **Character of the consolidation is determined by the stipulations of the agreement.**—Meyer v. Johnston, 53 Ala. 237; s. c., 64 Ala. 603. **The provision that the new corporation shall possess all the rights of the old only applies when the consolidated road will admit the passage of cars continuously.**—G. P. Ry. Co. v. Wilks, 86 Ala. 478; G. P. Ry. Co. v. Gaines, 88 Ala. 377.

1167 (1584) (2009). **When merged in new corporation.**—Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of state, the two or more corporations mentioned shall be merged in the new corporation provided for in such agreement, to be known by the name therein mentioned;

*"Par" inserted in lieu of "actual" by joint committee.

and the details of such agreement shall be carried into effect as provided therein.

1168 (1585) (2010). **Property and franchise of each corporation vested in new, and new corporation subject to liabilities of each.**—Upon the election of the first board of directors of the corporation created by such agreement, the rights and franchises of each of the two or more corporations, and their right and interest in and to every species of property, shall be deemed to be transferred to, and vested in such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the right of way and all other rights of property in the same manner, and to the same extent as if the two or more corporations had continued to retain the title and transact the business of such corporation; and the titles and the real estate acquired by either of the two or more corporations shall not be deemed to revert, or be impaired by means of anything in this article contained. And all rights of creditors, and all liens upon the property of either of the two or more corporations shall be preserved unimpaired; and the respective corporations shall continue to exist, so far as may be necessary to enforce the same. All the debts, liabilities and duties of either corporation shall thenceforth attach to such new corporation, and be enforced from the same, to the same extent, and in the same manner, as if such debts, liabilities and duties had been originally incurred by it.

Feb. 18, 1891, p. 1086.

1169. Domestic may sell its property and franchises to foreign corporation.—Whenever all of the capital stock of a railroad corporation chartered under the laws of this state is owned by a railroad corporation chartered by the laws of another state, it shall be lawful for the domestic corporation to sell and convey to the corporation owning its stock all of its property, road-bed, rights and franchises; but the purchasing corporation shall keep an office and an agent in this state; and such railroad so purchased shall be, in all respects, subject to the laws of this state as if owned by a domestic corporation, and all liens and rights of creditors shall be preserved unimpaired.*

As amended Feb. 11, 1891, p. 668.

1170 (1586) (2011). **Aid to, or purchase and lease of other roads.**—A corporation, chartered under the laws of this or any other state heretofore or hereafter created for the purpose of building, constructing, or operating a railroad, may, at any time, by means of subscription to the capital of any other corporation or company, or otherwise, aid such corporation or company in the construction of its railroad, for the purpose of forming a connection with the road owned by such corporation or company furnishing aid; or any railroad corporation, organized in pursuance of the laws of this or any other state, may lease or purchase any part or all of any railroad constructed by any other corporation or company, if the lines of such road are continuous or connected, upon such terms and conditions as may be agreed on between the corporations or companies re-

*As amended by joint committee.

spectively; or any two or more railroad corporations or companies, whose lines are so connected, may enter into any arrangement for their common benefit, consistent with, and calculated to promote the objects for which they were created; but no such aid shall be furnished, nor any purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of such corporations or companies has been called by the directors thereof, at such time and place, and in such manner as they shall designate; and the holders of a majority in value of the stock of such corporation or company, represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto.

Unaided by statute a railroad has no power to lease its road and property.—M. & C. R. Co. v. Grayson, 88 Ala. 572; George v. C. R. & B. Co., 101 Ala. 607. **A lease is invalid until both corporations have held meetings as required and the holders of a majority of the stock have assented.**—George v. C. R. & B. Co., 101 Ala. 607.

1171. Same.—Any railroad company incorporated by the laws of any other state and now owning or operating, or which is or may be authorized to own or operate, by lease or otherwise, any railroad in this state, is authorized and empowered, upon the resolution of its board of directors, to aid any railroad company incorporated under any general or special law of this state, in the construction, renovation or operation of its railroad, by the indorsement or guaranty of its securities which have been or may be issued for such purpose, in such manner as may be agreed upon by the board of directors of the contracting companies, or by leasing, or by guaranteeing the rentals of any lease of any such railroad, on such terms as may be agreed upon by the respective boards of directors. Feb. 23. 1887, p. 63.

1172 (1587) (1843). **Lines may be extended, or branch road constructed.**—A corporation, now existing or which may hereafter be organized for the building, constructing and operating a railroad, has authority, for the purpose of extending its line, or forming a connection, to acquire, hold and operate a railroad without the state; or within the state may extend its road, or may build, construct and operate branch roads from any point or points on its line.

A railroad has implied power to construct necessary turnouts and switches; but power to construct a branch is only given by statute.—Arrington v. S. & W. R. Co., 95 Ala. 434.

1173 (1588). **Mode of making purchase or extension, or of construction of branch roads.**—Such purchase must be made by resolution of the board of directors, which must be submitted to a meeting of the stockholders, called for the purpose of its consideration; of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice must be given to each stockholder, whose residence is known, and by publication for four consecutive weeks in a newspaper published at the principal place of business of the corporation, and at such meeting must be approved by the vote of a majority in value of the stockholders; and if such resolution is so approved, a copy thereof, and of the proceedings of the meeting of the stockholders, certified by the president and secretary, under As amended Feb. 28, 1889, p. 75.

the corporate seal, must be filed and recorded in the office of the secretary of state. Such extension or construction of such branch road must be made by resolution of the board of directors, to be entered in the record of the proceedings of the corporation, and designating the point from which and the point to which such extension, or such branch road is to be constructed. A copy of such resolution, certified by the president and secretary, under the corporate seal, must be filed and recorded in the office of the secretary of state, and thereafter for the purpose of making such extension or building such branch road, such corporation shall have all the rights, powers and immunities which are now, or may hereafter by the laws of this state, be granted to and vested in railroad corporations, under and by virtue of the general incorporation laws of the state.

Before a branch can be constructed the prescribed steps must have been taken.—Arrington v. S. & W. R. Co., 95 Ala. 434.

1174 (1589), (1850). **Increase of capital stock.**—A corporation organized under the provisions of this article has authority to increase its capital stock to a sum not exceeding ten millions of dollars; but such increase can be made only at a meeting of the stockholders called for that purpose, and by the vote of the persons holding the larger amount in value of the capital stock; of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in a newspaper published at the principal place of business of the corporation; if at such meeting the persons holding the larger amount in value of the stock vote for the proposed increase, the proceedings of the meeting must be reduced to writing, and entered on the books or minutes of the corporation, and a copy thereof, verified by the certificate of the president and secretary, under the corporate seal, must be filed and recorded in the office of the secretary of state.

1175 (1590). **Increase of bonded indebtedness.**—The indebtedness of the corporation, evidenced by negotiable bonds, or bonds in any form, must not be increased, except at a meeting of the stockholders called for that purpose; of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in some newspaper published at the principal place of business of the corporation; and such increase can be made only by the vote at such meeting of the persons holding the larger amount in value of the capital stock.

1176 (1591). **Annual meeting of stockholders.**—The stockholders must meet annually, at such time and place, and on such notice as may be prescribed by the by-laws, for the election of directors and other officers, and the transaction of business generally. At such annual meeting, any business authorized to be transacted at a special meeting may be transacted, if notice be given, as is required in reference to a special meeting, that such business will be considered and transacted.

1177 (1592). **Quorum of stockholders; vote.**—At all meetings of

the stockholders, a majority of the stock must be represented by proxy, or by the stockholders in person; and each stockholder is entitled to one vote for each share of stock he may hold.

1178 (1593). **Board of directors.**—The business of the corporation is under the management and control of a board of directors, consisting of not less than seven, nor more than eleven members, holding and owning, in good faith, and in their own right, shares of the capital stock, who must be elected by the stockholders, at the regular annual meeting, and who hold office for a term of one year, and until their successors are elected and qualified; and who must elect one of their own number president of the corporation, and must elect or appoint such other officers or agents as may be deemed necessary, or as may be required by the by-laws, removing or discharging at pleasure the president, or other officers or agents; and must exercise all such powers as may be delegated to them by the by-laws of the adoption of the stockholders; vacancies occurring in the board must be filled by the remaining members.

1179 (1594). **Stockholders' or directors' meetings may be held without the state.**—Any corporation organized under the provisions of this article, or a corporation heretofore organized for the purpose of building, constructing or operating a railroad, may hold meetings of the stockholders at such place or places without the state as may be designated by a resolution of the board of directors, by consent in writing of all the holders of the capital stock residing in this state who shall appear on the books of the company to be stockholders on the day the meeting shall be called, acknowledged before a judge of probate, and certified under the seal of his office, and filed and recorded in the office of the secretary of state. The directors of any such corporation may meet either within or without the state. But such corporation must keep a principal place of business within the state, and must there keep an agent with whom must be deposited copies of the proceedings of all such meetings of stockholders and directors, and must file with the secretary of state a certificate, signed by the president or other managing head, and the secretary of the corporation, under its corporate seal, stating the name of such agent and the principal place of business of the corporation, and a like certificate as there may, from any cause, be a change of such agent; and copies of the proceedings of such meetings, as filed with such agent and certified by him, or the copies filed with him, are admissible in evidence against the corporation; and the service of process upon such agent in any suit or proceeding against such corporation, must be deemed and taken as service on the corporation. A written consent of the stockholders residing in this state for such meeting to be held without the state, once filed in the office of the secretary of state, as herein provided, shall continue in force as to the stock held by those signing the same, until the same is revoked by an instrument in writing, executed by one or more of such stockholders, his or their assigns or legal representatives, acknowledged in the manner hereinabove provided, and duly filed and recorded in the office of the secretary of state.

As amended Feb. 28, 1889, p. 111.

The meeting can only be lawful when statutory requirements are complied with.—Brockway v. Gadsden M. L. Co., 102 Ala. 620.

1180 (1595). **Principal place of business within the state required.**—All corporations organized under the provisions of this article, and all corporations heretofore created or organized, or deriving corporate power or authority under or from any law of this state, the purpose of which is or was the building, constructing and operating a railroad, must keep within the state a principal place of business, and must there have and keep an agent on whom process may be served for the corporation, in any and all suits or proceedings against it.

"Principal place of business" is synonymous with "principal office."—State v. M. & G. R. Co., 108 Ala. 29.

1181 (1596). **Purchasers of railroads may organize as a corporation.**—The purchasers of a railroad, existing under the laws of this state, not being less than seven in number, at any judicial sale, or other sale by authority of law, made since the adoption of the present constitution, or which may be hereafter made, may organize as a corporation, entitling themselves, their associates and successors to all the powers, rights and capacity of a corporation organized under the provisions of this article.

1182 (1597). **Mode of organization.**—Such purchasers must make a declaration in writing, signed by each of them, stating—

1. The corporate name and style adopted by them.

2. Their names and places of residence, the capital stock of the proposed corporation, and the number of shares into which it is divided.

3. The purpose to organize as a corporation under this article, the property purchased by them, the name of the corporation to which it belonged, and the sale at which they purchased.

4. Such other matters as they may deem it desirable to state; which declaration must be filed and recorded in the office of the secretary of state; and upon the filing and record of such declaration, the secretary must issue to such purchasers, their associates and successors, a certificate of incorporation, in the manner hereinbefore provided, under the seal of the state, which must be recorded in his office; and thereafter such corporation must be deemed duly organized.

1183 (1598) (2052) (1797). **Purchasers under power in a mortgage or deed of trust.**—The purchasers of a railroad, the property of a corporation, at a sale under a power in a mortgage or deed of trust, or under a decree foreclosing a mortgage, deed of trust, or other security, if such mortgage, deed of trust or other security embraced the franchises of such corporation, are entitled to, and shall have, hold and enjoy such franchises; provided they organize as a corporation, under the provisions of this article, in the mode prescribed in the preceding section.

Consolidation does not operate to bring into existence a new corporation. Meyer v. Johnston, 53 Ala. 237; s. c., 64 Ala. 603. **Corporation organized by**

purchasers succeeds to franchises and powers of old corporation; as to ownership of property and liabilities, it is new.—M. & M. R. Co. v. Steiner, 61 Ala. 559.

1184 (1599) (1855). **Subscriptions for capital stock; how payable.**—Subscriptions to or for the capital stock of a corporation, organized under the provisions of this article, must be paid in such installments, or at such times and in such manner, as the board of directors may by resolution prescribe; and the board may prescribe that subscriptions payable in money, without the privilege to the subscriber of payment or discharge in services, or in labor, or by the transfer or conveyance of property, be paid in installments; and may prescribe, when the subscription may be paid or discharged in services, or in labor, or in the transfer or conveyance of property, when the services are to be rendered, or the labor is to be performed, or the property to be transferred or conveyed, appointing different times for the one or the other, as they may deem the interests of the corporation may require.

1185 (1600). **Forfeiture of stock; suits to recover subscriptions.** If, after twenty days' notice, given in such manner as may be appointed by the by-laws, or by resolution of the board of directors, any subscriber fails to pay the installment required of him, or to render the services, or to perform the labor, or to transfer or convey the property, as required of him by the resolution of the board of directors, a suit at law may be maintained against him for the recovery of such installment, or for the breach of his contract of subscription; and successive suits may be maintained for the recovery of installments, as called for by the board of directors, or for breaches of the contract of subscription, as they may occur; or, at the election of the board of directors, by resolution of the board, a forfeiture of his subscription for stock may be declared; and upon such declaration the subscriber is released and discharged from all liability to the corporation, upon his subscription for stock, or upon his contract to pay such subscription in services, or in labor, or in the transfer or conveyance of property, and ceases to be a stockholder; but his liability to the existing creditors of the corporation is not impaired by such forfeiture.

1186 (1601). **Issue and transfer of stock.**—Certificates of stock must not be issued until there has been full payment therefor, according to the terms of the subscription; no transfer of stock is valid and operative as to the corporation, without a surrender of the certificate, and a transfer in such manner as is by the by-laws authorized; and the corporation may keep an office at any place or places without the state the board of directors may appoint, for the transfer of stock held or owned by persons not residing within the state.

1187 (1602) (1858). **Forfeiture of franchises by non-user.**—A corporation organized under the provisions of this article forfeits its franchises, and ceases to exist, by non-user of its franchises for five consecutive years.

ARTICLE 7.

STREET-RAILWAY COMPANIES.

As amended Feb. 25, 1887, p. 144, §1.

1188 (1603). **Corporation, how formed.**—Corporations for constructing, maintaining and operating street-railways in, or in and near, or between, any of the cities and towns of this state, may be formed in the mode prescribed, and have the capacity and powers in this article expressed.

Corporation cannot absolve itself from the performance of its duties by a voluntary transfer of its property and franchises, without legislative consent. Ricketts v. Birmingham St. Ry. Co., 85 Ala. 600.

As amended Feb. 25, 1887, p. 144, §1. Feb. 28, 1887, p. 149, §1.

1189 (1604). **Declaration of subscribers; contents.**—Three or more persons, associating to form a corporation for the construction, maintenance and operation of a street-railway, in, or in and near, or between, any of the cities and towns of this state, must file in the office of the judge of probate of the county, a declaration in writing, signed by each of them, stating—

1. The names and residences of the subscribers, and the name and style of the proposed corporation.

2. The amount of the capital stock, and the number of shares into which it is divided.

3. The name of the town or city and the streets thereof in, or in and near, or between which it is proposed to construct, maintain and operate such railway, with a description of the line upon which the railway is to be constructed, and the termini thereof; or, in case it is proposed to purchase a railway already constructed, the name of the town or city and the streets thereof in, or in and near, or between which it is proposed to operate and maintain such railway, with a description of the line upon which the same is to be operated and maintained, and the termini thereof.

4. Any other matter it is deemed desirable to state; which declaration must be accompanied with the consent in writing of the proper authorities of such town or city, or of the county, in case such road lies without an incorporated city or town, as to the portion so lying without.

Office of declaration; surplusage.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

1190 (1605). **Issue of commission for opening books of subscription.**—Upon the filing of such declaration, the judge of probate must issue to three or more of the subscribers a commission, authorizing them, at such time and place as they may appoint, to open books of subscription to the capital stock of the proposed corporation; of which time and place the commissioners must give notice for thirty days by publication in some newspaper published in the town or city.

As amended Feb. 28, 1887, p. 149, §2.

1191 (1606). **Organization of subscribers.**—Ten per cent. of the capital stock having been subscribed in good faith by stockholders, whose solvency is satisfactory to the commissioners, notice thereof

must be given to the subscribers, and a time and place for them to meet appointed by the commissioners; and at such time and place, if a majority of the subscribers, having the larger part in value of the stock subscribed for, are present in person or by proxy, they must proceed to elect from the subscribers for stock a board of not less than three nor more than nine directors, who hold office until the time fixed for the next annual election, and until their successors are elected and qualified; and must elect an officer, or appoint some suitable person, to receive from the commissioners the subscriptions for stock, to hold the same subject to the order of the board of directors, and for the uses of the corporation; the proceedings of such meeting must be reduced to writing, and must be signed by the subscribers present, and delivered to the commissioners, who must file the same, with the commission issued to them, in the office of the judge of probate.

There is no power to remove directors elected for a definite period fixed by statute, whatever may be the incidental power to remove for cause.—Nathan v. Tompkins, 82 Ala. 437.

1192 (1607). **Certificate of incorporation.**—On the filing of such proceedings, the judge of probate must record the declaration, commission and the proceedings of the meeting of the subscribers, and thereupon must issue a certificate of incorporation, under the seal of his office, stating therein the name and style of the corporation as designated in the declaration, and that the subscribers, their associates and successors are a body politic and corporate for the purposes expressed in the declaration, having the capacity and powers conferred by law, and must record such certificate; and thereafter the corporation must be deemed and taken as duly organized.

Definition of charter.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325.

1193 (1608). **Powers of corporation.**—The corporation, when duly organized, has capacity and power— As amended Feb. 25, 1887, p. 144, §2. Dec. 10, 1886, p. 122. Feb. 29, 1889, p. 62. Feb. 18, 1893, p. 684.

1. To have succession by its corporate name for the period expressed in the declaration; or, if no period be expressed, perpetually.

2. To sue and be sued; and if deemed necessary, to have and use a common seal, and the same to alter at pleasure.

3. To appoint such officers, agents and servants as the business of the corporation may require, prescribing their duties, fixing their compensation, and removing them at pleasure.

4. To make such by-laws and rules as are necessary for the regulation of the business, and the management of the property of the corporation; and for the transfer of its stock; and for the creation and preservation of a lien on the shares of stockholders, for any debt or liability incurred by them to the corporation.

5. To acquire, hold, dispose of, and convey such property, real and personal, as may be necessary to the uses and business of the corporation.

6. To acquire by gift, purchase or condemnation, a strip, tract, or parcel of land, not exceeding thirty feet in width, for right of way.

7. To construct, maintain and operate a street-railway upon the streets, in any city or town, and upon any of the public roads in any county of this state, upon the line, and between the termini mentioned in the declaration, and in the written consent of the proper authorities of the city, town or county.

8. To use steam or electric force or mechanical power, or animals, as a motive agent, subject to the control of the authorities of the city, town or county, through which the road runs.

9. To borrow money, and to secure the payment thereof by mortgage, or by deed of trust, conveying its property and franchises, not exceeding its capital stock, and at an interest not exceeding eight per cent., payable semi-annually.

10. To unite and consolidate with any other street-railway, or electric light or gas company, the consolidated company having power to exercise any or all of the functions of the original component companies.

As amended Feb. 28, 1889, p. 62. Feb. 25, 1887, p. 144, §2.

1194 (1609). **Contract with municipal and county authorities; compensation.**—The proper authorities of the town, city or county and the corporation have authority to contract to and with each other in reference to the use of the streets and public roads, the manner of the construction of the railway, the mode of operating it, and the compensation for the carriage of persons or property, to which the corporation is entitled, which contracts may be altered by mutual agreement; the corporation has power to use steam, or electric force, or mechanical power, or animals, as it may deem expedient; and is entitled to reasonable compensation for the carriage of persons or property; and may commence demanding and receiving tolls, or fares, when a continuous line of railway, one-quarter of a mile in length, is completed. But this shall not prevent incorporated cities and towns from regulating the construction of street-railways within their corporate limits, and the kind of motive power to be used by such railways.

1195 (1610). **Board of directors; election; powers.**—The directors must be elected annually by the stockholders, and must hold office for a term of twelve months, and until their successors are elected and qualified; vacancies occurring in the board must be filled by the remaining directors; and the management of the property and the business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents and servants, fixing their compensation, prescribing their duties, and removing them at pleasure; and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders.

Powers of directors; exclusive in their character.—Nathan v. Tompkins, 82 Ala. 437; Moses v. Tompkins, 84 Ala. 613. **No power can remove directors until the expiration of statutory period,** whatever may be the incidental power to remove for cause.—Nathan v. Tompkins, 82 Ala. 437. **Equity generally has no jurisdiction to inquire into the legality of an election of officers.**—Nathan v. Tompkins, 82 Ala. 437; Moses v. Tompkins, 84 Ala. 613. **Directors de facto.**—Ib.

1196 (1611). **Stockholders meet annually.**—The stockholders must meet annually, at such time and place, and on such notice, as may be prescribed by the by-laws.

1197 (1612). **Increase of capital stock.**—The capital stock of the corporation may be increased by the vote of the persons holding the larger amount in value of the stock, at a meeting of the stockholders called for that purpose, of which meeting, and the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in some newspaper published in the town or city in which the railway is being operated; and if at such meeting the persons holding the larger amount in value of the stock vote for such increase, the proceedings of the meeting must be reduced to writing, signed by the president, or chief executive officer of the corporation, and filed and recorded in the office of the judge of probate of the county.

There is no implied power to change amount of capital stock; statute must be strictly followed.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325; Glenn v. Hatchett, 91 Ala. 316.

1198. Right of way.—Street-railroad companies, heretofore, or hereafter organized and incorporated under the laws of this state, may acquire by gift, purchase or condemnation real estate in this state for the right of way of such roads, a strip, tract or parcel of land not exceeding thirty feet in width. And such street-railroad companies shall have the right to condemn and take possession of such land on payment to the owner thereof of just compensation, in the same manner as now provided by law for condemnation of lands for public uses in chapter 42 of this Code. Dec. 10, 1886, p. 122. As amended Feb. 26, 1889, p. 62.

1199. Purchasers of street-railroads may organize as a corporation.—The purchasers of a street-railroad, existing under the laws of this state, not being less than three in number, at any judicial sale, or other sale by authority of law, made since the adoption of the present constitution, or which may be hereafter made, may organize as a corporation, entitling themselves, their associates and successors to all the powers, rights and capacity of a corporation organized under the general law. Feb. 14, 1891, p. 709, §1.

1200. Mode of organization.—Such purchasers must make a declaration in writing signed by each of them, stating— Ib. §2.

1. The corporate name and style adopted by them.

2. Their names and places of residence, the capital stock of the proposed corporation, and the number of shares into which it is divided.

3. The purpose to organize as a corporation under the general law, the property purchased by them, the name of the corporation to which it belonged, and the sale at which they purchased.

4. Such other matters as they may deem it desirable to state; which declaration must be filed and recorded in the office of the judge of probate of the county in which the street-railroad is located; and upon the filing and record of such declaration, the judge of probate

of such county must issue to such purchasers, their associates and successors, a certificate of incorporation, in the manner provided under the general law for the incorporation of street-railroad companies, under the seal of his office, which must be recorded in his office, and thereafter such corporation must be deemed duly organized.

Ib. §3. **1201. Purchasers under power in a mortgage or deed of trust.** The purchasers of a street-railroad, the property of a corporation, at a sale under a power in a mortgage or deed of trust, or under a decree foreclosing a mortgage, deed of trust or other security, if such mortgage, deed of trust or other security embrace the franchises of such corporation, are entitled to, and shall have, hold and enjoy such franchises; provided, they organize as a corporation under the general law in the mode prescribed in the preceding section.

Feb. 18, 1893, p. 684, §§1, 7. **1202. Consolidation of street-railway and electric light or gas companies.**—Any two or more street-railways and electric light or gas companies may unite and consolidate their capital stock, property and business, although such street-railway companies may have authority to consolidate with electric light or gas companies by virtue of special provisions in the charter of such corporations, in the manner herein provided.

Ib. §§2, 3. **1203. Agreement to consolidate; recommendation of directors.** Such consolidation shall be made on the recommendation of the board of directors of each corporation proposed to be consolidated, submitted in writing to the meeting of stockholders, and with the vote of the stockholders thereon entered on the minutes, when adopted by a vote of the persons holding the larger amount of the capital stock of each corporation. When a proposition for consolidation has thus been adopted, the consolidation shall be carried out by an agreement in writing, sealed with the corporate seals, and signed by the presidents of the contracting corporations, reciting that such agreement is made with the consent of the stockholders of each corporation, given as provided above, and stating the terms and conditions of the consolidation. This agreement must be recorded in the office of the judge of probate of the county in which such corporations are located, or if they be located in different counties, in the office of the judge of probate of each county, and upon the filing of the agreement as provided, the consolidation is complete.

Meyer v. Johnston, 53 Ala. 237; s. c., 64 Ala. 603.

Ib. §§4, 5, 6. **1204. Name, rights and obligations of consolidated corporation.** The parties may, by their agreement of consolidation, adopt the name and charter of either corporation as the name and charter of the consolidated corporation, and may make such changes and provisions as to the amount of stock and the number of directors of the consolidated corporation as they may think proper. The consolidated corporation shall be entitled to all the property and rights of each of the uniting corporations, and liable to the debts and obligations of each of them. Suits pending for or against either of the original

corporations, at the time of the consolidation, are not abated, but shall proceed in the name of the consolidated corporation. And such consolidated corporation shall be entitled to all the rights and privileges which such corporation would be entitled to under the laws of this state as now existing, regulating street-railways, electric light or gas companies.

Warren v. M. & M. R. Co., 49 Ala. 582.

ARTICLE 8.

MACADAMIZED, TURNPIKE AND OTHER TOLL-ROAD COMPANIES.

1205 (1613) (1860) (1696) (1424). **Mode of creating corporation for such purposes.**—Any number of persons, not less than seven, can be incorporated for the purpose of constructing and operating a macadamized, turnpike, plank, wooden, shelled, graded, or other improved toll-road, in the manner following:

1. They must give notice of the time when, and the place where books will be opened for subscription to the capital stock, by advertisement for six successive weeks in each county through any part of which such road is intended to pass, and also by publication in a newspaper published in one of such counties for twenty days, or, if there be no such paper, then in one nearest the intended line of such road.

2. When, after such notice, stock to the amount of at least five hundred dollars for each mile of such road is taken in good faith, the subscribers, on such notice as they may determine, may elect directors, and the directors from one of their number may elect a president.

3. The stockholders must subscribe articles of association, specifying the name of the corporation, residences of the stockholders respectively, the amount of capital stock and the number of shares, the number of shares taken by each stockholder, the number and names of the directors, and the route of the road, designating the counties, towns and villages through which it will pass, and its estimated length.

4. Upon stock being subscribed as above required for each mile of road, and the payment in cash of five per cent. of the whole amount subscribed, three directors must make an affidavit of such facts, and file the same, with a certified copy of the articles of association, in the office of the secretary of state, and thereupon such stockholders, their associates and successors are a body corporate by the name specified in such articles.

1206 (1614) (1862) (1698) (1426). **Certified copy of articles evidence.**—A copy of the articles of association, certified by the secretary of state, is presumptive evidence of the incorporation of such corporation, and of the facts stated in the articles.

1207 (1615) (1861) (1697) (1425). **Powers.**—Such corporation has power, in the mode prescribed by law, to condemn lands through

which its road will pass, for a right of way, or may acquire such right of way by gift, or purchase, or in payment of subscriptions for stock; to hold, convey and dispose of all such property, real and personal, as may be necessary for its uses and purposes; to borrow money; to make and issue negotiable paper; to mortgage its property and franchises; to create such officers as may be necessary for the conduct of its business; to prescribe their duties and fix their compensation; and to do all such other acts as may be necessary to carry out the objects and purposes of its formation.

1208 (1616) (1888, 1890, 1891) (1725, 1727, 1728) (1454, 1456, 1457). **Directors.**—The business of such corporation shall be managed by a board of not less than five directors, who hold office for one year, and until their successors are elected and enter upon the discharge of their duties. They must, at their first meeting, elect one of their number president. Vacancies in the board must be filled by the remaining directors.

1209 (1617) (1888, 1889, 1892) (1725, 1726, 1729) (1454, 1455, 1458). **Election of directors.**—Directors shall be elected from among the stockholders at such time and place as the stockholders may prescribe, not less than twenty days' notice thereof being first given. Each shareholder, present in person or by proxy, is entitled to one vote for each share which he has held for thirty days previous to the election.

1210 (1618) (1880, 1881) (1716, 1717) (1444, 1445) **Calling installments on stock.**—The directors may prescribe the amount of the installments to be paid on the stock subscribed, and the time and place of payment; and if any stockholder fails to pay any such installment, his stock may, after thirty days' notice, be declared forfeited, and enures to the benefit of the corporation.

1211 (1619) (1902) (1740) (1469). **When directors personally liable.**—The debts and liabilities of any corporation, formed under the provisions of this article, must not exceed in amount, at one time, fifty per cent. of the amount of its capital actually paid in; and if there is such excess at any time, the persons who were directors at the time of the creation thereof are jointly and severally liable for such excess, unless it is shown that they voted against contracting such debt or liability.

1212 (1620) (1893) (1730) (1459). **Capital stock increased to complete road.**—The capital stock of the corporation may be increased by consent of the persons holding the larger amount in value of the stock, first obtained at a meeting held after thirty days' notice of the time, place and purpose thereof has been given personally to each stockholder, whose residence is known, and by publication for four consecutive weeks in a newspaper published at the principal place of business of the corporation. The increase so determined on is to be deemed authorized, upon the filing of a certificate of the action of such meeting, signed by the president and secretary of the corporation, with the secretary of state.

1213 (1621) (1901) (1739) (1468). **Individual liability of stockholders.**—No stockholder is individually liable for the debts or liabilities of the corporation beyond the unpaid stock owned by him.

1214 (1622) (1863, 1864) (1699, 1700) (1427, 1428). **Application for authority to locate road.**—Such corporation shall make application to the court of county commissioners of each county through which any part of the road will pass, for authority to construct the same therein. The application shall state the kind of road proposed, and the route, as specified in the articles of association.

1215 (1623) (1865) (1701) (1429). **Notice.**—Notice of such application shall be given, by publication for four successive weeks in newspapers published in the respective counties, and, if in any county there should be no paper published, then the notice must be posted at the court-house door for four weeks before the hearing.

1216 (1624) (1866) (1702) (1430). **When granted.**—Any person, owning real estate in the county in which the application is made, may show cause against such application. If the court is of the opinion that the public interest would be benefited by constructing such road in or through the county, it must make an order authorizing the construction of the same on the route proposed, and a copy of the order shall be recorded in the office of the judge of probate.

1217 (1625) (1867) (1703) (1431). **How road laid out.**—No such road shall be laid out through any orchard to the injury or destruction of fruit-trees, or through any garden, dwelling-house, or building connected therewith, or any inclosure necessary for the use thereof, without the consent of the owner. Such corporation shall not bridge any navigable stream so as to obstruct the navigation thereof, or any other stream in a way which will prevent the passage of a raft twenty-five feet in width.

1218 (1626) (1884) (1720) (1448). **Width of road.**—All roads constructed under the provisions of this article must be so constructed as to allow carriages and other vehicles to pass each other conveniently, and pass on and off at intersections with other roads.

1219 (1627) (1883) (1719) (1447). **Towns may convey land to such corporation.**—The corporate authorities of any city or town may convey to such corporation land within the corporate limits for the construction of such road.

1220 (1628) (1916). **Changes in road by commissioners.**—The court of county commissioners may change the direction, width, character and grade of any such road, upon application in writing, specifying particularly the proposed change, signed by stockholders representing more than one-half of the capital stock of the corporation, which fact shall be sworn to by the president and secretary of the corporation.

1221 (1629) (1879) (1715) (1443). **Branch roads.**—Any corporation formed under this article may construct branch roads by consent of the courts of county commissioners of the counties through which the same will pass, and obtaining the right of way by purchase or condemnation.

1222 (1630) (1882, 1885, 1887, 1913) (1718, 1721, 1724, 1751) (1446, 1449, 1452). **Tolls; bridges; gates.**—On the completion of three miles or more of such road, the corporation may charge reasonable tolls, and may charge reasonable tolls on all bridges erected for persons and property passing thereon, which tolls must be defined and regulated by the board of directors. The rates shall be published, and can in no case be increased, except at the annual meetings of the stockholders. The corporation may erect gates and suitable buildings for the toll-keepers.

1223 (1631) (1886) (1722) (1450). **Exemptions from tolls.**—No toll must be taken from any person passing from one part of his farm or plantation to another part thereof, or from persons going to or from funerals or places of religious worship, or to or from military musters or drills, in which they participate as members of the state troops or militia, or to or from elections at which such persons are authorized to vote; no toll must be taken from any person traveling on foot, or going to or from any grist-mill with grain for family use, or to or from a blacksmith-shop for work, or going for a physician and returning.

1224 (1632) (1915) (1754). **Tolls fixed by county commissioners reasonable.**—Such corporation may apply to the court of county commissioners of the county in which the longest portion of its road is located to fix the rates of toll, and the rates thereupon fixed by the court shall be considered reasonable.

1225 (1633) (1913, 1914) (1751, 1752). **Penalty for overcharge.** Any such corporation that fixes, collects, or attempts to collect an unreasonable toll for the transit of persons or property over its road, bridges, or causeways, or permits any of its officers, agents, or employees to fix, collect, or attempt to collect an unreasonable toll, shall forfeit one hundred dollars, one half to the person suing and the other to the state. In all such cases, the question whether the toll is reasonable shall be left to the jury.

1226 (1634) (1911) (1749). **Penalty for evading gate.**—Any person evading a gate on such road shall, in addition to the customary tolls to the corporation and costs of suit, pay a penalty of five dollars, one half to the party suing, the other to the county treasury, to be recovered before any justice of the peace.

1227 (1635) (1912) (1750). **Trial; amendment.**—When any person is so sued under a wrong name or description, the misnomer or misdescription may be corrected by amendment. All proceedings hereunder shall be at such place, and on such notice as the justice may fix; but the defendant may postpone the trial for a period not longer than ten days.

1228 (1636) (1905) (1743). **Judge of probate appoints road commissioners.**—The judge of probate of each county through or into which any such road runs, must appoint three discreet freeholders of the county commissioners, who shall hold office for one year and until their successors are appointed.

1229 (1637) (1906) (1744). **Commissioners must examine roads and open gates.**—Upon the application of any two freeholders or householders, any two commissioners must examine the condition of such road within their county, and if it appear upon examination that the road is so out of repair as not to afford a safe and convenient transit for persons or property, they must throw open the toll-gates of the road, and without delay make return of their examination and action, under oath, to the judge of probate.

1230 (1638) (1907) (1745). **When road in order, commissioners so report.**—Whenever such corporation applies to the commissioners, any two of them shall examine the road so declared out of repair, and if upon such examination the road is found in proper order, they must forthwith report that fact, under oath, to the judge of probate, and thereupon toll may be received on such road as before.

1231 (1639) (1908) (1746). **Liability of gatekeeper for charging toll on road out of repair.**—If any gatekeeper or other person shall, after the road is declared out of repair, and before it has been reported in order, charge or receive toll from any person or for any property passing over the road, he shall be liable for five times the amount of the toll, and for costs, to be recovered before any justice of the peace of the county where the toll was received or charged.

1232 (1640) (1910) (1748). **Pay of commissioners.**—The commissioners appointed under this article shall be entitled to one dollar and fifty cents for each day they are engaged in the discharge of their duties, to be paid by the party applying for the examination, but the amount so paid may be recovered of the corporation, if the road is reported out of repair.

1233 (1641) (1909) (1747). **Office.**—The president and directors of such road corporation shall hold their meetings and keep the principal office for the transaction of the business of the corporation in the county in which the principal portion of the road lies, or at a terminus thereof; and all acts of the corporation in violation of the provisions of this section are null and void.

1234 (1642) (1894) (1732) (1461). **How process served.**—All legal process may be served on such corporation by leaving the same at such office with any person in charge, on any day except Sunday.

1235 (1643) (1895) (1733) (1462). **Book of officers and stockholders.**—Such corporation must cause a book to be kept, containing in alphabetical order, the names of the president and directors, the names of all stockholders for six years next preceding, the number of shares of each, and the time when each became the holder thereof, which book must be free to the inspection of all persons at least six hours of each day, except Sunday, at such office.

1236 (1644) (1896) (1734) (1463). **Transfer of stock.**—No transfer, hypothecation, or other lien of stock is valid against judgment creditors with lien, or subsequent purchasers, without notice, except from the time that it is registered upon such book.

1237 (1645) (1897, 1898) (1735, 1736) (1464, 1465). **Transcript from book; penalty for not furnishing.**—Any person may obtain a transcript from such book, on application at the office to the president or other officer of the corporation, and tender of the fees for transcribing, at the rate of twelve and one-half cents per hundred words; and the officer must certify that the transcript is correct. Any officer, failing to furnish such certified transcript for five days after such demand and tender, forfeits two hundred dollars to the party aggrieved.

1238 (1646) (1899) (1737) (1466). **Book or transcript evidence.** Such book or certified transcript is presumptive evidence for the plaintiff in any suit or proceeding against the corporation or stockholders.

1239 (1647) (1900) (1738) (1467). **Failure to keep book or allow inspection.**—Any such corporation failing so to keep such book forfeits its corporate powers; and any officer neglecting or failing to permit its inspection forfeits to the person demanding inspection two hundred dollars.

1240 (1648) (1903) (1741) (1470). **Forfeiture for not prosecuting work.**—Every corporation formed under the provisions of this article ceases to be a body corporate, if, within two years from filing its articles of association, it has not commenced the construction of its road, and in good faith expended thereon at least ten per cent. of the amount of its capital, or if, within four years, it has not so expended twenty per cent., and in the same rate for every two successive years until the road is completed.

1241 (1649). **Purchasers may become incorporated.**—Any three or more persons, or their assigns, holding by purchase, voluntary or under legal process, the larger amount of the interest in the roadbed of any macadamized, turnpike, plank, wooden, shelled, graded, or other improved road, previously owned and operated as a toll-road by any corporation under the laws of this state, may organize themselves into a body politic and corporate for the benefit of themselves, their associates and successors; and by purchasers hereunder is meant the persons actually furnishing the consideration, and not the trustees merely.

1242 (1650). **Manner of incorporation.**—Such purchasers shall elect directors and select a corporate name, and upon filing with the secretary of state within four months, a certificate of the proceedings so had, signed and verified by the oath of some person appointed by such purchasers so organizing to keep a record of the proceedings, showing the name of the original corporation, the new corporate name selected, and the names of the purchasers so organizing, the incorporation shall be deemed complete, and the corporation fully organized and entitled to exist under the name selected, and to have all the rights, privileges, immunities and franchises of the original corporation, to be held in all cases as if acquired under the constitution of 1875. The corporation has power to sell, mort-

gage, or otherwise encumber or dispose of its rights, franchises and property of every kind.

1243 (1651). **Certificate recorded; evidence.**—Such certificate shall be recorded by the secretary of state in his office, and a certified copy thereof by the secretary shall, in all courts and proceedings, be presumptive evidence of the incorporation and the proceedings therefor.

ARTICLE 9.

TELEGRAPH COMPANIES.

1244 (1652) (1930). **Right to construct and maintain lines along public highways.**—Any telegraph company, incorporated under the laws of this or any other state, shall have the right to construct, maintain and operate lines of telegraph along any of the railroads or other public highways in this state; but such lines of telegraph shall be so constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway.

1245 (1653) (1931). **Power to contract.**—Such telegraph company shall have power to contract with any persons or corporation, the owner of any lands, or of any franchise or easement over which such telegraph-line is proposed to be erected, for the right of way for planting, repairing and preserving its telegraph-poles, and for the erection and occupation of offices, at suitable distances for the public accommodation.

1246 (1654) (1932). **Right of way.**—Such telegraph company shall be entitled to the right of way over the lands, franchises and easements of other persons and corporations, and the right to erect poles, and to establish offices, upon making just compensation as now provided by law.

ARTICLE 10.

NAVIGATION COMPANIES.

1247 (1655) (1933) (1763). **Mode of forming navigation companies.**—Any two or more persons, who desire to operate a line of steamships or other water-craft navigating the sea to or from the port of Mobile to any other port of the United States or of any foreign country, may become incorporated and enjoy all the benefits and privileges of a charter to the same extent as if a charter were granted by a special act of the general assembly, who shall comply with the following conditions:

1. The person designing to establish such line must, by a declaration in writing, state the object of the company, the name to be assumed, the amount of capital stock to be raised, the number of shares into

which it is to be divided, and the names of the shareholders; but the capital stock shall in no case be less than twenty-five thousand dollars, or more than eight hundred thousand dollars, and each share shall be of the value of not less than fifty, and not more than one thousand dollars. Such declaration shall be subscribed by contributors holding at least one-third of the stock, or by their authorized agents, and filed in the office of the secretary of state, verified by the oath of at least two subscribers before any judge of probate or circuit judge.

2. Upon the filing of such declaration, and upon certificate that one-third of the proposed capital stock has been actually paid in cash into a bank doing business in Mobile to the credit of the corporators, or of some person designated in their declaration as trustee for them, which certificate may be by the cashier of the bank under its seal, the governor must issue to such subscribers, their associates and successors, letters patent, under the great seal of the state, declaring them a body politic and corporate under the name and style stated in the declaration.

3. Every corporation formed under this section shall have a president, treasurer and such other officers and agents as its business may require, and may also have a board of not more than ten, nor less than five directors. Such officers shall be appointed in such manner, and for such time as the company, by its by-laws, may provide.

4. After the issue of such letters, whatever money may stand in any bank to the credit of the company, or the trustee, is subject to the check or draft of the treasurer, countersigned by the president, or to the check or draft of such other officer as the by-laws may direct.

As amended Dec. 12, 1892, p. 94. Feb. 7, 1893, p. 305.

1248 (1656) (1934) (1764). **Powers.**—Upon complying with the above requisitions, the company shall be deemed duly organized under the name adopted in such declaration, and shall have perpetual succession and all the rights, privileges and immunities, and liable to all the obligations of a private corporation. Such subscribers, their associates and successors shall have full power to fill all subscriptions to the capital stock to the amount named in their written declaration, and to the amount of eight hundred thousand dollars, if they file a new declaration to that effect with the secretary of state; to purchase, build, equip, charter, own and sell vessels propelled by steam, or otherwise, to navigate the Gulf of Mexico and other seas between Mobile and the ports in the declaration named, and to purchase, build, equip, charter, own and sell and run such auxiliary vessels as may be necessary; to provide fuel and other necessaries, and to purchase, transport and sell, or contract for the sale of, or to transport or sell upon commission, any cargo or part of a cargo, of any article of domestic export or import; and to erect, purchase, lease, hold and convey such buildings and real estate as may be necessary to the efficient management of the business of the company. The company may further adopt such by-laws for the

management of its business, not inconsistent with law, as it may see fit; but no company organized hereunder shall have banking privileges, or powers not necessary for managing a line of vessels carrying freight and passengers.

Appointment and powers of agent.—Tenn. R. & T. Co. v. Kavanaugh, 93 Ala. 324; s. c., 101 Ala. 1. Authority of a corporation chartered to use steamboats to purchase or lease a barge for hauling wood.—Ib.

1249 (1657) (1935) (1765). **Special meetings.**—The president of the company, on the written request of stockholders owning one-third of the capital stock paid in, shall call a special meeting of the stockholders, after giving twenty days' notice, which shall state specifically the object of the meeting; and only the object so stated shall be acted on thereat. The treasurer, or other accounting officer of the company, must, on a similar request, furnish a written statement of the company's accounts and the condition of its pecuniary affairs.

1250 (1658) (1936) (1766). **Winding up affairs of company.** When, from any cause, it becomes necessary to wind up the affairs of the company, and an amicable arrangement cannot be made among the parties interested, the chancellor of the southwestern chancery division must, upon application by bill of parties interested to the extent of twenty-five thousand dollars, appoint three suitable commissioners, who may be required to give bond with sufficient sureties, to be approved by the chancellor, for the faithful performance of the trust, whose duty it is to take possession of the assets, and, as speedily as practicable, under the direction of the chancellor, wind up the affairs of the company, and make due distribution among the parties in interest.

ARTICLE 11.

CORPORATIONS NOT SPECIALLY PROVIDED FOR.

1251 (1659). **Corporations for any industrial business or lawful enterprise.**—Two or more persons, associating themselves for the carrying on of any industrial business, or for any lawful enterprise, if not otherwise provided by law, may form themselves into a private corporation, in the mode and with the capacity and powers in this article expressed.

De facto corporation; stockholders not liable as partners; estopped against persons contracting with it.—Cahall v. Cit. M. B. Asso., 61 Ala. 232; Lehman v. Warner, 61 Ala. 455; Cent. A. & M. Asso. v. Ala. G. L. Ins. Co., 70 Ala. 120; Schloss v. Montgomery Trade Co., 87 Ala. 411; Snider v. Troy, 91 Ala. 224; Cory v. Lee, 93 Ala. 468; Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214; Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102.

1252 (1660). **Declaration to be filed in office of judge of probate; contents.**—The persons so associating must file in the office of the judge of probate of the county in which it is proposed the corporation shall have its principal place of business, a declaration in writing, signed by each of them, stating—

1. The names and residences of the subscribers, and the name and style of the proposed corporation.

2. The general purposes of the corporation, the nature of the business intended, and the principal place of business or location of the corporation.

3. The amount of the capital stock and the number of shares into which it is divided.

4. Any other matter it is deemed desirable to state.

Office of declaration; surplusage.—Grangers' L. & H. Ins. Co. v. Kamper, 73 Ala. 325. **Subdivision 4.**—Need not set out installments in which stock is to be paid.—Bolling v. LeGrand, 87 Ala. 482.

1253 (1661). **Commission issued by judge of probate.**—Upon the filing of the declaration, the judge of probate must issue to two or more of the subscribers to the declaration a commission, authorizing them, as commissioners, to open books of subscription to the capital stock of the corporation at such times and places as they may appoint.

1254 (1662). **Subscriptions for stock.**—All subscriptions to or for the capital stock must be payable in money; but the commissioners may receive subscriptions payable in money, the subscriber having the privilege of discharging the same by the rendition of stipulated necessary services, or the performance of stipulated necessary labor for the corporation, at the reasonable value of such services or labor, or in property at the reasonable value thereof, the corporation has capacity to acquire and hold, the subscription stating the nature and character of such property, and when it is to be transferred or conveyed to the corporation.

Purpose is to prevent a fraudulent issue of fictitious stock.—Williams v. Evans, 87 Ala. 726; Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214. **Until organization is perfected an agreement to take stock is a mere offer,** revocable or not according to the nature of the agreement.—Knox v. Childersburg Land Co., 86 Ala. 180. **Stock cannot be issued as a bonus, or in any way except for money, property, or services.**—Williams v. Evans, 87 Ala. 726; Tutwiler v. Coal Co., 89 Ala. 391; Perry v. Tuscaloosa C. S. O. M. Co., 93 Ala. 364; Nelson v. Hubbard, 96 Ala. 238; Parsons v. Joseph, 92 Ala. 403; Beitman v. Steiner, 98 Ala. 241; Davis v. Montgomery F. & C. Co., 101 Ala. 127; Ala. Nat. Bank v. Halsey, 109 Ala. 196. **An increase in value of the property in which the capital stock is invested** will not justify the issuance of a stock dividend to represent such increase.—Fitzpatrick v. Dispatch Pub. Co., 83 Ala. 604. **When the subscription is payable in property the property must be taken at its reasonable money value.**—Parsons. v. Joseph, 92 Ala. 403; Elyton Land Co. v. Birmingham W. & E. Co., 92 Ala. 407; Nelson v. Hubbard, 96 Ala. 238; Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214; Davis v. Montgomery F. & C. Co., 101 Ala. 127; Nicrosi v. Irvine, 102 Ala. 648. **Corporation is a purchaser for value of land conveyed in payment of stock.**—Frenkel v. Hudson, 82 Ala. 158. See citations to Constitution, Art. XIV., §6.

1255 (1663). **Organization of corporation.**—Fifty per cent. of the proposed capital stock having been subscribed in good faith by subscribers, of whose solvency the commissioners are satisfied, they shall call the subscribers together at such time and place as they may appoint for the election of a board of directors and other officers, and the further organization of the proposed corporation; a majority in value of the subscribers being present in person or by proxy at such time and place, they must elect a board of directors from the subscribers, consisting of not less than three, nor more

than nine members, and such other officers as they may deem necessary; the directors holding office for a term of twelve months thereafter, and until their successors are elected and qualified; and shall designate an officer of their election, or some person of their appointment, to receive from the commissioners the subscriptions for stock. Upon the delivery of the subscriptions to such officer or person, he shall require of the subscribers whose subscriptions are payable in money, without the privilege of discharge in services or labor, or property, the payment in cash of twenty per cent. thereof; and of the subscribers whose subscriptions are payable in money, with the privilege of discharging the same in stipulated services or labor, or in the transfer or conveyance of property, contracts in writing signed by them, expressing such privilege, and binding them to the rendition of the services, or the performance of the labor, or the transfer or conveyance of property, at such times as the board of directors may appoint. The proceedings of the meetings of the subscribers must be reduced to writing, and must be signed by them and delivered to the commissioners, who must return and file the same in the office of the judge of probate; and the officer or person to whom the subscriptions for stock have been delivered, must make a copy thereof, and verify the same by affidavit, stating in such affidavit from which of the subscribers he has received payment in cash of twenty per cent., and from which he has received contracts in writing, as hereinbefore specified; upon the filing of such papers, the judge of probate must issue to the subscribers, their associates, and their successors, a certificate stating that they are duly organized as a corporation, under the name and style, and for the purposes expressed in the declaration, having the powers, capacity, and authority conferred by law.

Corporate functions acquired by an evasive compliance is a fraud upon the law.—Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214. **Organization may be perfected before all the capital is subscribed.**—Schloss v. Montgomery Trade Co., 87 Ala. 411. **Issuance of certificate, other steps having been taken, is not a condition precedent to legal organization; may be compelled by mandamus.**—Sparks v. Woodstock I. Co., 87 Ala. 294. **Legal existence cannot be collaterally assailed; if the state acquiesces others cannot complain.**—Cent. A. & M. Asso. v. Ala. G. L. Ins. Co., 70 Ala. 120; Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214; Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102. **Defects in organization may be cured by special legislative act.** Cent. A. & M. Asso. v. Ala. G. L. Ins. Co., 70 Ala. 120; Sanche v. Webb, 97 Ala. 111; s. c., 110 Ala. 214. **De facto corporations; estoppel.**—See citations to section 1251 (1659). **Powers of directors; term of office; removal.**—See citations to section 1195 (1610).

1256 (1664). Powers of corporation.—When duly organized such corporation has power—

1. To have succession by the corporate name for a period of twenty years, if a less period be not expressed in the declaration.

2. To sue and be sued; and, if deemed necessary, to have a corporate seal, which may be altered at pleasure.

3. To hold, purchase, dispose of, and convey such real and personal property as the nature of its business may require.

4. To appoint such officers and agents as may be deemed necessary

for the transaction of its business, and the management and control of its affairs and property,

5. To make all needful by-laws, rules, and regulations for the transaction of its business, the management and control of its affairs, and the uses and disposition of its property; and for the transfer of its stock, and the creation and preservation of a lien upon the shares of its stockholders, for the payment of any debt or liability they may incur to the corporation.

6. To carry on the business, or accomplish the purposes expressed in the declaration.

7. To borrow money, and to mortgage, or otherwise convey or pledge its property, real or personal, and its franchises, to secure the payment of the money so borrowed, or any other debt contracted by it; but it has not power to borrow a sum exceeding its capital stock, or at a rate of interest exceeding eight per cent., payable semi-annually; nor must such mortgage, conveyance, or pledge be made otherwise than by the consent of the holders of the larger part in value of the capital stock, expressed by vote at a meeting of the stockholders, called for that purpose, of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice is given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in the newspaper published nearest to the place of business of the corporation.

As amended Feb. 28, 1889, p. 108.

8. Land companies and corporations organized for the purpose of buying, selling, or improving land, shall, in addition to the powers above stated, have the power to invest their money in other property or assets in enterprises which they deem calculated to advance their interests, or to loan money or property to individuals or corporations buying, leasing, or making improvements on or near their lands, and to receive certificates of stock, notes, bonds, mortgages, or other security for such investments or loans; and all such investments or loans heretofore made by such companies in good faith are legalized.

Subdivision 3.—Corporation has the same right to sell for cash or on a credit as an individual.—Fort Payne Bank v. The Ala. Sanitarium, 103 Ala. 358. **And this although it is insolvent. The assets of an insolvent corporation do not constitute a trust fund** in its hands for the benefit of creditors in the proper and essential meaning of these terms.—O'Bear Jewelry Co. v. Volfer, 106 Ala. 205 (overruling Gibon v. Towbridge Fur. Co., 96 Ala. 357; Goodyear Rubber Co. v. Scott Co., 96 Ala. 439; Corey v. Wadsworth, 99 Ala. 68); Barrett v. Pollak Co., 108 Ala. 390; Pollak Co. v. Muscogee Mfg. Co., 108 Ala. 467; Mary Lee C. & R. Co. v. Knox, 110 Ala. 632. **Presumptively has power to issue negotiable paper.**—Florence R. & I. Co. v. Bank, 106 Ala. 364. **Unless specially authorized a subscription by one corporation of a part of its capital to the stock of another, is void.**—Commercial Fire Ins. Co. v. Bd. of Rev., 99 Ala. 1; Lanier Lumber Co. v. Rees, 103 Ala. 622. **If authorized, it cannot, against objection of stockholders sell all its property to another corporation, taking stock therein in payment.**—Elyton Land Co. v. Dowdell, Ala. (20 So. 981). **The president cannot convey corporate property without authority** from directors; subsequent ratification binds the corporation but not creditors who have acquired rights.—Wood v. McCain, 7 Ala. 800; Gibson v. Goldthwaite, 7 Ala. 281; T. & C. R. Co. v. E. A. R. Co., 73 Ala. 426, 445; Standifer v. Swann, 78 Ala. 88; Swann v. Gaston, 87 Ala. 569; Goodyear Rubber Co. v. Scott Co., 96 Ala. 439; Norton v. Bank, 102 Ala. 420; Jinwright v. Nelson, 105 Ala. 399; Jordan v. Collins, 107 Ala. 572; Mickle v. Montgomery, 111 Ala. 415. **Must convey in name of corporation; seal prima**

facie evidence of authority.—Jinwright v. Nelson, 105 Ala. 399. **Unauthorized covenants, entered into by president** in consideration of a conveyance of land, subsequently ratified, is binding on the corporation and its successor with notice.—M. & M. Ry. Co., v. Gilmer, 85 Ala. 422. **Subdivision 4.—As a general rule an officer cannot use his position for his own advantage; can make no contract with himself.**—Tuscaloosa C. S. O. Co. v. Perry, 85 Ala. 158; Corey v. Wadsworth, 99 Ala. 68; Mary Lee C. & R. Co. v. Knox, 110 Ala. 632. **Acts of agent within scope of chartered powers, or without, if ratified, are binding.**—Stanley v. Sheffield L. I. & C. Co., 83 Ala. 260; Tenn. R. & T. Co. v. Kavanaugh, 93 Ala. 324; s. c., 101 Ala. 1; Bibb v. Hall, 101 Ala. 79; Kahn v. Hall, 101 Ala. 102. **Subdivision 5.—Rules and regulations must be pertinent to the subject and reasonable in themselves.**—Cunningham v. Ala. L. I. & T. Co., 4 Ala. 652. **May adopt a by-law that stock cannot be transferred while the holder is in default to the corporation.**—Cunningham v. Ala. L. I. & T. Co., 4 Ala. 652; Mobile Mut. Ins. Co. v. Cullom, 49 Ala. 558. **After organization may legally ratify and accept agreements entered into by its promoters and intended for its benefit.**—Moore H. H. Co. v. Towers H. Co., 87 Ala. 206; Davis v. Montgomery F. & C. Co., 101 Ala. 127. **Subdivision 6.—Corporation chartered to manufacture and repair machinery cannot act as selling agent** and indorse notes given in that business.—Westinghouse Mach. Co. v. Wilkinson, 79 Ala. 312. **One chartered to manufacture, repair and operate machinery and do founder's business,** cannot engage in the business of manufacturing and selling ice.—Simmons v. Troy I. Wks., 92 Ala. 427. **Chartered to manufacture lime and barrels cannot conduct a general merchandise business.**—Chewacla Lime Wks. v. Dismukes, 87 Ala. 344. **Subdivision 7.—Includes power to pledge corporate bonds as collateral to secure debts.**—Nelson v. Hubbard, 96 Ala. 238. **Notice required is for the benefit of stockholders and, being waived, creditors cannot complain.**—Nelson v. Hubbard, 96 Ala. 238; Barrett v. Pollak Co., 108 Ala. 390. **Subdivision 8.—Without special authority one corporation cannot invest its capital in the stock of another.**—Commercial Fire Ins. Co. v. Bd. of Rev., 99 Ala. 1; Lanier Lumber Co. v. Rees, 103 Ala. 622.

1257 (1665). **Board of directors; election; powers.**—A board of directors, consisting of such number as may be prescribed by the by-laws, must be elected annually by the stockholders, and must hold office for a term of twelve months, and until their successors are elected and qualified; vacancies occurring in the board must be filled by the remaining directors; and the management of the property and business of the corporation is under the control of the directors, who have power to elect and appoint all officers, agents and servants, removing them at pleasure, fixing their compensation, and prescribing their duties; and to exercise such other powers as may be delegated to them by the by-laws of the adoption of the stockholders.

Cannot vote by proxy.—Perry v. Tuscaloosa C. S. O. Co., 93 Ala. 364. **It will be presumed, in the absence of proof, that there is a board of directors.** Goodyear Rubber Co. v. Scott Co., 96 Ala. 439. **Where the directors own all the stock they may authorize sale of all assets without having had a formal meeting.**—Jordan v. Collins, 107 Ala. 572. **Equity will enforce stock assessment when directors fail to perform that duty.**—Glenn v. Semple, 80 Ala. 159. **Powers, etc.**—See citations to section 1195 (1610).

1258 (1666). **Stockholders meet annually.**—The stockholders must meet annually, at such time and place, and on such notice, as may be prescribed by the by-laws.

Neither stockholders nor directors can vote by proxy unless specially authorized.—See citations to preceding section.

1259 (1667). **Amount of capital stock; how increased.**—Any company or corporation already organized, or that may hereafter be organized under the provisions of this article, may have a capital stock not exceeding ten millions of dollars, and any corporation now, or hereafter organized under the provisions of this article, may increase its capital stock to an amount not exceeding ten millions of

As amended Dec. 11, 1890, p. 221.

dollars by the vote of the persons holding the larger amount in value of the stock thereof, at a meeting of the stockholders called for that purpose, of which meeting and the purpose for which it was called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in some newspaper published in the town, city, or county in which the corporation is located; and if at such meeting the persons holding the larger amount in value of the stock vote for such increase, then such increase shall be made to the amount stated in the notice, or to a less amount, as may be determined. The proceedings of the meeting must be reduced to writing, which must be signed by the president or chief executive officer of the corporation, and filed and recorded in the office of the judge of probate of the county in which the corporation is located. Each stockholder is entitled to a preference in taking of the increased stock an amount in proportion to the amount of the original stock he may own, and shall have a right for sixty days after the increase of stock has been agreed upon to take and pay for his pro rata of the stock in proportion to the stock originally held by him. And the stock heretofore issued by corporations organized under this article, whose capital stock does not exceed ten millions of dollars, is hereby legalized and made valid, notwithstanding the amount of capital stock of such corporation exceeds the amount heretofore authorized by this article. Neither stock nor bonds shall be issued by any private corporation except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.

The fact that the capital has been invested in property which has doubled in value does not authorize the issue of a corresponding increase of stock to be distributed as a stock dividend.—Fitzpatrick v. Dispatch Pub. Co., 83 Ala. 604. **A pledge of corporate bonds for a greater par value than the debt secured thereby is valid if bona fide.**—Nelson v. Hubbard, 96 Ala. 238. **Notice is for the benefit of stockholders, and may be waived.**—Nelson v. Hubbard, 96 Ala. 238; Barrett v. Pollak Co., 108 Ala. 390. See citations to section 1254 (1662); also to Constitution, Art. XIV., §6.

1260 (1668). **Renewal of incorporation.**—An incorporation under this chapter may be renewed according to the provisions hereinbefore made, with the consent of a majority in value of the stockholders, expressed at a meeting of the stockholders called for that purpose.

ARTICLE 12.

GENERAL PROVISIONS.

1261 (1669). **Shares of stock personal property.**—Shares or interests in the stock of private corporations are personal property, transferable on the books of the corporation in such manner as is required by the by-laws, or by the rules and regulations of the corporation.

Shares of stock are personal property, but this alone does not affix subjectivity to levy and sale under legal process.—Nabring v. Bank, 58 Ala. 204; Union Bank v. Hartwell, 84 Ala. 379; Moses v. Scott, 84 Ala. 608; E. Birming-

ham Land Co. v. Dennis, 85 Ala. 565; Berney Bank v. Pinckard, 87 Ala. 577; Kennedy v. Mary Lee C. & R. Co., 93 Ala. 494; White v. Rankin, 90 Ala. 541; Birmingham T. & S. Co. v. Bank, 99 Ala. 379. **Agreement to purchase stock will sometimes be specifically enforced.**—Moses v. Scott, 84 Ala. 608. **Validity of a "voting trust."**—Moses v. Scott, 84 Ala. 608; M. & O. R. Co. v. Nicholas, 98 Ala. 92.

1262 (1670) (2043) (1785). **Transfer on books.**—When, by the charter, articles of association, or by-laws and regulations of a private corporation, the transfer of the stock is required to be made upon the book or books of the corporation, no transfer of stock shall be valid as against bona fide creditors, or subsequent purchasers, without notice, except from the time that such transfer shall have been registered, or made upon the book or books of such corporation.

To be construed in connection with sections 1263 (1671) and 1265 (1673). Berney Bank v. Pinckard, 87 Ala. 577; Abels v. P. & M. Ins. Co., 92 Ala. 382. **For the protection of purchasers and creditors;** not intended to invalidate other methods of transfer except as against them.—P. & M. Ins. Co. v. Selma Bank, 63 Ala. 585; Campbell v. Woodstock I. Co., 83 Ala. 351; Union Bank v. Hartwell, 84 Ala. 379; Berney Bank v. Pinckard, 87 Ala. 577; Winter v. Montgomery G. L. Co., 89 Ala. 544; Birmingham T. & S. Co. v. Bank, 99 Ala. 379. **Does not require any particular form of registration or book;** a memorandum on the stub of a stock-certificate book is sufficient.—Fisher v. Jones, 82 Ala. 117. **A transfer is not valid as against creditors or purchasers for value** and without notice except from date of registry.—Nabring v. Bank, 58 Ala. 204. **Bona fide creditors are judgment creditors with a lien,** or attachment creditors who perfect a lien by judgment. Rights accrue on the acquirement of the lien.—Jones v. Latham, 70 Ala. 164; Berney Bank v. Pinckard, 87 Ala. 577; Abels v. P. & M. Ins. Co., 92 Ala. 382. **Gives creditor whose attachment or execution has been levied before registration of transfer, or actual notice, rights superior to those of transferee.**—Jones v. Latham, 70 Ala. 164; Fisher v. Jones, 82 Ala. 117; Berney Bank v. Pinckard, 87 Ala. 577; White v. Rankin, 90 Ala. 541; Abels v. P. & M. Ins. Co., 92 Ala. 382; Birmingham T. & S. Co. v. Bank, 99 Ala. 379. **Where stock is registered in the name of one although really belonging to another, it may be subjected by creditors of the nominal owner.**—Winter v. Montgomery G. L. Co., 89 Ala. 544; White v. Rankin, 90 Ala. 541. **Purchaser without notice from the last registered holder is not affected by the rights of holders back of the registry.**—Winter v. Montgomery G. L. Co., 89 Ala. 544.

1263 (1671) (2044) (1786). **Must require register of transfer on books; transfer not registered void.**—It is the duty of every private corporation to require the transfer of its stock to be made or registered on the books of the corporation; and persons holding stock not so transferred or registered, or holding any stock under hypothecation, mortgage, or other lien, must have the transfer, hypothecation, mortgage, or other lien made or registered on the books of the corporation, or upon failing to do so within fifteen days, all such transfers, hypothecations, mortgages, or other liens shall be void as to bona fide creditors, or subsequent purchasers without notice.

Transfer is good between the parties without registration.—Duke v. Cahawba Nav. Co., 10 Ala. 82; Fisher v. Jones, 82 Ala. 117; Campbell v. Woodstock I. Co., 83 Ala. 351. See also citations to preceding section. **Registration must be made within the time limited.**—Berney Nat. Bank v. Pinckard, 87 Ala. 577; Abels v. P. & M. Ins. Co., 92 Ala. 382. **A memorandum on the stub of the stock-certificate book is sufficient registration.**—Fisher v. Jones, 82 Ala. 117. **Who are bona fide creditors or purchasers.**—See citations to preceding section. **A purchaser of a certificate indorsed in blank but unregistered,** which has been lost or stolen will not be protected against the title of the true owner in whose name the stock is registered.—E. Birmingham Land Co. v. Dennis, 85 Ala. 565. **The person in whose name the stock is registered is the owner** in the estimation of the statutes.—Winter v. Montgomery G. L. Co., 89 Ala. 544; White v. Rankin, 90 Ala. 541. **Actual notice of an unregistered transfer is binding** and protects the transferee.—Birmingham T. & S. Co. v.

Bank, 99 Ala. 379. **When a stockholder borrows money and, as security, causes the stock to be transferred on the books to the lender, the transaction is a pledge.**—Nabring v. Bank, 58 Ala. 204. **A writing by which a stockholder transfers and assigns his interest in stock as collateral and authorizes the transferee to sell it to satisfy the debt and transfer it to the purchaser is a mortgage.**—Campbell v. Woodstock I. Co., 83 Ala. 351; Gilmer v. Morris, 80 Ala. 78.

1264 (1672) (2038, 2039) (1780, 1781). **Transfer may be made by personal representative.**—An executor or administrator, deriving his appointment from a court of probate of this state, or if the testator or intestate resided without the state, from the proper tribunal of his domicil, may transfer the shares of stock held and owned by such testator or intestate in any private corporation existing under the laws of this state; payment of dividends on such stock may be made to such executor or administrator.

An administrator of a non-resident may be appointed in the county of the residence of a corporation in which his intestate owned stock and may transfer the shares, although the foreign administrator might have done so.—Winter v. London, 99 Ala. 263.

1265 (1673). **Stock subject to levy and sale.**—The shares of stock are subject to levy and sale under attachment or execution, as is other personal property; and the levy may be made with or without the officer having or obtaining possession of the certificate of stock, by indorsement on the attachment or execution, stating the number of shares, or other interest, on which the levy is made, and giving notice thereof to the custodian of the books of transfer, if he be known and reside within the state, or if he be unknown, or if he reside without the state, by posting notice at the court-house door of the county, and by publication for three consecutive weeks in a newspaper published at or near the principal place of business of such corporation; all transfers of the stock made in good faith and for a valuable consideration before notice of the levy is given, are valid and operative, and must prevail over the levy. The levy and the sale thereunder may be made in the county of the residence of the defendant, or in the county in which the corporation has its principal place of business; and on making the sale, the sheriff must make to the purchaser a transfer of the stock in writing; and the purchaser has the right to require the proper officer to register such transfer on the books of the corporation, and, with or without such registry, is entitled to all the rights and interests of the defendant as whose property such stock was sold.

The shares, not the certificates representing them, are the subject of levy. White v. Rankin, 90 Ala. 541. **Stocks are on the same footing as personal chattels** as to amenability to levy on execution or attachment.—Berney Nat. Bank v. Pinckard, 87 Ala. 577. **Does not provide for levy on an interest but that of an absolute owner.**—Nabring v. Bank, 58 Ala. 204. **Rights of purchasers at execution sale date from the acquirement of the lien**—Jones v. Latham, 70 Ala. 164; Fisher v. Jones, 82 Ala. 117; Berney Nat. Bank v. Pinckard, 87 Ala. 577; Abels v. P. & M. Ins. Co., 92 Ala. 382. **Levy is ineffectual until notice is given.**—Fisher v. Jones, 82 Ala. 117. **Notice to custodian may be oral.** Abels v. P. & M. Ins. Co., 92 Ala. 382. **The person in whose name the stock is registered is the true owner** in the estimation of the statutes, and it is subject to execution against him.—White v. Rankin, 90 Ala. 541; Winter v. Montgomery G. L. Co., 89 Ala. 544.

Feb. 18, 1893, p. 688, §1.

1266. Statement furnished officer making levy.—Whenever any sheriff or other officer, having an execution or attachment in his

hands against any person, makes demand of the custodian of the books of any corporation, upon the officer exhibiting his process to him, and furnishing him with a copy thereof, if demanded, it shall be the duty of such custodian to furnish such officer a statement, signed in his official capacity, of the number of shares or amount of interest held by such person in such corporation, and also a statement of all liens, mortgages or hypothecations of such stock, and the amount thereof, as shown on the books of such corporation; and if the custodian of such books neglects or refuses to furnish the statement, or if he shall willfully give a false statement thereof, he shall be liable to the plaintiff or other person purchasing such stock, as the one or the other may be damaged, for double the amount of damages occasioned by such neglect, refusal or false statement.

1267. Must keep stock record-books.—Every corporation incor- Ib. §2.
porated under any law of this state, general or special, shall keep in this state, in the hands of some officer, books showing who are the holders of stock therein, and all transfers, hypothecations, liens or mortgages of such stock must be entered upon said book within fifteen days after the same shall have been made or created, or the same shall be void against the lien of such attachments and executions, unless the plaintiff therein had notice of such transfer, hypothecations or mortgages prior to the levy of such attachment or execution.

See citations to section 1263 (1671).

1268 (1674). **Lien of corporation on shares of stockholder.**—All private corporations have a lien on the shares of its stockholders, for any debt or liability incurred to it by a stockholder before notice of a transfer, or of a levy on such shares; and if necessary for the payment of such debt, or the satisfaction of such liability, the corporation may sell the shares after notice for thirty days, sent through the mail, postage paid, to the stockholder, or if he be dead, to his personal representative, at the post-office nearest his last known place of residence, or after personal demand of payment or satisfaction from either, if such demand be not complied with in thirty days; such sale to be made at public auction to the highest bidder, after ten days' notice of the time and place, by publication in some newspaper published at the principal place of business of the corporation, or nearest thereto.

Lien only exists by statute.—Mobile Mut. Ins. Co. v. Cullom, 49 Ala. 558; Birmingham T. & S. Co. v. Land Co., 101 Ala. 304. **Statute relates to the remedy merely and applies to corporations organized and debts contracted before its enactment.**—Tutwiler v. Tuscaloosa C. I. & L. Co., 89 Ala. 391; Birmingham T. & S. Co. v. Land Co., 101 Ala. 304. **Lien covers any and all debts, not debts due for stock alone.**—Cunningham v. Ala. L. I. & T. Co., 4 Ala. 652; Mobile Mut. Ins. Co. v. Cullom, 49 Ala. 558; Birmingham T. & S. Co. v. Land Co., 101 Ala. 304. **Extends to debts owing by the holder of the equitable as well as the legal title.**—P. & M. Ins. Co. v. Selma Bank, 63 Ala. 585. **Lien cannot be asserted to protect debt incurred after actual notice of transfer of stock.**—Birmingham T. & S. Co. v. Bank, 99 Ala. 379. **Prima facie no action is necessary to enforce the lien.**—Elliott v. Sibley, 101 Ala. 344. **Lien will not be enforced when an illegal and void contract will thereby be established.**—Lanier Lumber Co. v. Rees, 103 Ala. 622.

Feb. 28, 1889, p. 86, §§1, 2.

1269. Preferred stock.—Any corporation organized under the general incorporation laws of this state may issue preferred stock by the vote of persons holding two-thirds in value of its stock, at a meeting of the stockholders called for that purpose, of which meeting, and the purpose for which it is called, thirty days' notice must be given each stockholder personally, whose residence is known, and by publication for four consecutive weeks in some newspaper published in the town or city in which the corporation is located, or if not located in a town or city then in some newspaper published in the county in which the corporation is located; and if, at such meeting, the persons holding two-thirds in value of the stock vote for the issue, the proceedings of the meeting must be reduced to writing, signed by the president or chief executive officer of the corporation, and filed and recorded in the office of the judge of probate of the county in which the corporation is located. Each stockholder shall be first entitled to the privilege of taking such preferred stock in proportion to the amount of common stock held by him, or a less amount, if he should desire it, before such preferred stock is offered for sale to the public.

Dec. 10, 1890, p. 202. §§1, 2, 3, 4. As amended Jan. 28, 1893, p. 224. As amended Feb. 6, 1895, p. 403.

1270. Increase of capital and bonded debt of corporations organized under special charter.—The capital stock and bonded indebtedness of any private corporation organized in this state under special charter, may be increased by the consent of the persons holding the larger amount in value of the stock of such corporation obtained in favor thereof, at a meeting of the stockholders of such corporation convened for the purpose of voting upon the proposition to increase such capital stock or bonded indebtedness, to be held after thirty days' notice thereof shall have been given by publication in a newspaper of general circulation, published in the county where such corporation has its principal office, and if no such newspaper be published in that county then in a newspaper having general circulation published in the county nearest the principal office of such corporation, a copy of which shall be mailed to each stockholder, which notice shall explicitly state what increase is proposed to be made to the capital stock or bonded indebtedness of such corporation. If at the meeting called in pursuance of this notice, the consent of the persons holding the larger amount in value of the stock of such corporation shall be obtained to a specified increase of either the capital stock or bonded indebtedness of such corporation, a report thereof specifying the amount of increase consented to, shall be made to the secretary of state, who shall make and keep a record thereof, and it shall be lawful for such corporation to increase its capital stock or bonded indebtedness in conformity with such consent of the stockholders. Such increase may be to a less, but not to a greater amount than stated in the published notice of the meeting; but neither stock nor bonds shall be issued by any private corporation except for money, labor done, or money or property actually received, and all fictitious increase of stock or indebtedness shall be void.

1271. Franchise tax.—A franchise tax of twenty-five dollars shall be paid on every fifty thousand dollars increase of capital stock until the capital stock amounts to one million dollars. The franchise tax for all increase of capital over one million dollars and under five million dollars, shall be five hundred dollars, and for all increase over five million dollars, one thousand dollars, to be paid into the state treasury. Ib. §4.

1272 (1675). **Increased capital stock; preference of stockholders.**—The stockholders of a private corporation, on an increase of the capital stock thereof, have the preference of taking such increased stock, in proportion to the amount of the original stock held and owned by them, each stockholder taking his pro rata share, or any less amount. As amended Feb. 28, 1889, p. 86, §2.

1273 (1676). **Forfeiture by non-user.**—The non-user of corporate franchises for a period of five consecutive years is a forfeiture of such franchise; and, if not otherwise provided, the failure to organize a private corporation for a period of two years after filing the declaration for incorporation is a forfeiture of all right to organize under such declaration.

1274 (1677). **Books of corporation open to inspection.**—The stockholders of all private corporations have the right of access to, of inspection and examination of, the books, records and papers of the corporation, at reasonable and proper times.

Right may be **exercised through an agent or attorney in fact.**—Foster v. White, 86 Ala. 467. **Stockholder need not show a definite, legitimate purpose,** nor negative an unlawful, improper purpose.—Foster v. White, 86 Ala. 467. **National banks are subject to the influence of the statute.**—Winter v. Baldwin, 89 Ala. 483.

1275 (1678) (2024). **Majority of board exercise corporate powers.**—When the corporate powers are directed to be exercised by any particular body, or number of persons, a majority of such body or persons, unless it is otherwise provided, form a board for the exercise of such powers.

No number less than a majority of the board is empowered to transact corporate business.—Moses v. Tompkins, 84 Ala. 613. Remedy where majority fraudulently combine to wreck the corporation.—Birmingham M. & M. Co. v. Mut. L. & T. Co., 96 Ala. 364.

1276 (1679) (2026). **Failure to elect officers does not dissolve corporation.**—A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors.

Corporate existence is not destroyed by failure to elect.—Moses v. Tompkins, 84 Ala. 613.

1277 (1680). **Change of number of directors.**—All private corporations have power to increase or diminish the number of their directors, or other managers, with the consent of the persons holding the larger amount in value of the capital stock, expressed by the vote of such persons at a regular meeting of the stockholders, or at a meeting called for that special purpose, of which, and the purpose for which it is called, thirty days' notice is given each stockholder personally, whose residence is known, and by publication for

four consecutive weeks in a newspaper published at the principal place of business of the corporation, or nearest thereto.

Dec. 10, 1892, p. 24, §1.

1278. Purchase of stock or bonds by officers.—Any purchase of the stock or bonds of a corporation by the president, or any director, or other managing officer of such corporation from any person, other than the corporation itself, shall be held and considered as a transaction between persons in fiduciary relations, and subject to all the rules of law governing the purchase by a trustee from the beneficiary of the trust.

Ib. §§2, 3, 4.

1279. Actions by officers calculated to depreciate the value of securities; misdemeanor; remedy; pleading.—The president of any corporation, or any director or managing officer thereof, by whatsoever title he may be known or called, who shall do or omit to do any act, or who shall make any declaration or statement, in writing or otherwise, with the intent to depreciate the market value of the stock or bonds of such corporation, to the end that such president, director or other officer, or any other person, may buy any such stock or bonds at less than the real value thereof, shall be guilty of a misdemeanor. And any bondholder or stockholder of such corporation who shall, by reason of such act, omission, declaration or statement made with the intent aforesaid, be induced to sell any bonds or stock of such corporation at less than the real value thereof, may recover in an action on the case, against the president, director or managing officer of the corporation, guilty of such act or omission or of making such declaration or statement, all damages sustained by such sale. In such action the plaintiff must aver and prove the ownership of the stock or bonds of the corporation, the act, omission, declaration or statement, and the name and office in the corporation of the person or persons who made the same, and that the same was made with the intent to depreciate the market value of the stock or bonds of such corporation to the end that some person might buy the stock or bonds of such corporation at less than the real value thereof, and that by reason of such act, omission, declaration or statement, made with the intent above stated, the plaintiff was induced to sell the stock or bonds in such corporation owned by him, and the difference between the real value thereof and the price obtained by the plaintiff at such sale.

1280 (1681). **Stockholders' meetings.**—The stockholders of every private corporation must meet annually, at a time and place, and upon notice to be prescribed by the by-laws; and the board of directors or other managers, have the power to call special meetings; and each stockholder is entitled to one vote for each share of stock held and owned by him; the failure to hold annual meetings of the stockholders, or the failure to elect directors regularly, shall not operate a forfeiture of corporate franchises.

Corporate existence is not destroyed by failure to elect.—Moses v. Tompkins, 84 Ala. 613.

Dec. 12, 1892, p. 180.

1281. Voting by proxy.—The capital stock in any corporation organized under the laws of this state, may, at all stockholders'

meetings, be voted by proxy, if the right to vote by proxy be conferred by the charter of the corporation, or claimed or reserved in its declaration, or permitted by a by-law duly adopted by the stockholders of the corporation.

Voting by proxy not unlawful; extent of power of holder of proxy.—M. & O. R. Co. v. Nicholas, 98 Ala. 92. Cannot vote by proxy unless authorized by charter or by-laws.—Perry v. Tuscaloosa C. S. O. M. Co., 93 Ala. 364. Validity of "voting trusts."—Moses v. Scott, 84 Ala. 608; M. & O. R. Co. v. Nicholas, 98 Ala. 92.

1282. Curing defects in organization.—Whenever any private corporation heretofore or hereafter created under the laws of this state, has accidentally or inadvertently failed to comply with the requisitions of the statute in its organization, it shall be lawful for the president of such corporation to supply such omission by filing with the probate judge who issued the certificate of incorporation, a statement, under oath, setting forth such omission and supplying the same, which shall be filed with the other papers of such incorporation and recorded. And such filing shall relate back to the date of such incorporation, except as to the rights of third parties, which may have intervened. Feb. 28, 1889, p. 74.

1283. Altering and amending charter.—Any corporation which has heretofore, or which may be hereafter, organized under the general incorporation laws of this state, and any corporation which has heretofore been chartered by an act of the general assembly, prior to the enactment of the general incorporation laws of this state of 1867, may alter or amend its charter by filing in the office of the judge of probate of the county wherein the original declaration of incorporation was filed, or in cases where the charter was granted by an act of the general assembly, prior to the enactment of the general incorporation laws of this state of 1867, in the office of the judge of probate of the county wherein such corporation has its principal place of business, or in the office of the secretary of state, in cases where the original declaration was filed in that office, a declaration in writing, signed by not less than three-fourths in number of the stockholders, holding not less than two-thirds in value of the stock thereof, verified by the affidavit of some one or more of the signers thereof, stating that the statements therein contained are true, and that the signers thereof signed the same in the presence of affiant, or acknowledged their signatures thereto to him, and setting forth— Dec. 12, 1888, p. 20, §§1, 2, 3. As amended Feb. 6, 1895, p. 398.

1. When such corporation was organized, its name, what change, if any, is desired to be made in such name, and the amount of its capital stock which has been subscribed for and taken.

2. The names of the stockholders signing the same and the amount of stock held by each.

3. The purposes of the corporation and the nature of its business, as the same is set forth in the original declaration, and the alterations and amendments thereof desired.

4. The amount of the capital stock as shown by the original declaration, and the amount to which it is proposed to decrease such capital stock, if a decrease is proposed.

But no such change or alteration in the charter of any corporation shall authorize it to exercise any powers, or do any acts which similar corporations are not authorized to exercise and do, under the laws existing at the time such alteration or amendment is made, nor to decrease its stock below the minimum fixed by existing laws.

Not violative of the constitution.—Perkins v. Montgomery L. Co., 102 Ala. 594. **Charter of a gas company may be amended so as to permit the manufacture of electricity.**—Perkins v. Montgomery L. Co., 102 Ala. 594. **Change of name does not affect the rights of the parties to prior contract.**—Lomb v. Pioneer S. & L. Co., 106 Ala. 591.

Ib. §4. **1284. Duties of probate judge and secretary of state.**—Upon the filing of the declaration provided for by the preceding section in the office of the judge of probate or secretary of state, as the case may be, it shall be the duty of that officer to issue a certificate, certifying that such corporation under its new name and style, is duly authorized to do business with the powers and capacity conferred after such alterations and amendments, which declaration and certificate must be recorded in the office of the judge of probate or the secretary of state, in and from which the same are filed and issued.

1285 (1682). **Record kept by judge of probate; fees.**—It is the duty of the judge of probate to keep a well-bound book, in which must be recorded, consecutively, the declaration of incorporation, the commission issued to the commissioners, the proceedings of the meeting of the subscribers on the appointment of the commissioners, the list of subscriptions returned to, and filed in his office, and the affidavit thereto, and the certificate of incorporation and organization; and for the record thereof he is entitled to fifteen cents for each hundred words, and to a fee of one dollar for the certificate of incorporation and organization, and to a fee of one dollar and fifty cents for the filing of the declaration, and for the issue of the commission to the commissioners.

1286. Corporate name not to be that of another corporation nor name of a person or firm.—No certificate of incorporation shall issue to any corporation under the same corporate name as that already assumed by another corporation of this state unless it be the successor of such other corporation; nor when the corporate name assumed is that of a person or firm, unless there be joined thereto some word designating the business to be carried on, followed by the word "Company" or "Corporation." If any corporation shall hereafter assume as its corporate name, the name of a person or firm without the qualification above required in such case, the organization of such corporation is void and the stockholders are liable as partners.

ARTICLE 13.

CHARTER FEES REQUIRED OF DOMESTIC CORPORATIONS.

1287. Fees to be paid by corporations organized under the general law before commission issues.—Before a commission shall issue to any corporation organized under the general incorporation laws of this state, authorizing such corporation to do business, the parties to whom the same is issued shall pay to the judge of probate or other officer issuing the same, to be reported to the auditor and the money paid into the state treasury in the same manner as licenses issued by the judge of probate are required to be reported and the money paid into the treasury, the following fees for the use of the state: Where the proposed capital stock does not exceed fifty thousand dollars, a fee of twenty-five dollars; where it exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, a fee of fifty dollars; where it exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars, a fee of seventy-five dollars; where it exceeds two hundred and fifty thousand dollars but does not exceed five hundred thousand dollars, a fee of one hundred dollars; where it exceeds five hundred thousand dollars but does not exceed one million dollars, a fee of two hundred dollars; where it exceeds one million dollars, a fee of two hundred and fifty dollars. All corporations or mutual companies which have no capital stock shall pay a fee of twenty-five dollars. Feb. 13, 1893, p. 690, §§1, 2. Feb. 18, 1895, p. 1024, §§1, 2.

1288. Upon increase of capital stock difference between fees upon original and increased amounts to be paid.—Before the report of the proceedings of the stockholders increasing the capital stock of a corporation shall be filed, such stockholders shall pay to the judge of probate or other officer filing the same, to be reported to the auditor and paid into the treasury as provided in the preceding section, the fee prescribed by the preceding section upon the amount of the capital stock as thus increased, less the amount of the fee as therein prescribed upon the amount of the capital stock before such increase.

1289. Same, when organized by special act.—Before any bill for the creation of any corporation by any special act of the general assembly of this state shall be introduced, there shall be paid into the treasury of the state by the parties seeking the same, double the fees required to be paid by corporations organized under the general incorporation laws; and before any bill for enlarging, amending, or correcting the charter of any corporation already established, or for confirming any such corporation by special act of the general assembly, shall be introduced, there shall be paid into the treasury of the state, by the parties seeking the same, a fee of fifty dollars. If such charter should not be granted, enlarged, amended, or corrected, as the case may be, the money so paid shall be refunded to the person paying the same, under such rules and regulations as the auditor may prescribe. Feb. 13, 1893, p. 690, §3. Feb. 18, 1895, p. 1024, §3.

1290. Corporations formed for charitable or religious purposes Ib. §7.

only, excepted.—The provisions of the three preceding sections do not apply to corporations organized solely for charitable, religious, social or literary purposes, nor to fraternal beneficiary organizations and orders operating upon the lodge system and providing for the payment of life, sick, accident and other benefits to the members of such societies, orders, or associations and dependents of such members, and which are not created for the purpose of making a pecuniary profit for its members and issuing no stock to its members.

ARTICLE 14.

DISSOLUTION OF BUSINESS CORPORATIONS.

1291 (1683) (2054). **Petition for dissolution.**—Whenever a majority of the stockholders of any private corporation, owning three-fourths of the stock, wish to dissolve the corporation, they may do so in the following manner: They shall file a petition in the chancery court of the division in which the corporation is located, or has its principal place of business, setting forth the names of all the stockholders, and their residences, the amount of stock owned by each stockholder, as nearly as practicable all the property, real and personal, of the corporation, and stating that it is the wish of the petitioners to dissolve the corporation.

Does not impair the obligation of contract entered into while statute in force.—Nelson v. Hubbard, 96 Ala. 238. **Does not restrict the common-law power of a private corporation to exercise their right to dissolve by the action of a majority of the stockholders.**—M. &. P. Line v. Waganer, 71 Ala. 581; Wolfe v. Underwood, 91 Ala. 523. **A furnace company, with usual powers, is a private corporation within the meaning of the statute.**—Wolfe v. Underwood, 91 Ala. 523. **Creditors, after dissolution, can only enforce their rights in the mode prescribed.**—Nelson v. Hubbard, 96 Ala. 238. **Receiver may be appointed pending the proceedings, where a necessity is shown.** Florence G. E. L. & P. Co. v. Hanby, 101 Ala. 15. **City court of Birmingham has jurisdiction of a proceeding to dissolve a corporation of Jefferson county.**—Wolfe v. Underwood, 91 Ala. 523.

1292 (1684) (2055). **Notice by register.**—Upon the filing of such petition, the register shall give notice by subpœna to all the stockholders not joining in the petition to appear within thirty days after service and contest the same; and if any stockholder residing out of the state does not join in the petition, he shall be made a party by advertisement in the manner non-resident defendants in chancery are made parties, and he has thirty days after the perfecting of such notice to answer and contest the petition.

1293 (1685) (2056). **When dissolution decreed.**—If, at a regular term of the chancery court, after the cause is at issue, it be made to appear to the chancellor that a majority of the stockholders still wish to dissolve the corporation, proof being made as in chancery cases, the chancellor shall decree the corporation dissolved.

Continued prosecution of the proceedings is sufficient evidence of the fact that dissolution is still desired.—Wolfe v. Underwood, 97 Ala. 375.

1294 (1686) (2057, 2059). **Receiver appointed; his duties.**—Upon decree of dissolution, the chancellor shall appoint a receiver of all

the property and assets of the corporation. The chancellor shall direct the receiver to collect, by suit or otherwise, all the debts due the corporation, and sell property, real or personal, belonging to the corporation, and how he shall make title thereto to the purchaser; the chancellor may, in his discretion, authorize the receiver to proceed, without suit, to sell any or all of the debts and assets of the corporation at public sale for cash, or on such terms as in his judgment the interest of the parties may require.

Receiver may be appointed in a proper case before decree of dissolution and under the same bill.—Florence G. E. L. & P. Co. v. Hanby, 101 Ala. 15. **Validity of receiver's appointment cannot be assailed in a suit by him on account of defects in the bill under which he was appointed.**—Comer v. Bray, 83 Ala. 217; Florence G. E. L. & P. Co. v. Hanby, 101 Ala. 15. **Receiver may file a bill** to foreclose a mortgage given to the dissolved corporation, but the corporation must be a party.—Comer v. Bray, 83 Ala. 217. **Extent of power to complete unfinished contracts.**—Florence G. E. L. & P. Co. v. Hanby, 101 Ala. 15.

1295 (1687) (2058). **How selected; bond.**—The person nominated by the majority of the stockholders must be appointed receiver, if they can agree; but if they fail to agree for ten days after the decree of dissolution, the chancellor, in term time or vacation, or the register in his absence, must appoint such receiver, requiring proper bond and sureties for the performance of his duties.

1296 (1688) (2060, 2061). **Receiver pays debts; contested claims.** In the performance of his duties under the decree, the receiver shall pay the debts of the corporation in full or ratably, as the funds realized may permit. If any claim is contested, it must be filed by the claimant in the court, and the genuineness thereof ascertained as in other contested claims in chancery. The residue, after the debts and costs are paid, shall be divided among the stockholders according to the amount of stock owned by each.

1297 (1689) (2062). **Appeal.**—Any party dissatisfied with the decree of dissolution may appeal, giving bond and sureties, as prescribed by the chancellor, and approved by the chancellor or register.

1298 (1690) (2027) (1775) (1489). **Powers after dissolution.**—All corporations whose powers expire by limitation, all which are dissolved by forfeiture or any other cause, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits, settling their business, disposing of their property, and dividing their capital stock, but not for the purpose of continuing their business.

Does not authorize suits to be maintained against corporations dissolved under the provisions of this article.—Nelson v. Hubbard, 96 Ala. 238.

1299 (1691) (2028) (1776) (1490). **Administration of affairs on dissolution.**—Upon the dissolution of any corporation, unless other persons are appointed by the general assembly, or by a court of competent authority, the managers of the business of the corporation at the time of its dissolution, by whatever name known, are the trustees of the stockholders and creditors, authorized to settle the affairs of the corporation, dispose of such property as is necessary to pay its debts, and divide among the stockholders the money and

property remaining after payment of such debts and the necessary expenses.

A practical, not a judicially ascertained, dissolution is meant.—McDonnell v. Ala. G. L. Ins. Co., 85 Ala. 401. Policy-holder is a creditor of a dissolved life-insurance company.—McDonnell v. Ala. G. L. Ins. Co., 85 Ala. 401.

1300 (1692) (2029) (1777) (1491). **Authority of officers.**—Such persons have authority to sue for and recover the debts and property of the dissolved corporation, in its corporate name, and are jointly and severally responsible to its creditors to the extent of the property which may come into their hands.

1301 (1693) (2030) (1778) (1492). **Time for settling extended.** On proper application to the chancellor, the power of such trustee, or person appointed receiver of such dissolved corporation, may be continued for such length of time beyond such five years as the chancellor may judge necessary for the purposes contemplated in the three preceding sections.

ARTICLE 15.

CORPORATIONS NOT OF A BUSINESS CHARACTER.

1302 (1694) (1991, 1994, 2000, 2001) (1521, 1524, 1529, 1530) (1257, 1258, 1259, 1260). **Religious, educational, benevolent and burial societies.**—The members of any church or religious society, of an educational society, benevolent society, or the owners of a graveyard, desiring to become incorporated, shall elect not less than three, nor more than nine trustees.

Unincorporated charitable trusts; jurisdiction of equity.—Burke v. Roper, 79 Ala. 138; s. c., 83 Ala. 193; Johnson v. Holifield, 79 Ala. 423.

1303 (1695) (1992) (1522) (1258). **Incorporation complete on trustees filing certificate.**—Such trustees shall, within thirty days after their election, file in the office of the judge of probate of the county in which the corporation is to exercise its functions, a certificate stating the corporate name selected, the names of the trustees, and the length of time for which they were elected; which certificate shall be subscribed by them, and recorded. The members of such society, their associates and successors are, from the filing of such certificate, incorporated by the name therein specified.

1304 (1696) (1996) (1526) (1262). **Powers.**—Corporations created under this article may hold real and personal property, not exceeding in value fifty thousand dollars, may receive property by gift, will, or devise, holding the same in conformity with all lawful conditions imposed by the donor, and exercise such other powers as are incident to private corporations.

1305 (1697) (1999) (1527) (1263). **How suits against commenced.** In all suits or legal proceedings, the service of process and papers on a trustee of such corporation is valid for the purpose of bringing such corporation into court, or for the objects of the notice.

1306 (1698) (1997). **How church mortgage executed.**—The trustees, or other authorized agents of any society or church, organ-

ized by special charter, or under the general laws of this state, may, by mortgage or deed of trust, convey all, or any part of the property thereof, real or personal, to secure the payment of any debt contracted by the trustees or other authorized agents; but this section shall first have been accepted as an amendment to the organic law of such society or church, if not already a part of it, by a majority of the adult members of such society or church, assembled after ten days' notice of the time, place and object of such meeting, posted at the usual place of assembly, and published by announcement at a regular meeting for at least one week prior to such action; no such mortgage or deed of trust shall be executed without the consent of a majority of such trustees and of a majority of the adult members of such organization, voting thereon at a meeting assembled after ten days' notice as above.

1307 (1699) (1998). **Recital in minutes evidence.**—A recital upon the minutes of the proceedings of such society or church, that such notice was given, and of the vote upon the question before the meeting, shall be evidence of the regularity of such meeting, and of the proceedings therein.

1308 (1700) (2003) (1532). **Special privileges of burial societies.** Burial societies so incorporated may exercise all powers necessary for properly governing, beautifying, improving and taking care of such graveyard, and may make such by-laws, rules and regulations as are proper and necessary to secure such objects.

1309 (1701) (2004) (1533). **Chairman of board.**—When such graveyard is wholly under the control of persons belonging to one denomination of faith, the elder, deacon, minister, bishop, or priest, who is the head of such denomination in the city, town, village, or county, shall be ex officio the chairman of such board of trustees; and when such graveyard is under the control of persons of different denominations, such heads of the denominations interested shall be members of such board.

1310 (1702) (2005). **Social and literary societies.**—Whenever ten or more persons desire to form a society for the social and literary advancement of its members, they may become incorporated and entitled to all the privileges of private corporations in the following manner:

1. Such persons shall first adopt a constitution and elect officers, and such officers shall file in the office of the judge of probate of the county in which such society is located, a declaration in writing, stating the name, object and purposes of the society, the adoption of the constitution, the names and style of its officers, the number of its members, which shall in no case exceed three hundred, and whether such society issues shares of stock, or is formed for pecuniary purposes, and if so, then the amount of stock, the number of shares into which it is divided, and by whom held. As amended Feb. 21, 1893, p. 1039, §1.

2. The declaration shall be signed by the officers, acknowledged or proved as in the case of deeds, and recorded in the office of such judge of probate.

1311 (1703) (2006). **Exemption from taxation.**—The property of corporations formed bona fide under this article, for other than pecuniary purposes, shall be, to an amount not exceeding two thousand dollars, exempt from all state, county, and municipal taxation and licenses; but if used for any other purpose than legitimately pertains to the object of such society, it shall not be so exempt.

1312 (1704) (2007). **Forfeiture of charter for gaming.**—If any society, incorporated under this article, permits any games to be played for wager, it thereby forfeits its charter, and ceases to be a body corporate.

Feb. 21, 1893, p. 1039, §§1, 2.

1313. May increase membership.—Any society which has heretofore, or which may hereafter be organized under the laws of this state, for the social and literary advancement of its members, may enlarge its membership to a number not exceeding three hundred, by filing in the office of the judge of probate of the county in which such society was incorporated, a written declaration, signed by a majority of the existing members of such society, to the effect that such extension is declared and made, and fixing the limit thereof.

Dec. 12, 1888, p. 20, §2. As amended Feb. 6, 1895, p. 398.

1314. May alter and amend charter.—Any corporation, not of a business character, may alter or amend its charter whenever not less than three-fourths in number of the members thereof shall file in the office of the judge of probate of the county wherein the original declaration of incorporation was filed, or in cases where the charter was granted by an act of the general assembly, prior to the enactment of the general incorporation laws of this state of 1867, in the office of the secretary of state, a declaration in writing signed by them, setting forth—

1. When such corporation was organized, its name, what changes, if any, it is desired to make in such name.

2. The purposes of such corporation, as the same are set forth in the original declaration of incorporation, and the alterations and amendments thereof, if any such are desired.

But no such change or alteration in the character of any corporation shall authorize it to exercise any powers or do any acts which similar corporations are not authorized to exercise and do, under the laws existing at the time such alteration or amendment is made, nor to decrease its stock below the minimum fixed by existing laws.

Ib. §§3, 4.

1315. Declaration to be verified; duties of probate judge or secretary of state.—Such declaration shall be verified by the affidavit of some one or more of the signers, stating that the statements contained therein are true, and that the signers thereof signed the same in the presence of affiant, or acknowledged their signatures thereto to him; and upon the filing of such declaration in the office of the judge of probate or secretary of state, as the case may be, it shall be the duty of such officer to issue a certificate, certifying that such corporation under its new name and style, is duly authorized to do business with the powers and capacity conferred after such alterations and amendments. Such declaration and certificate must

be recorded in the office of the judge of probate or the secretary of state, in and from which the same are filed and issued.

ARTICLE 16.

CONDITIONS UPON WHICH FOREIGN CORPORATIONS ARE PERMITTED TO DO BUSINESS IN THE STATE.

Feb. 28, 1887, p. 102, §§1, 2.

1316. Foreign corporation must file instrument of writing designating agent and place of business in this state.—Every corporation not organized under the laws of this state shall, before engaging in or transacting any business in this state, file an instrument of writing, under the seal of the corporation and signed officially by the president and secretary thereof, designating at least one known place of business in this state and an authorized agent or agents residing thereat; and when any such corporation shall abandon or change its place of business as designated in such instrument, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing as herein provided, before transacting any further business in this state.

A legitimate exercise of police power and not in conflict with any act of congress or violative of Federal Constitution.—Am. U. Tel. Co. v. W. U. Tel. Co., 67 Ala. 26; Dudley v. Collier, 87 Ala. 431. **Not intended to interfere with interstate commerce, and not applicable to corporations engaged therein as to such business.**—Ware v. Hamilton Brown Shoe Co., 92 Ala. 145. **Foreign corporations are not citizens within meaning of Federal Constitution,** and are dependent on state laws for privilege of doing business therein; yet their contracts with citizens are subject to interstate commerce regulations. Ware v. H. B. Shoe Co., 92 Ala. 145; Nelms v. Mortgage Co., 92 Ala. 157; Noble v. Mitchell, 100 Ala. 519. **A contract to purchase shoes made between a citizen of Alabama and a Missouri corporation is interstate commerce** and the statute does not apply.—Ware v. H. B. Shoe Co., 92 Ala. 145; Nelms v. Mortgage Co., 92 Ala. 157. **So, the sale of bricks in another state to be delivered in Alabama.**—Cook v. Rome Brick Co., 98 Ala. 409. **So, the sale in Alabama of books in Georgia, followed by delivery in Alabama.**—Culberson v. A. T. & B. Co., 107 Ala. 457. **Loaning money is engaging in business within the meaning of this statute although there is but a single act.**—Nelms v. Mortgage Co., 92 Ala. 157; Mullens v. Mortgage Co., 88 Ala. 280; Farrior v. Mortgage Co., 88 Ala. 275; Ginn v. Mortgage Co., 92 Ala. 135; Dundee Mortgage Co. v. Nixon, 95 Ala. 318; State v. Bristol Bank, 108 Ala. 3. **The institution and prosecution of suits is not doing business.**—Cook v. Rome Brick Co., 98 Ala. 409; Christian v. Mortgage Co., 89 Ala. 198; McCall v. Mortgage Co., 99 Ala. 427. **Nor is the soliciting and receiving subscriptions for a newspaper published in another state.**—Beard v. U. & A. Pub. Co., 71 Ala. 60. **Contract made by a corporation which has not complied is void and, if executory, will not be enforced.**—Sherwood v. Alvis, 83 Ala. 115; Craddock v. Mortgage Co., 88 Ala. 281; Dudley v. Collier, 87 Ala. 431; Farrior v. Mortgage Co., 88 Ala. 275; Collier v. Davis, 94 Ala. 456; Gamble v. Caldwell, 98 Ala. 577. **Sufficiency of appointment of agent and designation of place of business.**—Mortgage Co. v. Ingram, 91 Ala. 337; Nelms v. Mortgage Co., 92 Ala. 157; Mortgage Co. v. Sewell, 92 Ala. 163; McCall v. Mortgage Co., 99 Ala. 427; McLeod v. Mortgage Co., 100 Ala. 496. **Agent need not be invested with any contractual powers.**—McCall v. Mortgage Co., 99 Ala. 427. **Foreign corporation may be sued in any county where it is doing business;** if not doing business, in the county in which is its designated known place of business.—Sullivan v. Sullivan T. Co., 103 Ala. 371. (See citations to Constitution, Art. XIV., §4.)

Ib. §1.

1317. Where filed.—Such instrument, when filed by a corporation engaged in any business of insurance, must be filed in the office of the state auditor, and when filed by a corporation engaged

in any other business than that of insurance, must be filed in the office of the secretary of state.

Ib. §4. **1318. Unlawful for foreign corporation to transact business in this state before declaration filed; penalty.**—It is unlawful for any foreign corporation to engage in or transact any business in this state before filing the written instrument provided for in the two preceding sections; and any such corporation that engages in or transacts any business in this state without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the state the sum of one thousand dollars.

(See citations to section 1316.)

Ib. §3. **1319. Unlawful to act as agent of foreign corporation before such declaration is filed; penalty.**—It is unlawful for any person to act as agent or transact any business, directly or indirectly, in this state, for or on behalf of any foreign corporation which has not designated a known place of business in this state and an authorized agent or agents residing thereat, as required in this article; and any person so doing shall, for each offense, forfeit and pay to the state the sum of five hundred dollars.

Ib. §5. **1320. Solicitor must enforce penalties; commissions.**—Every penalty provided for in this article shall be sued for and recovered in the name of the State of Alabama, by the solicitor of the circuit or county in which the offense is committed; and when collected, must be paid by the solicitor into the state treasury for the use of the state, less twenty-five per cent. to be retained by such solicitor for his services. The attorney-general shall represent the state in such actions carried to the supreme court, and for his services therein is entitled to one-half the commissions herein allowed to the solicitor.

Feb. 13, 1893, p. 690. As amended Feb. 18, 1895, p. 1024, §§1, 2, 4. **1321. Admission fees exacted of foreign corporations.**—No corporation created by the laws of any other state or of any foreign country shall engage in or transact any business in this state without first having paid into the treasury, for the use of the state, the following fees: Where the capital stock of such corporation does not exceed fifty thousand dollars, a fee of twenty-five dollars; where it exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars, a fee of fifty dollars; where it exceeds one hundred thousand dollars, but does not exceed two hundred and fifty thousand dollars, a fee of seventy-five dollars; where it exceeds two hundred and fifty thousand dollars, but does not exceed five hundred thousand dollars, a fee of one hundred dollars; where it exceeds five hundred thousand dollars, but does not exceed one million dollars, a fee of two hundred dollars; where it exceeds one million dollars, a fee of two hundred and fifty dollars. All corporations or mutual companies which have no capital stock shall pay a fee of twenty-five dollars.

1322. Statement to be filed.—Such foreign corporation shall, at the time of paying such fee into the treasury, file in the office of the state auditor, an instrument of writing under the seal of the corpo-

ration and signed officially by the president and secretary thereof, showing the name of the corporation and of the state or country under whose laws it was incorporated, its principal place of business and the amount of its capital stock.

1323. Fee to be paid but once; failure to pay vitiates contracts. Feb. 13, 1893, p. 690. As amended, Feb. 18, 1895, p. 1024, §§5, 6. The fee required by the second preceding section shall be paid once, only; but such payment does not relieve any foreign corporation from the duty of complying with the requirements of existing laws. All contracts made in this state by any foreign corporation which has not first complied with the provisions of the two preceding sections, shall, at the option of the other party to the contract, be wholly void.

1324. Exceptions.—The provisions of this article do not apply to corporations organized under the laws of the United States; nor to corporations engaging in or transacting business of interstate commerce only within the state.

CHAPTER 29.

COSTS AND FEES.

ARTICLE 1.—TAXATION AND RETAXATION OF COSTS. 1325–1346.
2.—SECURITY FOR COSTS. 1347–1352.
3.—GENERAL RULES APPLICABLE TO ALL FEES, CIVIL OR CRIMINAL. 1353–1370.
4.—FEES OF OFFICERS. 1371–1380.
5.—FEES OF JURORS AND WITNESSES. 1381–1388.

ARTICLE 1.

TAXATION AND RETAXATION OF COSTS.

1325 (2837) (3128) (2779) (2375). **Costs given to successful party.**—The successful party in all civil actions is entitled to full costs, for which judgment must be rendered, unless in cases otherwise directed by law; and this provision is applicable in all cases in which the state is a party plaintiff in civil actions, as in cases of individual suitors.

Distinction and difference between costs and fees.—Tillman v. Wood, 58 Ala. 578; Bradley v. State, 69 Ala. 318. **Generally, the prevailing party recovers full costs.**—McWhorter v. Marrs, 1 S. 63; Townson v. Moore, 9 P. 136; Shearer v. Boyd, 10 Ala. 279; Westmoreland v. Hale, 11 Ala. 122; Massey v. Steele, 11 Ala. 340; McPhail v. Mosely, 14 Ala. 740; Hanson v. Jacks, 22 Ala. 549; Dover v. State, 45 Ala. 244; Beach v. Dennis, 47 Ala. 262; Folmar v. Folmar, 71 Ala. 136; Askew v. Renfroe, 81 Ala. 360; State v. Parker, 83 Ala. 269; Buxbaum v. McCorley, 99 Ala. 537. **Judgment may be rendered for costs, though the court has no jurisdiction of the subject-matter.**—Westmoreland v. Hale, 11 Ala. 122; Hilliard v. Brown, 103 Ala. 318. **Judgment must be in favor of a party to the suit.**—Patterson v. Officers, 11 Ala. 740. **Except when suit abates by death** (sec. 1332); **then in favor of officers.**—Garrison v. Burden, 40 Ala. 513; Prestridge v. Officers, 42 Ala. 405. **A party to the record**

for whose use suit is brought, is liable.—Coalter v. Bell, 2 S. & P. 358; Bates v. Terrell, 7 Ala. 129. **Nominal plaintiff may demand indemnity.**—Brazier v. Tarver, 4 Ala. 569. **In case of tender before suit brought.**—Hanson v. Todd, 95 Ala. 328; Gardner v. Black, 98 Ala. 638; Schuessler v. Simon, 100 Ala. 422. **After suit.**—Raiford v. Governor, 29 Ala. 382; Gardner v. Black, 98 Ala. 638. **Judgment by default in real action**; possession must be proved, else plaintiff taxed with costs.—Sims v. Thompson, 30 Ala. 158; Ivey v. Perry, 97 Ala. 583. **Successful plaintiff entitled to costs though plea partly sustained.**—Buxbaum v. McCorley, 99 Ala. 537. **Costs are not adjudged against the state.**—Collier v. Powell, 23 Ala. 579; Pollard v. Brewer, 59 Ala. 130; Burke v. Blan, 79 Ala. 97; Skinner v. Dawson, 87 Ala. 348; Dawson v. Matthews, 105 Ala. 435. **Nor against a state officer without personal interest.**—Riggs v. Pfister, 21 Ala. 469; Reynolds v. Blue, 47 Ala. 711. **Nor against the judge of a court.**—State v. McDuffie, 52 Ala. 4. **Nor against a guardian ad litem.** Perryman v. Burgster, 6 P. 99. **Nor against a municipal corporation in a prosecution for violating ordinance.**—Montgomery v. Foster, 54 Ala. 62; Camden v. Block, 65 Ala. 236; Selma v. Stewart, 67 Ala. 338. **Defendant obtaining judgment on plea since last continuance entitled to costs** accruing after plea filed.—Dolberry v. Trice, 49 Ala. 207; Draper v. Walker, 98 Ala. 310; Sanche v. Webb, 110 Ala. 214. **Costs as against personal representatives.** Chandler v. Shehan, 7 Ala. 251; Mitchell v. Mitchell, 8 Ala. 414; Stewart v. Hood, 10 Ala. 600; Hutchinson v. Gamble, 12 Ala. 36; Jones v. Deyer, 16 Ala. 221; Bradley v. Andress, 30 Ala. 80; Wallace v. Nelson, 28 Ala. 282; Hanson v. Jacks, 22 Ala. 549; Hughes v. Mitchell, 19 Ala. 268; Cunningham v. Pool, 9 Ala. 615; Savage v. Dickson, 16 Ala. 257; Smith v. Gafford, 33 Ala. 168; McDonald v. Cox, 104 Ala. 379. **County failing in suit is taxed with costs as other litigants.**—Commissioners v. Goldthwaite, 35 Ala. 704; Dover v. State, 45 Ala. 244; State v. Parker, 83 Ala. 269. **Costs as terms imposed by the court.**—Reese v. Billing, 9 Ala. 363; DeWitt v. Bigelow, 11 Ala. 480; Plank Road v. Persee, 25 Ala. 526; Waller v. Sulzbacher, 38 Ala. 318; Torrey v. Bishop, 104 Ala. 548; Torrey v. Slaughter, 104 Ala. 552; Alexander v. Moore, 111 Ala. 410. **Costs due officers and witnesses are debts.**—Dane v. Loomis, 51 Ala. 487; Clingman v. Kemp, 57 Ala. 195. **For which an action may be maintained against party at whose instance the service was rendered.**—S. & N. R. Co. v. Bradley, 84 Ala. 468. **But officers and witnesses cannot maintain joint action against sureties on cost bond.**—Hilliard v. Brown, 103 Ala. 318. **Judgment for costs cannot be changed after term expired, unless motion made and continued; but errors of clerk in taxing costs may be corrected at any time.**—Bailey v. Hodges, 3 P. 335; Spann v. Cole, 13 Ala. 473; Pryor v. Beck, 21 Ala. 393; Tecumseh I. Co. v. Mangum, 67 Ala. 246; State v. Parker, 83 Ala. 269; Tippins v. Peters, 103 Ala. 196.

1326 (2838) (3129) (2780) (2376). **Rule for recovery in torts, if verdict is for less than twenty dollars; exception.**—In all actions to recover damages for torts, the plaintiff recovers no more costs than damages, where such damages do not exceed twenty dollars, unless the presiding judge certifies that greater damages should have been awarded; and on failure to certify, judgment must be rendered against the plaintiff for such residue.

Unless the judge certifies, etc.—Reid v. Gordon, 2 S. 469; Galee v. Lynch, 21 Ala. 579; Tecumseh I. Co. v. Mangum, 67 Ala. 246; Tippins v. Peters, 103 Ala. 196; McDaniel v. Jordan, 110 Ala. 526. **This section does not apply to action commenced in justice's court and removed**—a different rule being provided.—Baker v. Keith, 77 Ala. 544. **Nor to suit on attachment bond.**—McAllister v. McDonald, 26 Ala. 453. **Applies to trespass by sheriff.**—Smith v. Johnson, 95 Ala. 482. **Judgment taxing costs cannot be changed after term expired; errors of clerk in charging costs may be corrected at any time.** Bailey v. Hodges, 3 P. 335; Spann v. Cole, 13 Ala. 473; Pryor v. Beck, 21 Ala. 393; Tecumseh I. Co. v. Mangum, 67 Ala. 246; State v. Parker, 83 Ala. 269; Tippins v. Peters, 103 Ala. 196.

Feb. 28, 1887, p. 130.

1327. Trespass by stock; tender of damages before suit brought; when plaintiff taxed with costs.—In actions to recover damages for trespass by cattle or other stock, the defendant may plead and prove a tender of payment for such damages before suit brought; and if the damages assessed on the trial do not exceed the amount so tendered, the plaintiff must be taxed with all costs, un-

less the presiding judge certifies that greater damages should have been awarded.

1328 (2839) (3130) (2781) (2377). **Defendant proving usury recovers costs.**—If it be made to appear that usurious interest has been intentionally taken or reserved, the defendant recovers full costs.

Black v. Hightower, 30 Ala. 317; Neel v. Clay, 48 Ala. 252.

1329 (2840) (3131) (2782) (2378). **Costs of set-off, if sustained, recovered by defendant.**—In all actions, when a set-off is pleaded and controverted, the defendant recovers his costs sustained in establishing the set-off, though judgment be rendered for the plaintiff for a residue.

Fuller v. Hunter, 34 Ala. 56.

1330 (2845) (3136) (2787) (2383). **Costs against beneficial plaintiff.**—When judgment is rendered against the plaintiff, in any suit brought in the name of a nominal plaintiff for the use of another, judgment for costs must be rendered against the beneficiary, or his personal representative.

Coalter v. Bell, 2 Stew. & Port. 358; Bates v. Terrell, 7 Ala. 129; Griffin v. Smith, 14 Ala. 571; Scott v. John, 15 Ala. 566; Dover v. State, 45 Ala. 244; State v. Parker, 83 Ala. 269.

1331. (2852) (3143) (2796) (2391). **Defendant, as to whom plaintiff fails, recovers costs.**—When a plaintiff fails to recover against all of the defendants, the defendants against whom he fails to recover are entitled to have their aliquot proportion of the whole costs taxed against the plaintiff.

Morris v. Robinson, 80 Ala. 291; Neff v. Edwards, 81 Ala. 246; Handley v. Lawley, 90 Ala. 527.

1332 (2851) (3142) (2794) (2389). **On abatement by death of defendant, plaintiff pays costs.**—When a plaintiff brings a suit which he suffers to abate by the death of the defendant, or other cause, judgment for costs shall be rendered against such plaintiff; or where the suit abates by the death of the plaintiff, and his representative fails to revive the same, judgment for costs may be rendered against such representative; judgments in both cases must be in the name of the officers of the court, and when against representatives, are paid as other claims against such estate.

Garrison v. Burden, 40 Ala. 513; Prestridge v. Officers, 42 Ala. 405.

1333 (2846) (3137) (2788) (2384). **Costs of transcript of other court taxed.**—When the suit is founded on the record of another court, the costs of the transcript, on proof to the court, must be taxed in the bill of costs.

1334 (2847) (3138) (2789) (2385). **Fees for certificates taxed in the bill.**—When either party introduces on the trial any execution, bond, or other matter of evidence, certified by any officer or person whose certificate makes the copy thereof evidence, the fees allowed by law to such officer or person, for the transcript thereof and certificate, must be allowed as costs.

1335 (2848) (3139) (2790) (2386). **Costs on a plea "since last**

continuance."—When the party filing a plea "since last continuance" succeeds thereon, but fails on the plea to the merits, previously filed, he must be taxed with the costs which accrued previous to the filing of the last plea.

Dolberry v. Trice, 49 Ala. 207; Draper v. Walker, 98 Ala. 310; Sanche v. Webb, 110 Ala. 214.

1336 (2841) (3132) (2783) (2379). **Fees of witnesses for mileage and attendance.**—Witnesses are allowed one dollar and fifty cents per day in civil cases; also five cents per mile for each mile to and from their residence by the usual traveled route, and all necessary ferriage, tolls of turnpikes and toll-bridges, whether attending under subpœna, or at the request of the party.

Coker v. Patty, 51 Ala. 511. Ala. Mid. Ry. Co. v. Rushing, 103 Ala. 542.

1337 (2842) (3133) (2784) (2380). **Certificates to witnesses.** After the trial, continuance of the cause, or discharge of the witness, the clerk must, on his application, and upon his oath, give him a certificate, setting forth the cause in which he was a witness, the party by whom he was summoned, or on whose request he attended, the number of days he attended as a witness, and the sum to which he is entitled for his attendance, travel, ferriage and tolls, which he must also enter, either upon the subpœna-docket, or book to be kept for that purpose.

Hill v. White, 1 Ala. 576; Carville v. Reynolds, 9 Ala. 969; Marsh v. Branch Bank, 10 Ala. 57; Burns v. Howard, 68 Ala. 352. Ala. Mid. Ry. Co. v. Rushing, 103 Ala. 542.

1338 (2843) (3134) (2785) (2381). **Attendance; when proven.** The witness must prove his attendance within five days after the adjournment of the court at which he attended.

Hill v. White, 1 Ala. 576.

1339 (2844) (3135) (2786) (2382). **Only to charge one party.** A witness shall charge for his attendance but on one side of the same cause.

Findley v. Wyser, 1 Stew. 23; Renfro v. Kelly, 10 Ala. 338.

1340 (2849) (3140) (2792) (2387). **Witness fees taxed, collected and paid to clerk.**—Upon the final disposition of any civil cause, the amount proved by the witnesses, as hereinbefore provided, must be taxed in the bill of costs against the rightful party, setting forth the name of each witness, and the amount allowed him, which must be collected by the sheriff for the use of such witnesses, and be paid to the clerk issuing the execution, unless the certificate of such clerk, with the receipt of the witness thereon, is produced to the sheriff.

1341 (2850) (3141) (2793) (2388). **When refused payment, witness excused from further attendance.**—The certificate issued to the witness entitles him to demand of the party summoning him, or at whose request he attended, the amount therein stated, and is presumptive evidence that such amount is due, in any proceeding instituted for its recovery; and if in any civil cause, on demand therefor of the party, his agent, or attorney, the same is not paid,

the witness is not obliged to appear again as a witness in the same cause until his fees are paid.

1342 (2853) (3144) (2797) (2392). **Only two witnesses charged to prove one fact; exception.**—Not more than two witnesses shall be taxed in any bill of costs, who were called to prove any one matter of fact, or, having been subpœnaed, were not examined, unless the court, upon a motion to retax the costs, should, in its discretion, consider that the circumstances of the case warranted the examining or summoning of more than two witnesses for the proof of a particular fact; or unless such witnesses were summoned or examined to assail or defend the reputation of a witness for veracity, or to assail or to establish the character of a party, when character is put in issue.

Porter v. Williams, 22 Ala. 527; Coker v. Patty, 51 Ala. 511; Murphy v. State, 71 Ala. 15; Forcheimer v. Kaver, 79 Ala. 285; T. & C. R. Co. v. E. Ala. Ry. Co., 81 Ala. 94.

1343 (2854) (3145) (2798) (2393). **Motion for instructions to clerk in such case.**—If more than two witnesses are examined in proof of any particular fact, a motion must be made, at the term at which the cause is tried, for instructions to the clerk as to the taxation of costs, and cannot be made afterwards.

1344 (2855) (3146) (2799) (2394). **Motion to retax costs.**—If the taxation of costs be excessive, by charging the costs of witnesses who were not examined, or by charging costs to an improper party, or taxing costs contrary to law, the party aggrieved may move the court for a retaxation, setting forth the particulars in which the clerk has erred.

Briley v. Hodges, 3 Port. 335; Spann v. Cole, 13 Ala. 473; Pryor v. Beck, 21 Ala. 393; Tecumseh Co. v. Mangham, 67 Ala. 246; Forcheimer v. Kaver, 79 Ala. 285; T. & C. R. Co. v. E. Ala. Ry. Co., 81 Ala. 94; State v. Parker, 83 Ala. 269; McDonald v. Cox, 104 Al. 379; Torrey v. Bishop, 104 Ala. 548. (See also citations to sections 1325 and 1326.)

1345 (2856) (3147) (2800) (2395). **When sheriff ordered not to collect items of costs.**—If execution has issued in any such case, the party complaining thereof, or his attorney, may file a written application with the clerk for a retaxation of the costs, setting forth in what the alleged error consists, and the clerk must issue an order to the sheriff, directing him to abstain from the collection of the disputed items of cost until the further order of the court, to which a motion must be made, at the ensuing term, for a retaxation thereof.

1346 (2857) (3148) (2801). **Payment of costs against township.** If any township shall fail to recover in any suit brought by it, the clerk of the court or justice of the peace shall certify an itemized statement of the costs to the superintendent of education, who may pay the same out of the funds of such township, if any it have; and to this end the superintendent of education may request the auditor to draw his warrant on the treasurer, in favor of such clerk or justice, for the amount of such costs, payable out of the funds of such township; but not more than twenty dollars shall be so paid in any one case.

ARTICLE 2.

SECURITY FOR COSTS.

1347 (2858) (3149, 3772) (2802, 3338) (2396, 2887). **Non-residents must give security for costs.**—All suits at law or in equity, commenced by or for the use of a non-resident of this state, must be dismissed on motion, if security for the costs, approved by the clerk or register, be not given by such non-resident when the suit is commenced, or within such time thereafter as the court may direct.

What proceedings within the statute.—Ex parte Robbins, 29 Ala. 71; Shepherd v. Spriggs, Ib. 673; Garrett v. Terry, 33 Ala. 514; McAdams v. Beard, 34 Ala. 478; Forrester v. Forrester, 35 Ala. 594. **Non-residents within statute.** Ex parte Cole, 28 Ala. 50; Ex parte Bush, 29 Ala. 50; Ex parte Jemison, 31 Ala. 392; Davis v. You, 43 Ala. 691. **Refusal to dismiss available on appeal.** Empire v. Ala. Mining Co., 29 Ala. 698. **But not without exception.**—Tuscaloosa Co. v. Mayor, 38 Ala. 514; Eslava v. Ames Plow Co., 47 Ala. 384. **What sufficient lodgment.**—Ex parte Locke, 46 Ala. 77. **What not a compliance with statute.**—Ex parte Morgan, 30 Ala. 51; Bullard v. Jones, 50 Ala. 382; Ulman v. Langham, 49 Ala. 265. **What is.**—Ex parte Camp, 35 Ala. 143. **When right of objection waived.**—Weeks v. Napier, 33 Ala. 568; Harper v. Columbus Factory, 35 Ala. 127; Lavange v. Burke, 50 Ala. 61; Heflin v. Rock Mills, 58 Ala. 613; Dunklin v. Richardson, 34 Ala. 117. **When judgment debtor cannot move to dismiss garnishment.**—Edmondson v. DeKalb County, 51 Ala. 103. **Recovery on bond for costs.**—Pryor v. Beck, 21 Ala. 393. **Sureties' liability.**—Shepherd v. Spriggs, 29 Ala. 673. **If insufficient, new security should be allowed.**—Peavey v. Burket, 35 Ala. 141; Stribling v. Bank, 48 Ala. 451. **When motion to dismiss sufficient.**—Boswell v. Morton, 20 Ala. 235. **Court, in its discretion, may fix and extend time** for giving security.—Ex parte Jones, 83 Ala. 587. After case docketed, pleas to merits filed and cause continued several times, **motion for security comes too late.**—Brown v. Bamberger, 110 Ala. 342. **On appeal,** motion presumed to have been waived when record shows no action thereon.—Rosenberg v. Chaflin, 95 Ala. 249. Motion and ruling thereon must be shown by bill of exceptions.—A. G. S. R. Co. v. Bailey, 112 Ala. 167.

1348 (2859). **Money may be deposited.**—Money may be deposited with the clerk or register as security, the amount of the deposit to be fixed by the clerk or register, subject to increase or diminution on the order of the court.

1349 (2860) (3153) (2806) (2400). **When attorney liable for costs.**—If a suit, commenced by or for the use of a non-resident of the state, is dismissed for the want of security for costs, on motion, judgment for the costs must be rendered against the attorney or solicitor instituting the suit, knowing of the non-residence of the plaintiff.

1350 (2861) (3150) (2803) (2397). **If plaintiff removes, security required.**—If suit be commenced by or for the use of a resident, who afterwards removes from the state, the defendant, by motion to the court in term time, or by notice to the plaintiff, his agent, or attorney, or solicitor, in vacation, may require security for costs; and if such security be not given at or before the next term of the court, the suit must be dismissed.

1351 (2862) (3152) (2805) (2399). **Judgment against surety for costs.**—If judgment be rendered for the defendant, judgment must, on motion, be rendered against the surety for the costs as well as against the plaintiff.

1352 (2863). **Security for costs in court of probate or before justice.**—The provisions of this article apply to suits or proceedings

in the court of probate, or before a justice of the peace; and the judge of probate, or the justice, must take and approve the security for costs.

ARTICLE 3.

GENERAL RULES APPLICABLE TO ALL FEES, CIVIL OR CRIMINAL.

1353 (3665) (5017) (3534) (3063). **No fee charged unless expressly authorized.**—The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law.

Statutes giving costs are not to be extended beyond their letter, but must be strictly construed.—Dent v. State, 42 Ala. 514; Brown v. State, 46 Ala. 148; State v. McDuffie, 52 Ala. 4; Montgomery v. Foster, 54 Ala. 62; Tillman v. Wood, 58 Ala. 578; Pollard v. Brewer, 59 Ala. 130; Camden v. Block, 65 Ala. 236; Selma v. Stewart, 67 Ala. 338; Kahn v. Locke, 75 Ala. 332; T. & C. R. Co. v. E. Ala. Ry. Co., 81 Ala. 94; Banks v. State, 96 Ala. 41; R. & D. R. Co. v. Sibert, 97 Ala. 393; Morrow v. Rosenstihl, 106 Ala. 198; Troup v. Morgan Co., 109 Ala. 162; Lee v. Lide, 111 Ala. 126. **Officer demanding fee must point to some clear and definite provision of law authorizing it.**—Tillman v. Wood, 58 Ala. 578; Troup v. Morgan Co., 109 Ala. 162. **Ignorance of law is no excuse for an overcharge.**—Lee v. Lide, 111 Ala. 126.

1354 (3666) (5018) (3535) (3064). **Fee bills posted.**—Clerks of the circuit, city and criminal courts and judges of probate and registers in chancery must keep posted, in a conspicuous place in their respective offices, a complete list of all the fees allowed by law to them and to sheriffs for services connected with their respective courts, and must furnish a copy thereof on application.*

1355 (3667) (5019) (3536) (3065). **Penalty for failure to post.** The clerk of the circuit, city or criminal court, judge of probate, or register in chancery, who fails to comply with the provisions of the preceding section, is not authorized to collect or receive any fee for services rendered during such failure.*

1356 (3668) (5005, 5011) (3522, 3528) (3051, 3057). **When fees due.**—Fees allowed by law are due only at the termination of the suit, except that fees for transcripts of papers filed in the cause, other than copies of bills to which parties are entitled as of course, are due when service is performed; and no fee, except for the final record, shall be demanded or received in any case unless the service has been performed.

1357 (3669) (5009) (3526) (3055). **Sheriff's fees; when due.** Sheriffs and coroners are not entitled to full commissions until after actual levy of execution on property of the defendant, and the money made or paid to the plaintiff in execution, and then only on the amount actually collected or paid.

1358 (3670) (5010) (3527) (3056). **When entitled to half commissions.**—When the sheriff or coroner has levied execution, and before sale it is stayed by order of the plaintiff, the officer so levying must receive only half commissions.

Barron v. Tart, 18 Ala. 668.

*As amended by joint committee.

1359 (3671) (5008, 5012) (3525, 3529) (3054, 3058). **Bill of costs on request; no fee for taxing.**—All officers entitled to fees or costs must, on demand, make out a bill of such fees or costs, stating each item distinctly, and except in cases where it is expressly authorized, no fee shall be charged for taxing costs or furnishing a copy of the bill.

1360 (3672) (5016) (3533) (3062). **No commissions on costs.** No sheriff, coroner, or constable, shall collect or receive commissions on costs taxed in any execution put in his hands. The commissions allowed by law shall be collected or received only on the principal, damages and interest of the execution.

1361 (3673) (5014) (3531) (3060). **When execution against plaintiff for his own costs; penalty for failure to collect, etc.** The clerk of the supreme court, clerks of the circuit or city court, judges of probate and justices of the peace, upon return of an execution "no property" against the defendant by the proper officer of the county in which the judgment was rendered, or, if the execution be from the supreme court, of the county from which the case was brought, may issue execution in their own names against the plaintiff for the costs actually created by the plaintiff, but for none other, to be collected and returned as other executions. Judgment may be rendered on motion in the circuit or city court of such county, in the name of the clerk, or judge of probate issuing the execution, against the sheriff so failing and his sureties, or either of them, upon three days' notice, for failing to return, twenty per cent. upon the amount of the execution; for failing to collect, the amount of the execution and ten per cent. damages; and for failing to pay over, the amount of the execution and five per cent. damages for each month after demand.*

Wescott v. Booth, 49 Ala. 182.

1362 (3674) (5023). **No charge for keeping indexes.**—The probate judges, clerks of the circuit courts and registers in chancery are prohibited from receiving any fees or allowances out of the county treasury for keeping direct and reverse indexes to books and records required by law.

1363 (3675) (5025). **Account for ex-officio services itemized and sworn to; maximum of allowance.**—Persons entitled to an allowance by the court of county commissioners for what are commonly called ex-officio services, shall, before the allowance is made, itemize such services, and make oath thereto, as in the case of other claims against the county. The compensation allowed shall be the fair and reasonable value of the services, in no case to exceed two hundred dollars per annum, unless otherwise provided by law.

1364 (3676) (5005, 5006) (3522, 3523) (3051, 3052). **Clerks, registers and sheriffs keep fee-books.**—The clerks of the circuit, city or criminal courts, registers in chancery and sheriffs must keep a fee-book, which, in the case of the clerk and register, is a book belonging to the office. Each such officer must enter therein, in the

*As amended by joint committee.

form of a regular account opened for that purpose, every fee charged by him for every distinct service rendered by him. The fee-book must have an index pointing out the folio of the respective accounts.*

Bilbro v. Drakeford, 78 Ala. 318; McDonald v. Cox, 104 Ala. 379.

1365 (3677) (5007) (3524) (3053). **No fee charged unless entered in fee-book.**—No clerk, register, or sheriff, shall demand or receive a fee for any service by him performed, not justified by a charge entered in his fee-book.

Bilbro v. Drakeford, 78 Ala. 318; McDonald v. Cox, 104 Ala. 379.

1366 (3678) (5021) (3538) (3067). **Judge of probate keeps book showing fees received.**—The judges of probate must keep constantly in their offices, free to public inspection, a book in which must be entered all fees received by virtue of their office, stating for what and from whom received.

Lee v. Lide, 111 Ala. 126.

1367 (3679) (5013) (3530) (3059). **Quadruple damages for unlawful charge.**—Any officer authorized by law to take fees, who knowingly receives any other or higher fees than are prescribed by law, is liable to the party aggrieved for fourfold the fees so received, to be recovered in any court of competent jurisdiction.

Foster v. Blount, 18 Ala. 687.

1368 (3680) (5020) (3537) (3066). **Judge of probate forfeits fifty dollars for receiving unlawful fee.**—Any judge of probate, who knowingly receives any other or higher fees than are allowed by law, forfeits fifty dollars, to be recovered in the name of the person aggrieved. Such sum, if recovered by a personal representative, or guardian, is assets of the estate. This penalty is no bar to an indictment for extortion.

Judge liable to penalty though the overcharge was made by his clerk in ignorance of the law.—Lee v. Lide, 111 Ala. 126.

1369. Figures, initials and abbreviations; how estimated in copying or recording.—In ascertaining the cost of copying or recording any matter which any public officer is authorized or required to copy or record, each amount or number expressed in figures shall constitute one word regardless of the number of figures therein; the year, month and day shall each constitute one word, or in all three words; and each initial letter or abbreviation shall constitute one word.

1370. Special or local laws giving greater fees than those prescribed by this Code are repealed.—All special or local laws whereby fees in excess of those prescribed by this Code are allowed to any officer, are repealed; and no officer shall receive for any service a greater fee than that prescribed by this Code for such service, any special or local statute to the contrary notwithstanding; but such special or local laws, so far as they prescribe fees not in excess of the fees prescribed by this Code, are not hereby repealed. But the

*As amended by joint committee.

provisions of this section do not apply to allowances for ex-officio services.*

ARTICLE 4.

FEES OF OFFICERS.

1371 (3681) (5026) (3513) (3042). **Authority to receive; how taxed and collected.**—Clerks, sheriffs and other officers in this chapter named are entitled to receive, for the services therein mentioned, the fees to such services respectively annexed, and no more; to be taxed, paid and collected in the manner directed by the provisions of this Code.

See citations to section 1353.

1372 (3682) (5027) (3514) (3043). **Fees allowed to clerks of circuit and city courts.**—Clerks of circuit and city courts are entitled to receive the following fees for the following services:

Issuing summons and complaint	$ 1 25
Making every copy thereof	30
Making every copy thereof, when over two hundred words, for each hundred words	15
Entering sheriff's return, or copy thereof	20
Docketing cause, to be charged but once	25
Entering appearance	20
Filing pleas, demurrer and other pleadings, for each	10
Every trial, with or without jury, and its incidents, not including judgments by default or nil dicit	75
Entering up each continuance	10
Entering up each judgment	30
Entering up any other order of court	30
Every scire facias, or notice in the nature thereof	75
Every execution, or copy thereof	50
Entering return, or copy thereof, for each hundred words 15 cents; but in no case less than	20
Recording the award of arbitrators, referees, auditors, etc., for each hundred words	15
Issuing execution, or attachment thereon, and entering return	1 00
Taking bond for certiorari, supersedeas, or appeal, or copy thereof, and filing same	75
Issuing subpœna, for each witness	30
Administering an oath, not relating to a trial pending, and certifying the same	25
Issuing each attachment and taking bond	1 00
Filing each paper in attachment	10
Issuing each summons for garnishee	50
Swearing and taking examination of garnishee and recording the same, for each hundred words, 15 cents; but not less than	50

*Last clause added by joint committee.

Order to advertise, or order of survey, or copy thereof	.$ 50
Certificate of judgment	50
Recording each survey and surveyor's report, or copy thereof, for each hundred words, 15 cents; but not less than	25
Issuing commission to take depositions, or copy thereof	75
Making copy of interrogatories accompanying commission, 50 cents; or for each hundred words	15
Filing each package of depositions	10
Indorsing each package depositions opened	10
Issuing writ of ad quod damnum, or writ in the nature thereof	75
Recording the return and inquest thereon, 50 cents; or for each hundred words	15
Issuing writ of certiorari, prohibition, mandamus, or writ in the nature thereof	75
Filing the same and entering return	15
Making a complete record of a cause, or copy thereof, for each hundred words	15
Making copy of any paper not herein provided for, for each hundred words	15
Making each certificate requiring the seal of office, and affixing seal	50
Taking any bond not otherwise provided for	75
Making each necessary certificate not otherwise provided for	25
Performing official duties not otherwise provided for, to be paid from the county treasury, such sum as may be allowed by the court of county commissioners, not exceeding, per annum	200 00
Except in Barbour county, in which it shall not exceed	400 00 Feb. 26, 1889, p. 102.
And except in the counties of Madison, Montgomery, Jefferson, Calhoun and Mobile, in which it shall not exceed	500 00 Feb. 9, 1897, p. 681.

Fee for scire facias applies to proceeding against bail.—State v. Parker, 83 Ala. 269. **Formerly clerk of city court was not entitled to ex-officio allowance.**—Troup v. Morgan Co., 109 Ala. 162.

1373 (3683) (5028) (3515) (3044). **Fees allowed to registers in chancery.**—Registers in chancery are entitled to the following fees for the following services: Feb. 28, 1889, p. 114.

Filing each bill or other paper required by law to be filed	.$ 10
For each original subpœna on a bill, including one original for each county in which there are one or more defendants to be served	50
For each copy thereof	40
Entering each return thereof	15
For each order of publication, to include all non-resident defendants against whom publication is had at the same time	1 00
Issuing writ of injunction or ne exeat, including one original for each county in which there are one or more defendants to be served	1 50
For each copy thereof	50

Entering each return thereof	$ 15
Issuing writ of attachment, or assistance, or other writ of seizure	1 00
Entering each return thereof	15
Docketing each cause, to be charged but one time	1 00
Entering each appearance, to include all solicitors appearing on the same side or for the same parties	25
For each decree pro confesso on personal service, to include all defendants against whom such decree is taken at the same time	1 00
For each decree pro confesso on publication, to include all defendants against whom such decree is taken at the same time	1 00
For each order appointing a guardian ad litem for one or more defendants	1 00
For any other order by the register except continuances	50
Issuing commission to take testimony, or other commission	50
Receiving and filing each package of testimony	10
Indorsing each package of depositions published	10
Entering order submitting cause for decree	50
Entering any other order of court	25
Noting all testimony on hearing of cause	50
Abstract of cause as it stands on docket, for the use of the chancellor, on submission for final decree	1 00
Entering each decree of five hundred words or less	75
For every hundred words over five hundred	15
Taking account, swearing witnesses and performing other services on reference, for each day engaged therein (but in no case to exceed five days' pay, unless by special order of the court*)	3 00
For taking testimony on reference or in proceedings relating to trustees and receivers, for every hundred words	15
For each report of five hundred words or less	2 50
For every hundred words over five hundred	15
But when the amount claimed is less than five hundred dollars, and the register is not required to pass upon any disputed item of indebtedness, payment or credit, his fee for executing the reference and making report thereon is only	2 00
Issuing subpœna for each witness	25
Each witness certificate	25
Issuing each execution	75
Entering each return thereof	15
Taking and approving each bond	1 00
Making copy of bill, answer, or other paper or record, or making a complete record, or copy thereof, or recording any other paper, for every hundred words	15
Each notice not otherwise provided for	50

*As amended by joint committee.

Each certificate or affidavit when annexation of official seal is required	$ 50
Each certificate or affidavit when official seal not required	25
Hearing and passing upon application for appointment of receiver or trustee	3 00
Each settlement with receiver or trustee	3 00
Examining each voucher of receiver or trustee or other person making settlement of trust before him	10
Examining each answer on exception to see whether the same is full and sufficient	3 00
Recording resignation, removal or suggestion of death of trustee	75
Entering each certificate of the supreme court	50
Taking questions and answers and recording the same in proceedings to perpetuate testimony, for each hundred words, to be paid by the applicant	25
For all other services relating to such proceeding, to be paid by the applicant	1 00
For services in proceedings to relieve minors of the disabilities of non-age, the same specific fees as are allowed by law for similar services in other cases, to be paid by the minor or his next friend, but not to exceed five dollars in any case where the application is not contested.	
Commissions on sales: For the first one hundred dollars, two per cent.; for all over one hundred dollars, and not exceeding one thousand dollars, one and one-half per cent.; for all over one thousand dollars, and not exceeding twenty thousand dollars, one per cent., and for all over twenty thousand dollars, one-fourth of one per cent.	
For receiving, keeping and paying out or distributing money other than that arising from sales, on the first thousand dollars, one per cent.; on all over one thousand dollars, and not over five thousand dollars, three-fourths of one per cent.; on all over five thousand dollars, and not exceeding ten thousand dollars, one-half of one per cent., and all over ten thousand dollars, one-fourth of one per cent.	
Receiving, keeping and paying out money paid into court under a decree in favor of an administrator ad litem, one-half of one per cent. on the amount so received and paid out.	
For each notice sent by mail to creditors under article 1 of chapter 113	15
Filing, receipting for and docketing each claim under same article	25
For all entries on subpœna-docket made in a cause, whether one or more of such entries, one fee of	50
For all entries on commission-docket made in a cause, whether one or more of such entries, one fee of	50

Register not entitled to commissions on sale by receiver.—R. & D. R. Co. v. Sibert, 97 Ala. 393.

1374 (3684) (5029) (3516) (3045). **Fees allowed to clerk of supreme court.**—The clerk of the supreme court is entitled to receive the following fees for the following services:

Docketing each cause	$ 30
Entering each appearance, to include all attorneys appearing on the same side or for the same parties	30
Each bond	50
Each appeal or writ of error	50
Each order	50
Each continuance	25
Each judgment	1 00
Each certificate of default of clerk of lower court to forward transcript in criminal cases within twenty-five days after appeal or writ of error, to be paid by such clerk and the sureties on his official bond	5 00
Each mandate or certificate to the court below	2 00
Each writ of scire facias, certiorari, mandamus, prohibition, or other similar writ	1 00
Filing the same with return	20
Each writ of fieri facias	1 00
Taxing costs, copying and entering satisfaction	85
Copying opinions, record, or paper in his office, for each hundred words	15
*In each case an additional fee of	4 00

1375 (3685) (5030) (3517) (3046). **Fees allowed to judges of probate.**—Judges of probate are entitled to the following fees for the following services:†

Services rendered in the incorporation of towns, under the provisions of this Code, to be paid by the corporation	$ 5 00
Each entry of an estray, to be paid by the taker	50
Each record of a mark or brand	25
Filing and recording all certificates of incorporation of religious, educational, benevolent and burial societies	2 00
Each certificate given under the chapter in relation to hospitals, diseases, infection and quarantine	50
Issuing and recording marriage license, together with consent to the marriage, and certificate of its celebration and taking and recording bond	1 50
Celebrating rites of matrimony	1 50
Services rendered in legitimatizing and adopting children under the provisions of this Code	1 00
Issuing writs of ad quod damnum for the erection of dams or public mills	2 50

*As amended by joint committee.

†The item "Filing statement required to be made by foreign life-insurance company under section (1211)" is omitted, that section being omitted from the Code as published, because repealed by the insurance law of February 18, 1897, article 1, chapter 63.

And, for each copy of such writ and application, twenty-five cents, to be paid at the time such application is made; and if publication is required, the applicant must deposit with such judge an amount sufficient to cover the expenses therefor; for each notice to show cause, and copy, fifty cents, to be paid by the applicant on the return of the inquest, and before the issue of the notice; for determining on the application, two dollars, to be paid by the applicant if the same is not contested, otherwise, by the unsuccessful party; for issuing subpœnas to attend on the hearing of the application, the same fees as in other cases, to be paid by the unsuccessful party; for which execution may issue.	
Each day engaged in making division of property under provisions for partition of property	$ 2 00
Recording the proceedings of commissioners, for each hundred words	15
Services rendered in proceedings to have persons declared of unsound mind, and appointing guardian for them . . .	5 00
All orders on presenting will for probate	1 00
Examination of witnesses and order admitting will to probate	2 00
Presiding at trial of contested will, for each day	2 50
Granting letters testamentary or of administration . . .	50
Order appointing general guardian or general administrator, or general administrator ad litem	1 00
Issuing and recording same	50
Taking, approving, filing and recording bond of executor or administrator	1 50
Granting order of appraisement or sale of personalty . . .	50
Issuing order of appraisement or sale of personalty . . .	25
Order removing executor, administrator or guardian . . .	2 00
Granting letters of guardianship, for each minor	75
Taking, approving and recording bond of guardian . . .	1 00
Issuing, filing and recording letters of guardianship . . .	50
Order appointing commissioners to divide real or personal property, and issuing writ to the sheriff	2 00
Approving such division and entering order thereon . . .	1 00
Order on application to sell real estate, appointing day for hearing, and order for notice	1 00
Order appointing guardian ad litem on application to sell land and giving notice to such guardian	50
Examining testimony and granting order to sell land . . .	2 00
Making and entering order approving sale of land . . .	75
Hearing application for dower, issuing writ and entering all necessary orders, and recording assignment of dower . .	4 00
Examining, stating and passing the accounts of executors, administrators and guardians, for final or partial settlement, and appointing day for hearing	1 00

Appointing guardian ad litem for such settlements, and giving notice to same . . . . . $ 50
Examining each voucher 10
Making decree on annual or partial settlement, and order to record the same 1 50
Making each decree on final settlement 50
Each copy of any order of publication, and having same published 50
Entering all necessary orders in relation to insolvent estates, for each order or decree 25
Issuing each writ, citation, or notice required by law, and entering sheriff's return 50
Filing each claim, and giving receipt therefor 15
Approving each bond not otherwise provided for 50
Recording each decree relieving minors from the disabilities of non-age 1 00
Recording wills, inventories, sale-bills, reports, certificates, transcripts, returns, orders, decrees, declarations of incorporation, deeds, and all other instruments, and all proceedings required by law to be recorded, and not otherwise provided for, for each hundred words 15
Taking questions, answers and recording the same, in proceedings to perpetuate testimony, for each hundred words, to be paid by applicant 20
Other services in relation thereto, to be paid by applicant . 75
Each certificate, with seal of office 50
Each certificate, without seal of office 25
Each commission to take depositions 50
Filing interrogatories 10
Copying interrogatories, deeds, orders, decrees, or other proceedings, or instruments, not otherwise provided for, for each hundred words 15
Administering affidavit, not otherwise provided for . . . 25
Presiding in court of county commissioners and keeping minutes of such court, for each day 3 00
Trying and sealing weights and measures, for each weight and measure sealed, to be paid by the person for whom services performed 25
Each acknowledgment or probate of deed, or other conveyance 50
Services rendered in and about limited partnerships: For each acknowledgment, fifty cents; for filing and recording the original certificate and acknowledgment, and each transcript of the same, seventy-five cents; for each affidavit, twenty-five cents; for making out transcript and certifying the same, fifty cents; and the same fees on the renewal or continuance of the partnership.
Hearing an application to compel a personal representative to convey land under contract of testator or intestate, and

making all necessary orders and decrees, to be paid by the unsuccessful party	$	2 00
Discharging his duties in relation to public roads, on proof to the court of county commissioners that he has discharged such duties, annually, to be paid out of the county treasury, not exceeding		90 00
Receiving, keeping and paying out money paid into court under a decree in favor of an administrator ad litem, one-half of one per cent. on the amount so received and paid out.		
On all sums paid to him as escheats, ten per cent. thereon.		
All other official duties, for the compensation of which no express provision is made by law, such sum as may be allowed by the court of county commissioners, to be paid out of the county treasury, not exceeding per annum . . .		200 00
Recording proceedings in each case for binding out apprentice, to be paid by master		1 00
Every certificate or charter issued to a private corporation		1 00 Feb. 26, 1889, p. 61.
Recording certificate of judgment or decree		50 Feb. 26, 1889, p. 55.
Recording or copying town plats, for each hundred words .		15
For each lot contained therein		05
Commissions on state and county licenses issued by him, two and one-half per cent. on the amount collected and paid over.		
Commissions on charter fees paid by corporations, two and one-half per cent. on the amount collected and paid over.		
Approving, filing and recording each official bond		1 00

Registration of conveyances.—Tillman v. Wood, 58 Ala. 578; Lee v. Lide, 111 Ala. 126.

1376 (3686) (5031). **Judge of probate to make itemized account for services.**—It is the duty of the several judges of probate to make out an itemized account for their official services before their fees are due and collectible.

1377 (3687) (5032) (3518) (3047). **Fees allowed to sheriffs.** Sheriffs are entitled to receive the following fees for the following services:

Services rendered in the incorporation of towns under the provisions of this Code, to be paid by the corporation . . .	$	5 00
Serving and returning an application to perpetuate testimony, to be paid by the applicant		1 00
Services in proceedings to incorporate railroads under the laws of this state, such fees as are usually allowed in civil proceedings.		
Services in cases of arbitration under the provisions of this Code, the customary fees for executing subpœnas, which must be paid jointly by the parties, unless the arbitrators otherwise determine.		
Services in relation to persons of unsound mind, the same fees as are allowed for similar services in other cases, to be		

paid out of the county treasury, if such person has no estate.

Levying attachment	$ 1 50
Entering and returning same	25
Summoning garnishee and making return	1 30
Selling property attached, the same as for selling under execution.	
Serving summons and other mesne process, and returning the same	1 30
Summoning each witness, and returning subpœna	65
Impaneling a jury, in each case when a jury is sworn	75
Executing a writ of possession	2 50
Making a deed to real estate sold	2 50
Serving summons and making return in cases of forcible entry and detainer and unlawful detainer	1 00
Executing writ of restitution in such cases	2 00
Other services in such cases, the same fees as in circuit court.	
Collecting execution for costs only	1 50
Summoning a jury for any inquisition in the county, or under a writ of ad quod damnum, or dower, and attending on such jury, and taking inquest, per day, when no other provision is made by law	5 00
Serving subpœnas on bills in chancery, and returning the same, for each defendant	1 50
Serving scire facias, or notice in the nature thereof, and returning the same	65
But no fee shall be charged by him for serving a scire facias on a defaulting juror or witness, when the same is excused by the court without terms.	
Serving any summons not herein provided for, and making return	65
Serving attachment for contempt of court, or rule to show cause	1 50
Taking and approving bonds of every kind	75

Collecting money under execution: For the first hundred dollars, five per cent.; for the second hundred dollars, four per cent.; and, for collecting all sums over two hundred dollars, three per cent.; but no commissions must be charged on costs.

Levying execution when sale is stayed after levy by any restraining order, one per cent. on the amount of the judgment, to be paid by the party obtaining the order, to be taxed for his benefit, if successful, against the adverse party on the termination of the suit.

When an attachment is by him levied on personal property, which is replevied, or the cause is settled without a sale, he is entitled to one-half the commissions upon the amount of the demand sued for, allowed him for making money on execution, to be paid by the party paying such demand, or

replevying such property; and, if such demand is afterwards collected upon execution, or other final process, he must receive only half commissions; and if the plaintiff fails to obtain judgment, the amount so paid on the replevy of the property must be taxed as costs against him, and collected for the benefit of the defendant.

Attendance upon the chancery court, each day, to be paid out of county treasury . . . . . .$ 2 00

And the register, after the adjournment of each term of such court, shall certify to the court of county commissioners the number of days the sheriff so attended, and the amount of his compensation therefor; and thereupon, that court shall allow the compensation so certified, and a warrant therefor shall be drawn in favor of the sheriff on the county treasurer.

Discharging his duties in relation to the public roads, he is entitled to receive annually, on showing to the court of county commissioners that he has discharged such duties, to be paid out of the county treasury, not exceeding . . 90 00

Services under the provisions of this Code for the erection of dams and public mills: For the service of each writ, application, or notice, and return thereof, fifty cents; for summoning a jury and attending and charging the same, and returning their inquest, five dollars, to be paid by the applicant before any other proceedings are had; for serving subpœnas and other services, the same fees as in other cases, to be paid by the unsuccessful party, for which execution may issue.

Seizing personal property under writ of detinue 1 50

Taking care of such property, such just compensation as the court may fix.

Impaneling grand juries, advertising and attending all elections in his county, and for all other public services not otherwise provided for, such sum as may be allowed by the court of county commissioners, to be paid out of the county treasury, not exceeding two hundred and fifty dollars per annum.

Fees and commissions for levying and making money on execution or attachment.—Mastin v. Cullom, 28 Ala. 670; Kahn v. Locke, 75 Ala. 332; Clark v. Lamb, 76 Ala. 406; T. & C. R. Co. v. E. Ala. Ry. Co., 81 Ala. 94; U. S. Rolling Stock Co. v. Clark, 95 Ala. 322; Morrow v. Rosenstihl, 106 Ala. 198; Burns v. T. & C. R. Co., 112 Ala. 498. **Half commissions to be estimated, not on the amount claimed in the complaint, but on the amount really due and paid.**—U. S. Rolling Stock Co. v. Clark, 95 Ala. 322. **Plaintiff cannot, by remitting part of his just claim, deprive the sheriff of his commissions.**—Morrow v. Rosenstihl, 106 Ala. 198. **The party who obtains the restraining order after levy must pay sheriff's commission of one per cent.; if successful, he recovers it back.**—T. & C. R. Co. v. E. Ala. Ry. Co., 81 Ala. 94. **But the payment of such commission is not a condition precedent to the right of a party to appeal and supersede the judgment.**—Burns v. T. & C. R. Co., 112 Ala. 498. **Sheriff selling property subject to rent lien should pay the rent out of proceeds.**—Smith v. Huddleston, 103 Ala. 223. **Is entitled to allowance for necessary watchman to guard goods under levy; but is not entitled to allowance for clerk-hire in invoicing goods, nor for insurance on**

goods.—Smith v. Huddleston, supra. **Fee for serving scire facias applies to proceeding against bail.**—State v. Parker, 83 Ala. 269.

1378 (3688). **Fees allowed coroner.**—The coroner is entitled to receive, for services rendered by him in civil cases, the same fees as are allowed to sheriffs for like services.

1379 (3689) (5033) (3520) (3049). **Fees allowed justices of the peace.**—Justices of the peace are entitled to receive the following fees for the following services:

Services under section 1790 (1359), in relation to taking up studs and jackasses, to be paid by the owner	$ 1 00
Administering the oath to the taker, summoning householders to appraise the property, taking bond and making return to the judge of probate, in relation to estrays, to be paid by the taker	1 00
Proving property by the owner and issuing order to restore the same, in such matter, to be paid by the owner . . .	1 00
Issuing order to fence viewers under section 2119 (1371), one-half to be paid by each party	50
Making appraisement and summons in proceedings in relation to "salvage," for each, to be paid by the person taking up the property	1 00
Summons and proceedings thereon to judgment, if judgment be for less than fifty dollars	50
Same services if judgment be for more than fifty dollars .	1 00
Each warrant in a qui tam action, and proceedings thereon to judgment	1 00
Subpœna, for each witness	15
Execution, and taxing costs thereon	50
Attachment bond and affidavit	1 50
Summoning garnishee and taking examination, in all cases in which the answer is for not more than fifty dollars . .	50
Same services, in all cases in which the answer is for over fifty dollars	75
Issuing each attachment	50
Each appeal or certiorari, including bond and certificate of proceedings	1 00
Every other bond	50
Administering an oath, and certifying the same	25
Every necessary certificate not otherwise provided for . .	25
Docketing each cause	10
Judgment on forthcoming, stay, or replevin bond	50
Each judgment in a summary proceeding	75
Transcript of proceedings other than on appeal or certiorari	50
Issuing venire facias	50
Attending trial of right of property	1 00
Taking and certifying acknowledgments or probates of deeds or other conveyances	50
Each scire facias, or notice in the nature thereof	50

Making return of certiorari, other than in cases of forcible entry and unlawful detainer . . . . . .$ 50
Every summons in cases of forcible entry and detainer and unlawful detainer 50
Administering oath or affirmation in such cases 10
Entering judgment in such cases 25
Each trial in such cases 2 00
Each writ of restitution in such cases 25
Return on appeal or certiorari in such cases 1 00
Celebrating rites of matrimony 1 50

1380 (3690) (5034) (3521) (3050). **Fees allowed to constables.** Constables are entitled to the following fees for the following services:

Serving summons . . . . . .$ 50
Summoning each witness 25
Levying an attachment for not exceeding fifty dollars . . 75
Levying an attachment for more than fifty dollars . . . 1 00
Levying an execution for not exceeding fifty dollars . . . 50
Levying an execution for more than fifty dollars 1 00
Making money on execution, two per cent. on the amount collected, but in no case less than 50
Serving notice on each party therein named 25
Serving scire facias, or notice in the nature thereof . . . 50
Taking any bond required by law 50
Keeping property levied on, such sum as the justice of the peace may order to be paid out of the money in the hands of the constable arising from the sale.
Services in forcible entry and detainer and unlawful detainer, the same fees as in other cases.
Summoning and impaneling jury under section 2691 (3375) 1 50

ARTICLE 5.

FEES OF JURORS AND WITNESSES.

1381 (3691) (5049, 5056) (4345, 3467) (794). **Jurors in circuit, city and chancery courts.**—Regular and tales jurors serving in the circuit and city courts in civil cases, and those serving in the chancery court are entitled to the same fees and allowances as provided by law for criminal cases, to be evidenced and paid in the same manner.

1382 (3692) (5055) (3284). **Pay of jurors in trial of right of property before justice.**—Jurors in trials of right of property before justices of the peace are each entitled to fifty cents for their services in each case tried by them, to be taxed as costs against the unsuccessful party.

1383 (3693) (5052) (2506) (2114). **Pay of jurors in ad quod damnum proceedings.**—The viewing jurors in cases of erection of dams and establishment of public mills, and all jurors summoned

under writs of ad quod damnum are each entitled to two dollars, to be paid by the applicant before return of verdict.

1384 (3694) (5057) (1742) (1472). **Pay of jurors condemning for turnpike.**—For condemning lands for turnpike roads the jurors are entitled to two dollars a day, to be taxed as costs.

1385 (3695) (5054) (3202) (2763). **Pay of jurors and witnesses on inquisition of lunacy.**—Jurors and witnesses summoned under the provisions of this Code to pass upon the soundness of mind of a person, with a view to the appointment of a guardian, are each entitled to receive seventy-five cents per day of attendance, to be paid, unless otherwise provided, out of the estate of the person, if adjudged of unsound mind, on the certificate of the judge of probate, or if there be no estate, out of the county treasury. If the person be adjudged of sound mind, the fees of jurors and witnesses shall be taxed as costs against the petitioner.

1386 (3696) (5064). **Pay of jurors and witnesses in probate court.**—Jurors and witnesses in the probate court are entitled to the same pay as in the circuit court, to be taxed as costs, except that, on the trial of contested will cases, the jurors shall, upon the certificate of the judge of probate stating the number of miles traveled and the amount of compensation to which they are entitled, be paid in the same manner as jurors in the circuit court.

1387 (3697) (5058) (837). **Fees of witnesses before county commissioners.**—Witnesses before the court of county commissioners, or similar court of like jurisdiction, must be compensated as in the circuit court, to be taxed as costs.

1388 (3698) (5060). **Fees of witnesses in condemnation.**—Witnesses summoned in ad quod damnum proceedings, to assess the damages to real estate from taking land, are entitled to the same fees and allowances as in the circuit court, to be taxed as costs.

CHAPTER 30.

COTTON. 1389–1395.

As amended Dec. 3, 1890, p. 23.

1389 (1186) (1411) (1160) (931). **What unlawful in buying cotton.**—It shall be unlawful for any person, firm, company, or corporation, in buying baled cotton, or in weighing such cotton for sale, to deduct from the actual weight thereof, as shown on a level-standing beam of the scale, or to use in weighing cotton untested weights, so as to deprive the seller of the cotton of any of its real value.

As amended Dec. 3, 1890, p. 22.

1390 (1187) (1412) (1161) (932). **Penalty for making deduction, etc.**—Any person, company, firm, or corporation, who violates the preceding section, shall be guilty of a misdemeanor, and, on conviction, be fined in each case, not less than ten nor more than fifty

dollars. But deductions may be made by mutual consent of buyer and seller or their authorized agents or representatives on wet or damaged cotton-bales, on each bale so weighed or deducted from.

1391 (1188) (1420) (1170). **Cotton rejected on resampling must be returned.**—Whenever cotton bought from a factor is removed by the purchaser, his agent, or broker, from the warehouse in which it is stored, to another warehouse, for the purpose of reweighing, resampling, or examining, and the same, or any part thereof, shall, after such reweighing, resampling, or examining, be rejected, the purchaser, his agent, or broker, must replace the cotton so rejected in the warehouse from which it was removed, in as good order as when it was removed therefrom, and pay all the costs attending such removal and replacing.

1392 (1189) (1421). **Sampling before and after selling and weighing.**—No more than six ounces of cotton shall be taken from any bale of cotton, under pretext of sampling the same; but after the sale of the cotton, and after the weight thereof has been ascertained and agreed upon, the buyer may take from the bale, at his own loss, six ounces more of cotton, for comparison with the sample by which he bought.

1393 (1190) (1422). **Cotton not removed without consent of seller.**—Without the consent of the seller, cotton must not be removed from the place where it may be when sold, until the weight thereof has been ascertained.

1394 (1191) (1423). **Compensation for sampling.**—Persons engaged in buying or selling cotton must not pay, or contract to pay, for the sampling thereof, any other than a compensation in money.

1395 (1192) (1416) (1166). **Warranty on sale by planter or owner implied.**—When cotton in bales is sent by a planter or other owner to a factor for sale, a warranty is implied on the part of such planter or owner to the factor, and the purchaser from such factor, respectively, that such cotton is not fraudulently packed; and when cotton is sold by sample by the owner or his factor, that the sample has been fairly drawn, and that the cotton is not fraudulently packed, and no other warranty is thereby implied; and for any breach of such implied warranty, the purchaser may recover damages, either from the owner or factor selling the same; but no action can be brought for any breach of such last-mentioned implied warranty, unless the suit is commenced within one year after such sale; but planters shall not be liable, in any way, for losses sustained by factors or commission merchants for having sold cotton by fraudulent or unfair samples, unless such loss was occasioned by plating or fraudulent packing of the cotton by such planter.

CHAPTER 31.

COUNTIES. 1396-1425.

1396 (23) (23) (26) (25). **Number and names of counties.**—The state is divided into sixty-six counties, called: Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Mobile, Monroe, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, Winston.

1397 (886) (815) (897) (763). **County a body corporate.**—Every county is a body corporate, with power to sue or be sued in any court of record.

Courts take judicial notice of the names and corporate character of counties.—Reeves v. State, 20 Ala. 33; Overton v. State, 60 Ala. 73; Camp v. Marion Co., 91 Ala. 240; Trammell v. Chambers Co., 93 Ala. 388. **Counties are public corporations or quasi corporations, not municipal,** but mere government auxiliaries or agencies under legislative control.—Askew v. Hale Co., 54 Ala. 639; Chambers Co. v. Lee Co., 55 Ala. 534; Marengo Co. v. Coleman, 55 Ala. 605; James v. Conecuh Co., 79 Ala. 304. They are not strictly corporations but rather **involuntary political or civil divisions of the state.**—Commissioners v. Moore, 53 Ala. 25; Simpson v. Lauderdale Co., 56 Ala. 64; Covington Co. v. Kinney, 45 Ala. 176. **County may be taxed with costs.** Dover v. State, 45 Ala. 244; State v. Parker, 83 Ala. 269. **Can only be charged with such expenses and liabilities as are authorized by law.**—Van Eppes v. Commissioners, 25 Ala. 460; Mitchell v. Tallapoosa Co., 30 Ala. 130; Barbour Co. v. Brunson, 36 Ala. 362; Barbour Co. v. Horn, 48 Ala. 649; Posey v. Mobile, 50 Ala. 6; Simpson v. Lauderdale Co., 56 Ala. 64; Burgin v. Hawkins, 101 Ala. 326. **As to matters within these limits it has the same power to contract as an individual.**—Montgomery Co. v. Barber, 45 Ala. 237. **There is no general liability on a county to answer for injuries received from defective roads and bridges;** the liability is special and defined by statute.—Covington Co. v. Kinney, 45 Ala. 176; Barbour Co. v. Horn, 48 Ala. 566; s. c., 48 Ala. 649; Sims v. Butler Co., 49 Ala. 110; Askew v. Hale Co., 54 Ala. 639. **Suits against county; presentation of claims, etc.**—See citations to section 13 (2574). See also, citations to section 1416 (901).

1398 (25) (25) (28). **Share of debts to be paid by new counties.** In all cases in the formation of new counties, the inhabitants cut off from any county are liable in law and equity for the payment of their pro rata amount of the existing debt of the counties from which they have been severed.

Does not subject the new county to liability for any part of the contingent liabilities of the old.—Askew v. Hale Co., 54 Ala. 639. **An action lies against the new county for its pro rata share of the debt of the old,** as ascertained by the commissioners' court.—Chambers Co. v. Lee Co., 55 Ala. 534.

1399 (26) (26) (29). **How ascertained, and proceedings thereupon.**—The court of county commissioners of any county from which a portion of its territory and inhabitants has been taken to form a new county, must ascertain, as nearly as practicable, the entire debt of their county at the time such portion of their county was taken

off, and out of such indebtedness must ascertain the pro rata share due from that part of the county taken off, and transmit a certified statement of the amount to the court of county commissioners of the new county to which such portion of their territory has been attached, and the court of county commissioners of the new county must then issue a certificate of indebtedness for such certified amount in favor of the county making such certified statement, which shall be paid by said new county as now provided by law for the payment of county dues.

1400 (27) (27) (25) (24). **Their jurisdiction over navigable streams.**—The jurisdiction over navigable streams, not included within the limits of any county, belongs to the county or counties whose jurisdiction extends to the margin thereof, and all process may be executed on such streams by officers of either county.

Jackson v. State, 90 Ala. 590.

1401 (887) (816) (898) (764). **Deeds to others for use of county.** All deeds, grants, or conveyances, made to any officer or person for the use and benefit of the county, vest in such county the title as fully as if made to such county by name.

1402 (888) (817) (899) (765). **Commissioners have custody of property, and may sell.**—The court of county commissioners have the control of all property belonging to the county, and may, by an order to be entered on its minutes, direct the disposal of any real property which can be lawfully disposed of, and appoint a commissioner to make titles thereto; and a conveyance of such commissioner, in accordance with such order, invests the grantee with the title of the county.

1403 (889) (818) (900) (766). **County buildings erected and repaired by county.**—The county buildings are to be erected, and kept in order and repair at the expense of the county, under the direction of the court of county commissioners, which court is authorized to make all necessary contracts for that purpose.

1404 (890) (819) (901) (767). **Sheriff has charge of court-house, etc.**—The sheriff has charge of the court-house, and must prevent trespasses, keep out intruders, and keep it and the ground attached thereto in order; reporting, from time to time, the repairs required to the court of county commissioners.

1405 (891) (820) (902) (768). **Erection of county buildings.**—It is the duty of the court of county commissioners of each county to erect a court-house, jail, and other necessary county buildings; and such court has authority to levy a special tax for that purpose.

1406. **When court-house cannot be occupied, courts and offices held elsewhere.**—When the court-house of any county is damaged or destroyed or is undergoing repair so as to interfere with the sittings of the courts or the occupancy of offices therein, such courts may sit and such offices may be kept at such other place in the city, town or village where such courts and offices are required by law to be held and kept, as may be provided by the court of county commissioners or board of revenue; or, in case of emergency, such place as may be

provided by the judge of probate, sheriff and clerk of the circuit court.

1407 (892) (821) (903) (769). **County jail; how constructed and arranged.**—The county jail must be of sufficient size and strength to contain and keep securely the prisoners which may be confined therein; and must contain at least four apartments, properly ventilated, so as to secure the health of those confined therein; one for white men, one for white women, one for colored men, and one for colored women.

1408 (893) (822) (904) (770). **Tax for building or repairing jail; proposals for same.**—It is the duty of the court of county commissioners of each county if there is not a sufficient jail in their county, to levy a county tax for the erection thereof, and cause proposals to be issued for building or repairing the same, within twelve months thereafter.

1409 (894) (823). **Special tax for court-house or jail; disposition of surplus.**—Whenever it shall be deemed necessary by the court of county commissioners of any county in this state to build a new court-house or jail for such county, or to repair those already built, such court shall have the power and authority to levy and collect a special tax upon the taxable property of such county, not to exceed in any one year one-half of one per centum, for such purposes; and such tax, when collected, shall be used exclusively for the purposes herein indicated; but should any greater fund be raised by such tax than is needed for the purpose for which it was levied, such balance, after the building and repairs hereinbefore set forth shall have been paid for, shall go into the fund for compromising the debt of such county, or in case it be not needed for such purpose, shall be turned over to the treasury, and become a part of the common fund of the county.

1410 (895) (824). **Special tax; how levied.**—In all cases in which the commissioners' court of any county is directed or empowered to levy a special tax for county purposes, such levy shall be made by the court itself, upon the assessment last made for state taxes.

1411 (896). **Special appropriations for heating jail, etc.**—It is the duty of the court to make special appropriations for heating the county jail in cold weather, for supplying it with wholesome water for drinking and bathing, to keep it in a cleanly condition and free from offensive odors, and for providing it with necessary vaults, water-closets and dry earth.

Action does not lie to recover an amount paid for keeping up the fires. The claim must be presented and, if refused, enforced by mandamus.—Marengo Co. v. Lyles, 101 Ala. 423.

1412 (897). **Special term for making such appropriations.**—If there be a necessity, and delay until a regular term of the court may be of injury to the health of the prisoners, it is the duty of the judge of probate to appoint a day for the meeting of the court, of which, if practicable, five days' notice must be given to each commissioner,

which notice must be in writing, signed by the judge, and must be served by the sheriff.

1413 (898). **Duty of court at such special term.**—Upon assembling, it is the duty of the court of county commissioners to make an appropriation of such an amount as is necessary for the purposes expressed in the second preceding section, and for the payment thereof must order the issue of a warrant payable to the sheriff, which must be paid by the county treasurer on the presentment thereof in preference and priority of all other claims.

1414 (899). **Duty of sheriff.**—The appropriation having been made, and the sheriff having received payment thereof, it is his duty, so far as such appropriation will enable him, to keep the jail supplied with wholesome water for drinking and bathing, to keep drinking water accessible at all times to each prisoner, to keep it comfortably warm in cold weather, at all times cleanly and free from offensive odors, and provided with necessary vaults, or water-closets, or dry earth for the use of prisoners.

1415 (900). **Examination of jail.**—It is the duty of the judge of probate and clerk of the circuit court, once each week, without informing the sheriff or jailer of the time when such visit will be made, to visit and examine the condition of the jail, and make a memorandum in writing of such examination, and report under oath such examination to the grand jury.

1416 (901) (826) (907) (773). **Auditing and registry of claims; how paid.**—The court of county commissioners must, in term time, audit all claims against their respective counties; and every claim, or such part thereof as is allowed, must be registered in a book kept for that purpose; and the judge of probate must give the claimant a warrant on the treasury for the amount so allowed.

A claim allowed at an unauthorized term creates no liability.—Wightman v. Karsner, 20 Ala. 446. **Allowance is a ministerial, not a judicial, act.** Commissioners v. Moore, 53 Ala. 25; Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. Only claims which are a charge on the general funds of the county need be audited.—Palmer v. Fitts, 51 Ala. 489; Chambers Co. v. Lee Co., 55 Ala. 534. **Claim for compensation for service on a coroner's jury** must be audited and allowed.—Hawkins v. Duncan, 103 Ala. 398. **Claim does not bear interest** from date of allowance or registration.—Vincent v. Gilmer, 51 Ala. 387. **Failure to allow or register a claim** does not release the county.—Randolph v. Hutchins, 46 Ala. 397. **The registry is not the order of allowance, but a mere memorandum** which, as evidence, is insufficient to establish a claim.—Speed v. Cocke, 57 Ala. 209. **The fact that three of the commissioners are interested** in a claim does not make the order of allowance a nullity.—Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. **The duty of the judge of probate to issue a warrant** after the claim has been audited and allowed, is ministerial, and may be compelled by mandamus.—Commissioners v. Moore, 53 Ala. 25; Jack v. Moore, 66 Ala. 184; Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. **The warrant imports a prima facie liability on the county.**—Commissioners v. Moore, 53 Ala. 25; Speed v. Cocke, 57 Ala. 209; Henry v. Cohen, 66 Ala. 382; Grayson v. Latham, 84 Ala. 546; Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. **Legal and commercial characteristics of the warrant.**—Savage v. Mathews, 98 Ala. 535. **The county can only be charged with such expenses as are authorized by law,** or which are necessarily incidental to the accomplishment of its purposes.—See citations to section 1397 (886). **Actions against county; presentation and allowance of claims, etc.**—See citations to section 13 (2574).

1417 (902) (827). **Claims must be itemized, proved, entered and filed.**—No claim against the county shall be passed upon or al-

lowed by the court of county commissioners, unless it is itemized and sworn to by the claimant, or some person in his behalf having personal knowledge of the facts; and all claims passed upon and allowed, according to this section, must be entered in the order in which they were allowed, in a book kept for that purpose, and filed for future reference, within two weeks after the term at which such allowances were made; and the testimony required in the allowance of a claim must show whether or not any part thereof has been previously paid.

What is sufficient itemization.—Crenshaw v. Fleming, 109 Ala. 554. **In an action on a claim the complaint must show that the claim was itemized and verified.**—Schroeder v. Colbert Co., 66 Ala. 137.

1418 (903) (828). **Claim by executor, etc.**—When a claim is filed by an executor, administrator, guardian, or trustee, it may be verified by the affidavit of such executor, administrator, guardian, or trustee, that he believes the claim to be just, due and unpaid.

1419 (904) (831) (908) (774). **Withdrawal of claim.**—If a claim is rejected, or not allowed in full, the claimant may withdraw the same.

1420 (905) (832) (909) (775). **Claims barred if not presented.** All claims against counties must be presented for allowance within twelve months after the time they accrue, or become payable, or the same are barred, unless it be a claim due to a minor, or to a lunatic, who may present such claim within twelve months after the removal of such disability.

Does not apply to the proportion of a debt of an old county due by a new one carved out of its territory.—Chambers Co. v. Lee Co., 55 Ala. 534. **Claims existing at the time** of the enactment of the statute must have been presented within twelve months after that time.—Michael v. Marengo Co., 52 Ala. 159.

1421 (906) (833). **When barred if records burnt.**—Claims against a county in which the records have been destroyed by fire are barred if not registered in the proper office of the county within twelve months.

1422 (907). **Lights and fuel furnished courts.**—It is the duty of the sheriff to furnish the circuit, city and chancery courts and court of county commissioners, necessary lights and fuel during their sessions, and therefor the court of county commissioners must, upon the presentation of an account by him, properly verified, make to him reasonable compensation; and for the amount allowed, the judge of probate must draw a warrant on the treasury of the county.

1423 (908). **Preferred claims.**—The claims of grand and petit jurors for compensation, as shown by the certificates issued to them; the compensation of the members of the court of county commissioners, as shown by the certificates issued to them; and the accounts for necessary stationery furnished the county, are to be preferred in payment to all other claims, except special appropriations for the county jail provided for under sections 1411 (896) and 1413 (898), which have priority of all other claims; and for the payment thereof it is the duty of the county treasurer to set apart a sufficient fund

from the moneys of the county. Claims for the support of the poor are to be next preferred; and thereafter a claim for the use of a building for a court-house, the county not having a suitable building, is to be preferred; and thereafter the claim of the secretary of state for certified copies of field-notes is to be preferred.

Money set apart for the payment of preferred claims cannot be used in the payment of any other claims even of the same class.—Allen v. Watts, 88 Ala. 497. **Compensation of the coroner's jury must be audited, allowed and paid** in the same manner as other fees for inquest are paid.—Hawkins v. Duncan, 103 Ala. 398. **Powers of commissioners' court with respect to providing for the poor.**—Henry v. Cohen, 66 Ala. 382.

1424 (909). **County indebtedness may be funded.**—The court of county commissioners, if they deem it necessary, may, without increasing the indebtedness of the county, settle, or compromise and fund the debt of the county existing at the ratification of the constitution of 1875, and for the payment thereof may issue the bonds of the county, not running for a longer time than thirty years, nor bearing an annual interest exceeding six per cent.; and for the payment of the principal and interest of such bonds, may levy annually a special tax on the value of the taxable property of the county, as assessed for state taxation, not exceeding one-fourth of one per centum, which must be collected as state and county taxes are collected, and which must be applied exclusively to the payment of the principal and interest of such bonds.

1425. Local laws of county may be codified.—The court of county commissioners or board of revenue of any county may, in their discretion, once in every ten years, cause the laws of the county to be codified; such codification not to embrace any statute embodied in the Code of Alabama, nor any private act relating to persons or corporations except town corporations and school districts. Every county officer, justice of the peace and notary public with magisterial powers shall, on his application, be furnished with a copy of such county code, the same to be delivered to his successor in office. Feb. 27, 1889, p. 110.

CHAPTER 32.

COUNTY TREASURER. 1426-1436.

1426 (910) (841) (922) (787). **Election and term of office.**—A county treasurer for each county is elected by the qualified voters thereof, who holds office for four years from the first day of September next after his election, and until his successor is elected and qualified. Feb. 21, 1893, p. 1091, §4.

1427 (913). **Vacancy, how filled.**—Vacancies in the office of county treasurer are filled by appointment of the court of county commissioners, and the person appointed holds office for the unexpired term and until his successor is elected and qualified.

1428 (911) (842) (923) (788). **Bond.**—Before entering on the duties of his office he must give bond, with at least two good and sufficient sureties, in double the estimated amount of the annual revenue of the county, to be determined by the court of county commissioners, payable to the county and conditioned as prescribed by law, which bond is to be approved by the judge of probate and filed and recorded in his office.

Not necessary for the bond to recite that the principal is treasurer, or elected as such.—Wilson v. Cantrell, 19 Ala. 642. **The sureties are bound for the performance of those acts which the law requires the treasurer to perform.**—Townsend v. Everett, 4 Ala. 607. **And for money in the hands of the treasurer at the time of the execution of the bond.**—Townsend v. Everett, 4 Ala. 607; Moore v. Madison Co., 38 Ala. 670. **And for any default as to money collected on account of the subscription of the county to stock in a railroad.**—Lewis v. Lee Co., 66 Ala. 480; s. c., 73 Ala. 148. **But not for money collected by the treasurer and delivered by him to the probate judge to be exchanged, under the order of commissioners' court.**—Lewis v. Lee Co., 66 Ala. 480. **Nor for failing to pay sheriff's fees for summoning witnesses for the defendant in a criminal case who is insolvent.**—Cohen v. Coleman, 71 Ala. 496. **Nor for failure to pay clerk's fees for issuing subpœnas** for defendants' witnesses.—Burgin v. Hawkins, 101 Ala. 326. **Nor for failure to pay a warrant for the support of a pauper, when the claim had not been audited and filed.**—Boothe v. King, 71 Ala. 497. **Nor for defalcation as to certain funds to cover which the legislature had ordered a new bond to be given,** although such bond had not been made.—Morrow v. Wood, 56 Ala. 1. **If a county treasurer receives money as taxes from the collector, he and his sureties are estopped to deny that the money belonged to the county.**—Coleman v. Pike Co., 83 Ala. 326.

1429 (915) (845) (926) (791). **Duties.**—It is the duty of the county treasurer—

1. To receive and keep the money of the county, and disburse the same according to law.

Subdivision 1.—Treasurer is the mere custodian of funds and must disburse them according to law.—Edmondson v. DeKalb Co., 51 Ala. 103. **He is the proper custodian of funds raised for the payment of a subscription by the county to stock in a** railroad.—Barnes v. Hudman, 57 Ala. 504. **The allowance of a claim in excess of the authority of the commissioners' court is void, and the treasurer may refuse to pay it.**—Commissioners v. Moore, 53 Ala. 125; Speed v. Cocke, 57 Ala. 209; Boothe v. King, 71 Ala. 497; Grayson v. Latham, 84 Ala. 546. **Suit lies against treasurer and sureties when he has proper funds and refuses to pay claim.**—Arrington v. Van Houton, 44 Ala. 284; Randolph Co. v. Hutchins, 46 Ala. 397; Briggs v. Coleman, 51 Ala. 561; Caldwell v. Guinn, 54 Ala. 64; Speed v. Cocke, 57 Ala. 209; Caldwell v. Dunklin, 65 Ala. 461: Grayson v. Latham, 84 Ala. 546. (See also citations to section 13 (2574).)

2. To pay out of the general fund of the county, on presentation and without being audited and allowed by the court of county commissioners, all grand and petit juror certificates.

Subdivision 2.—Purchase of certificate by a deputy, who is acting treasurer; when regarded as a payment.—Allen v. McCreary, 101 Ala. 514.

3. To keep, in well-bound books, separate registers of claims presented against the general fund, the special fund if any, and the fine and forfeiture fund.

4. To number and register, in the order in which they are presented, all claims against the general fund which have been audited and allowed by the court of county commissioners as claims against such fund, such register showing the number of the claim, the date presented for registration, to whom allowed, when allowed, the character of the claim and the amount thereof; and, except as other-

wise provided by law, to pay the same in the order of their registration. He must in like manner number, register and pay all claims allowed against a fund raised for a special purpose.

5. To number and register, in the order in which they are presented, all claims against the fine and forfeiture fund which have been duly authenticated as claims against such fund, and without being audited and allowed by the court of county commissioners, such register showing the number of the claim, the date presented for registration, to whom payable, when it accrued, the character of the claim and the amount thereof; and to pay the registered claims of state witnesses in the order of their registration, and whenever there is a surplus of such fund, over and above the sum required to pay the registered claims of state witnesses, he must apply such surplus to the payment of the claims of officers of court in the order of their registration.

Fine and forfeiture fund belongs to the state and the commissioners' court has no control over it.—Palmer v. Fitts, 51 Ala. 489; State v. Stone, 69 Ala. 206; State v. Coleman, 73 Ala. 550; Herr v. Seymour, 76 Ala. 270; Bilbro v. Drakeford, 78 Ala. 318; Sessions v. Boykin, 78 Ala. 328; Brown v. Parris, 93 Ala. 314; Harold v. Herrington, 95 Ala. 395; Burgin v. Hawkins, 101 Ala. 326; Alston v. Yerby, 108 Ala. 480. **Witness certificates in criminal cases; applies only to state witnesses.**—Briggs v. Coleman, 51 Ala. 561; Cohen v. Coleman, 71 Ala. 496; Burgin v. Hawkins, 101 Ala. 326. **Authentication by clerk.**—Herr v. Seymour, 76 Ala. 270. **Proceeds of hire of county convicts belong to the fine and forfeiture fund.**—State v. Coleman, 73 Ala. 550.

6. Upon the registration of a claim he must indorse thereon the number and date of registration and sign his name thereto.

7. When a claim is received in payment of a debt due to the county, he must give a receipt therefor, showing a description of the claim and the name of the person and character of the debt on whose account the claim was received.

8. On the payment of any claim he must take a receipt therefor; and when a claim of any character is paid to or received by him, he must cancel the same by defacing or mutilating it so as to show that it is of no further value, and, if registered, write upon the register against the claim the word "paid" and the date of such payment.

9. To keep a correct account of the receipts and disbursements of all money received by him for the county, according to the forms herein prescribed, charging himself with all moneys so received, of whom, on what account, and the amount, and crediting himself with all payments, stating the number and character of the claim, in whose favor, and the amount.

10. To examine the dockets of the circuit and city courts, and sheriff semi-annually; to demand and receive all moneys due to the county, and to institute proceedings against defaulters.

11. To submit to the court of county commissioners, at the first term in each year, the register of claims; his account for the year balanced; vouchers for the payments; an estimate of the indebtedness of the county for the coming year, and the means of providing for the same.

12. To make reports, and give information to the court of county

commissioners, when required, respecting all matters relating to the finances of the county.

13. To furnish the probate judge, in January of each and every year, a verified statement of all moneys received by him for the county during the preceding year, and of all claims received by him in lieu of money, which are receivable in payment of county taxes, which statement must designate the time and person from whom such moneys or claims were received.

14. To keep his office within one mile of the court-house of the county.

15. To perform such other duties as are, or may be by law required of him.

Garnishment does not lie against the treasurer to subject funds in his hands to the payment of a judgment against the county.—Edmondson v. DeKalb Co., 51 Ala. 103.

1430. When claim paid though prior claims outstanding.—The county treasurer must not refuse the payment of any lawful and valid claim for the reason that claims of prior registration have not been paid, if there is money in the treasury belonging to the fund sufficient to pay such prior claims and the claim so presented.

1431 (917) (847) (928) (793). **Books.**—The books of the county treasurer are to be provided at the expense of the county.

1432 (918) (848) (929) (794). **Annual account recorded.**—The annual account of the county treasurer, when examined and approved by the court of county commissioners, must be recorded, and a copy of the same posted at the court-house door.

1433 (919) (849) (931) (796). **Judge of probate to appoint an expert accountant to examine books and vouchers.**—The judge of probate must each year, without giving any notice or information thereof to the county treasurer, appoint one expert accountant, of known integrity, to examine the books and vouchers of the county treasurer and report the condition of the same; and the person so appointed shall proceed without delay to make such examination and report, and to that end he is invested with all the powers and authority conferred by law upon the examiner of public accounts. He shall receive such compensation as may be allowed by the court of county commissioners or board of revenue.*

1434 (920) (850) (933) (798). **Proceedings on death, or termination of office.**—In case of the resignation, expiration of his term, or removal from office, the county treasurer, or if he is dead, his personal representatives, must state his account, and deliver all the money, books, papers and property of the county to his successor, who must report the same to the term of the court of county commissioners held next thereafter, and if satisfied that such account is correct, and that all the money, books, papers and property of the county have been delivered to such successor, such court must cause an entry thereof to be made of record.

1435 (921) (851) (934) (799). **Compensation.**—The county treas-

*As rewritten by joint committee.

urer receives such compensation as may be allowed by the court of county commissioners, in no case exceeding five per cent. on the money paid out by him; nor in any case exceeding the aggregate sum of one thousand dollars in any one year.

Barbour County v. Clark, 50 Ala. 416.

1436 (922) (851) (934) (799). **Forms of accounts.—**

Register of claims against —— county.
General fund (or special —— fund).

NO.	WHEN FILED.	IN WHOSE FAVOR.	WHEN ALLOWED.	CHARACTER OF CLAIM.	AMOUNT.	REMARKS.
1.....	Oct. 2, 1896....	A. B.....	Oct. 1, 1896....	Jail repairs...	.....$43.50	Paid Oct. 2, 1896.
2.....	Nov. 3, 1897....	C. D.....	Nov. 2, 1897....	Stationery.....	..... 75.00	Paid Jan. 1, 1898.

(*Or Fine and Forfeiture Fund.*)

NO.	WHEN FILED.	IN WHOSE FAVOR.	WHEN ACCRUED.	CHARACTER OF CLAIM.	AMOUNT.	REMARKS.
1.....	June 1, 1896....	A. B.....	May 1, 1896....	Witness.....	.....$1.50	Paid Dec. 1, 1897.
2.....	July 4, 1896....	C. D.....	June 2, 1896....	Sheriff.....	..... 3.60	Paid Jan. 1, 1900.

A. B., treasurer, in account with —— county.

TO CASH RECEIVED,			DR.	BY CASH PAID OUT,				CR.
WHEN RECEIVED.	OF WHOM.	ON WHAT ACCOUNT.	AM'T.	NO.	WHEN PAID.	CHARACTER OF CLAIM.	IN WHOSE FAVOR.	AM'T.
Dec. 9, 1896..	G. H...	Taxes, 1896..	$2,276.50	1...	Oct. 2, 1896...	Jail repairs.	A. B.....	$43.50
Feb. 1, 1897..	L. M...	Licenses....	143.00	2...	Jan. 3, 1898..	Stationery..	C. D.....	75.00

CHAPTER 33.

DEFAMATION. 1437–1443.

1437 (2724) (2976) (2627) (2225). **Truth of charges against public men may be proved.**—In civil actions for the publication of papers, investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence.

1438 (2725) (2977) (2628) (2226). **Truth of the words, etc., evidence under the general issue.**—In all actions of slander or libel, the truth of the words spoken or written, or the circumstances under which they were spoken or written, may be given in evidence under the general issue in mitigation of the damages.

Gaither v. Advertiser Co., 102 Ala. 458; Sternau v. Marx, 58 Ala. 608.

1439 (2726) (2975) (2626) (2224). **Import of words.**—Every accusation of false swearing presumptively imports a charge of perjury, and every accusation importing the commission of a crime punishable by indictment must be held presumptively to mean what the language used ordinarily imports.

Iron Age Co. v. Crudup, 85 Ala. 519.

1440 (2727) (2971) (2622) (2220). **Charge of unchastity actionable.**—Any words, written, spoken, or printed, of any woman, married or unmarried, falsely imputing to her a want of chastity, are actionable without proof of special damages.

Smith v. Gaffard, 31 Ala. 45; Downing v. Wilson, 36 Ala. 717.

1441 (2728) (2972) (2623) (2221). **Retraction mitigates damages.**—The defendant in an action of slander or libel may prove, under the general issue in mitigation of damages, that the charge was made by mistake or through inadvertence, and that he has retracted the charge and offered amends before suit, by publishing an apology in a newspaper, when the charge had been thus promulgated, or verbally, in the presence of witnesses, when the accusation was verbal or written, and had offered to certify the same in writing.

Bradford v. Edwards, 32 Ala. 628.

1442 (2729) (2973) (2624) (2222). **Recantation and tender; effect of.**—If the defendant, after or before suit brought, make the recantation and amends recited in the preceding section, and also tender to the plaintiff a compensation in money, and bring the same into court, the plaintiff can recover no costs, if the jury believe and find the tender was sufficient.

1443 (2730) (2974) (2625) (2223). **Effect of tender received.** The receipt of the money tendered, if before suit brought, is a bar to the action; if after suit, releases the defendant from all damages and costs, except the costs which accrued before the tender and receipt of the money.

CHAPTER 34.

DENTISTS. 1444–1452.

As amended Feb. 28, 1887, p. 97, §2.

1444 (1310). **Board of dental examiners.**—A board of dental examiners is constituted. Such board shall consist of five members, one of whom shall be elected at each annual meeting of the Alabama Dental Association, and shall hold office for five years and until his successor is elected and qualified. Vacancies occurring in the board are filled by appointment for the unexpired term, made by the president of the association.

Ib. §1.

1445 (1311). **Qualifications of members of the board.**—The members of the board of dental examiners shall be dental graduates, or practitioners of dentistry, who have obtained a license to practice dentistry, from the board of examiners, and members in good standing of the Alabama Dental Association who have practiced dentistry in the State of Alabama for not less than three years.

Ib. §4.

1446 (1312). **Duty and authority of board.**—The board of dental examiners shall have authority and it shall be its duty—

1. To meet annually at the time and place of meeting of the Alabama Dental Association.

2. On the call of three members of the board, to hold special meetings at such time and place as may be appointed, giving to all known practicing dentists in the state, through the mails, thirty days' notice of such special meeting.

3. To grant licenses to all applicants who undergo a satisfactory examination, and who shall pay to said board a fee of five dollars for such examination.

4. To keep a registry of the licensed practitioners of dentistry, a transcript from which, certified under the seal of the board by the officer having the custody thereof, shall be evidence of the license of any practitioner therein named.

5. To prescribe a course of reading for students of dentistry under private instruction.

1447 (1313). **Temporary license.**—One member of the board of dental examiners may grant license to practice, which is operative until the regular meeting of the board; but such temporary license must not be granted to an applicant who has been previously rejected by the board.

1448 (1314). **License recorded.**—The license, other than a temporary license, must be signed by the president of the board of examiners, and countersigned by the secretary, if the board have a secretary, and must, within thirty days after the grant thereof, be filed in the office of the judge of probate of the county of the residence of the person to whom it is issued, and must be therein recorded; and after record thereof, the judge must thereon indorse and certify under the seal of the court the fact of record; and for the record and certificate, the judge of probate is entitled to a fee of one dollar.

1449 (1315). **Proof of license.**—The license, certified by the judge of probate, is evidence of the authority of the party therein named to practice dentistry; and if the same is lost, a copy of the record, duly certified, is sufficient evidence.

1450 (1316). **Dentistry must not be practiced without license.** Rb. §8. It is not lawful to engage in the practice of dentistry without a license from the board of dental examiners; but the mere extraction of teeth shall not constitute the practice of dentistry within the meaning of this chapter.

Nicholson v. State, 100 Ala. 132.

1451 (1317). **Quorum of board of dental examiners.**—Three members of the board of dental examiners constitute a quorum for the transaction of business, and if a quorum is not present on the day appointed for a regular or special meeting, so many as are present may adjourn from day to day for five successive days until a quorum is present.

1452 (1318) (1524, 1526) (1231, 1234) (977, 980). **When contracts for dental services void.**—Every contract or agreement, express or implied, the consideration of which is the service of a

dentist, is void, unless the dentist has authority to practice dentistry obtained according to the provisions of this chapter; but proof of such authority must not be required unless two days' notice to make the same is given before the trial of any suit brought to recover the value of such service.

Harrison v. Jones, 80 Ala. 412.

CHAPTER 35.

DESCENTS AND DISTRIBUTIONS.

ARTICLE 1.—DESCENTS. 1453–1462.
2.—ADVANCEMENTS. 1463–1476.

ARTICLE 1.

DESCENTS.

1453 (1915) (2252) (1888) (1572). **Descent of real estate.**—The real estate of persons dying intestate as to such estate descends, subject to the payment of debts, charges against the estate and the widow's dower, as follows:

1. To the children of the intestate, or their descendants, in equal parts.

Feb. 23, 1893, p. 1055. 2. If there are no children or their descendants, then to the father and mother, in equal parts.

Ib. 3. If there are no children or their descendants, and if there be but one surviving parent, then one half to such surviving parent, and the other half to the brothers and sisters of the intestate, or their descendants, in equal parts.

Ib. 4. If there are no children or their descendants, no brothers or sisters or their descendants, and if there be but one surviving parent, then the whole to such surviving parent.

Ib. 5. If there are no children or their descendants, and no father or mother, then to the brothers and sisters of the intestate, or their descendants, in equal parts.

6. If there are no children or their descendants, no father or mother, and no brothers or sisters or their descendants, then the whole to the husband or wife of the intestate.

7. If there are no children or their descendants, no father or mother, no brothers or sisters or their descendants, and no husband or wife, then to the next of kin to the intestate, in equal degree, in equal parts.

8. If there are no children or their descendants, no father or mother, no brothers or sisters or their descendants, no husband or wife, and no next of kin capable of inheriting, then it escheats to the state.

Statutory system complete; its purpose.—Cox v. Clark, 93 Ala. 400; Butler v. Elyton Land Co., 84 Ala. 384; Stallworth v. Stallworth, 29 Ala. 76; Deloney v. Walker, 9 Port. 497; Banks v. Speers, 97 Ala. 560. **Right of state to enact laws of descent.**—Cox v. Clark, 93 Ala. 400; Harley v. State, 40 Ala. 689; Tannis v. Doe, 21 Ala. 449; Etheridge v. Malempre, 18 Ala. 565. **Personal estate descends by the law of domicil.**—Goodman v. Winter, 64 Ala. 410; Lingen v. Lingen, 45 Ala. 410; Johnson v. Copeland, 35 Ala. 521; Varner v. Bevil, 17 Ala. 286. **Real estate by the lex rei sitæ.**—Grimball v. Patton, 70 Ala. 626; Goodman v. Winter, 64 Ala. 410; Donovan v. Pitcher, 53 Ala. 411; Brock v. Frank, 51 Ala. 85; Lingen v. Lingen, 45 Ala. 410; Varner v. Bevil, 17 Ala. 286. **Property descends, though contrary to intention of decedent, unless disposed of by will.**—Wolffe v. Loeb, 98 Ala. 426; Banks v. Sherrod, 52 Ala. 267; Denson v. Autrey, 21 Ala. 205. **When testator fails to make disposition by will of all his property, the law disposes of residue.**—Johnson v. Holifield, 82 Ala. 123; Bryan v. Weems, 25 Ala. 195; Denson v. Autrey, 21 Ala. 205. **Descent governed by the law in force at the time of descent cast.**—Donovan v. Pitcher, 53 Ala. 411; Etheridge v. Malempre, 18 Ala. 565. **Remedy, when right to share in estate denied.**—State v. Williams, 69 Ala. 311; Ex parte Boynton, 44 Ala. 261; Fowler v. Trewhit, 10 Ala. 622; Graham v. Abercrombie, 8 Ala. 552; McRae v. Pigues, 4 Ala. 158; Reese v. Nolan, 99 Ala. 203; Townsend v. Steel, 85 Ala. 580; McConico v. Cannon, 25 Ala. 462. **Persons entitled to take.**—Abney v. DeLoach, 84 Ala. 393; Cofer v. Scroggins, 98 Ala. 342; Butler v. Elyton Land Co., 84 Ala. 384; Donovan v. Pitcher, 53 Ala. 411; Tannis v. Doe, 21 Ala. 449; Etheridge v. Malempre, 18 Ala. 565. **Subdivision 1.**—Bullock v. Knox, 96 Ala. 195. **Subdivision 3.**—Griswold v. Griswold, 111 Ala. 572. **Subdivision 5.**—Cox v. Clark, 93 Ala. 400; Stallworth v. Stallworth, 29 Ala. 76; Hithcock v. Smith, 3 Stew. & P. 29. **Subdivision 7.**—Cox v. Clark, 93 Ala. 400; Deloney v. Walker, 9 Porter, 497; Gardner v. Kelso, 80 Ala. 497; Phillips v. Peteet, 35 Ala. 696. **Subdivision 8.**—Etheridge v. Malempre, 18 Ala. 565.

1454 (1916) (2253) (1889) (1573). **Lineal descendants take ancestor's share.**—Under the provisions of the preceding section, the lineal descendants, in equal degree, represent their ancestor; that is, the children of a deceased child, brother, or sister of the intestate are entitled to inherit, in equal parts, the same share that such deceased child, brother, or sister would have inherited, if living; the grandchildren of such deceased child, brother, or sister, taking in equal parts the same share that their parents would have inherited, if living.

Hitchcock v. Smith, 3 Stew. & Port. 29; Stallworth v. Stallworth, 29 Ala. 76; Cox v. Clark, 93 Ala. 400.

1455 (1917) (2254) (1890) (1574). **No representation among collaterals; exception.**—There is no representation among collaterals, except with the descendants of the brothers and sisters of the intestate.

Cox v. Clark, 93 Ala. 400.

1456 (1918) (2255) (1891) (1575). **Kindred computed by civil law.**—The degree of kindred must be computed according to the rules of the civil law.

Johnson v. Copeland, 35 Ala. 521; Phillips v. Peteet, Ib. 696; Pinkston v. Semple, 92 Ala. 564.

1457 (1919) (2256) (1892) (1576). **No distinction made against heirs of half-blood; exceptions.**—There is no distinction made between the whole and the half blood in the same degree, unless the inheritance came to the intestate by descent, devise, or gift from or of some one of his ancestors; in which case all those who are not of the blood of such ancestor are excluded from the inheritance as against those of the same degree.

McLemore v. McLemore, 8 Ala. 687; Stallworth v. Stallworth, 29 Ala. 76; Johnson v. Copeland, 35 Ala. 521; Eatman v. Eatman, 83 Ala. 478; Butler v.

Elyton Land Co., 84 Ala. 384; Cox v. Clark, 93 Ala. 400; Coleman v. Foster, 112 Ala. 506.

1458 (1920) (2257) (1893) (1577). **Posthumous children.**—Posthumous children of the intestate inherit as if born in his lifetime; but no right of inheritance accrues to any other person than the children of the intestate, unless born at his death.

Bishop v. Hampton, 11 Ala. 254.

1459 (1921) (2258) (1894) (1578). **Bastards.**—Every illegitimate child is considered as the heir of his mother, and inherits her estate in whole or in part, as the case may be, in like manner as if born in lawful wedlock.

Lingen v. Lingen, 45 Ala. 410; Butler v. Elyton Land Co., 84 Ala. 384.

1460 (1922) (2259) (1895) (1579). **Who inherit from illegitimate child.**—The mother, or kindred of an illegitimate child on the part of the mother are, in default of children of such illegitimate child, or their descendants, entitled to inherit his estate.

Butler v. Elyton Land Co., 84 Ala. 384.

1461 (1923) (2273) (1909) (1588). **Heirs take as tenants in common.**—When an inheritance, or share of an inheritance descends to several persons, they take as tenants in common, in proportion to their respective rights, unless it is otherwise provided by law.

Marshall v. Crow, 29 Ala. 278; Morgan v. Farned, 83 Ala. 367; McQueen v. Turner, 91 Ala. 273.

1462 (1924) (2261) (1897) (1581). **Distribution of personal estate.**—The personal estate of persons dying intestate as to such estate, after the payment of debts and charges against the estate, is to be distributed in the same manner as his real estate, and according to the same rules; except that the widow, if there are no children, is entitled to all the personal estate, or, if but one child, she is entitled to one-half; if more than one, and not more than four children, to a child's part; and if more than four children, to one-fifth.

When widow's right to distribution affected by the amount of her statutory separate estate.—Wadsworth v. Miller, 103 Ala. 130; Zachary v. Lockard, 98 Ala. 371; Shepard v. Shepard, 87 Ala. 560; Lee v. Lee, 77 Ala. 412; Gordon v. Tweedy, 74 Ala. 232; Williams v. Williams, 68 Ala. 405; Barnes v. Carson, 59 Ala. 371; Harris v. Harris, 71 Ala. 536; Wiggins v. Newberry, 72 Ala. 240; Billingslea v. Glenn, 45 Ala. 540; Dubose v. Dubose, 38 Ala. 238. **When decree of distribution ignoring right of widow will be reversed on appeal.**—Crothers v. Ross, 17 Ala. 816. **Widow can claim nothing from advancements made by the husband to his children and brought into hotchpot.**—Logan v. Logan, 13 Ala. 653. **Heirs may dispense with administration when its only office would be the collection and distribution of the assets.** Fretwell v. McLemore, 52 Ala. 124; Baines v. Barnes, 64 Ala. 375; Alexander v. Alexander, 70 Ala. 212; Sullivan v. Lawler, 72 Ala. 68; DeBardelaben v. Stoudenmire, 82 Ala. 574; Glover v. Hill, 85 Ala. 41; Cooper v. Davison, 86 Ala. 367; Marshall v. Marshall, 86 Ala. 383; Stevenson v. Anderson, 87 Ala. 228; McQueen v. Turner, 91 Ala. 273; Hopkins v. Miller, 92 Ala. 513; Wright v. Robinson, 94 Ala. 479; McGhee v. Alexander, 104 Ala. 116.

ARTICLE 2.

ADVANCEMENTS.

1463 (1925) (2262) (1898) (1582). **Advancements deducted in division and distribution.**—Any estate, real or personal, which has been given by any intestate in his lifetime, as an advancement to any child, or other lineal descendant, must be considered as part of the estate, so far as regards the division and distribution thereof among his children or their descendants, and must be taken by such child or descendant towards his share of the estate of the deceased.

Statute does not apply where there is a will; refers alone to estate of intestate.—Greene v. Speer, 37 Ala. 532; Cawlfield v. Brown, 45 Ala. 552. **The statutory mode of ascertaining the fact and value of advancement is exclusive.**—Malone v. Malone, 106 Ala. 567; Mitchell v. Mitchell, 8 Ala. 414; Taylor v. Reese, 4 Ala. 121. **When a court of equity takes jurisdiction to administer the estate, or for partition, it will adjust and equalize the advancements.** Marshall v. Marshall, 86 Ala. 383; Booth v. Foster, 111 Ala. 312. **Money or property given by parent to child presumed to be an advancement.**—Fennell v. Henry, 70 Ala. 484; Mitchell v. Mitchell, 8 Ala. 414; Butler v. Mer. Ins. Co., 14 Ala. 777; Merrill v. Rhodes, 37 Ala. 449; Autrey v. Autrey, Ib. 614; Clements v. Hood, 57 Ala. 459; Wilks v. Greer, 14 Ala. 437. **The intention is the controlling inquiry.**—Malone v. Malone, 106 Ala. 567; Fennell v. Henry, 70 Ala. 484; Mitchell v. Mitchell, 8 Ala. 414; Butler v. Mer. Ins. Co., 14 Ala. 777; Booth v. Foster, 111 Ala. 312; Merrill v. Rhodes, 37 Ala. 449; Autrey v. Autrey, Ib. 614; Clements v. Hood, 57 Ala. 459; Handley v. Heflin, 84 Ala. 600; Grey v. Grey, 22 Ala. 233; Burnett v. Branch Bank, Ib. 642; Smith v. Smith, 21 Ala. 761; Taylor v. Reese, 4 Ala. 121. **Mere gift not an advancement.**—Malone v. Malone, 106 Ala. 567; Fennell v. Henry, 70 Ala. 484; Caldwell v. Pickens, 39 Ala. 514; Merrill v. Rhodes, 37 Ala. 449. **Nor a loan.**—Grey v. Grey, 22 Ala. 233; Caldwell v. Pickens, 39 Ala. 514; Clements v. Hood, 57 Ala. 459; Fennell v. Henry, 70 Ala. 484. **A promissory note taken by the grantor is conclusive evidence that no advancement was intended.**—Fennell v. Henry, 70 Ala. 484; Grey v. Grey, 22 Ala. 233. **When legatee cannot be required to account for advancements.**—Coleman v. Smith, 55 Ala. 368; Cawlfield v. Brown, 45 Ala. 552. **Advancements do not bear interest.**—Krebs v. Krebs, 35 Ala. 293; Fennell v. Henry, 70 Ala. 484. **When heir indebted to decedent, his interest descends subject to the debt.**—Streety v. McCurdy, 104 Ala. 493; Nelson v. Murfee, 69 Ala. 598, 604; Goodman v. Benham, 16 Ala. 625; Brown v. Lang, 14 Ala. 719. **The right of other heirs, prior to creditors of debtor heir.**—Streety & Co. v. McCurdy, 104 Ala. 493.

1464 (1926) (2263) (1899) (1583). **Rule when advancement exceeds or is less than share.**—If the amount of such advancement is equal to or exceeds the share of the heir so advanced, he is excluded from any further portion in the division and distribution of the estate, but he is not required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to as much more as will give him a full share of the estate of the intestate.

See citations to preceding section.

1465 (1927) (2264) (1900) (1584). **If made in real or personal estate, considered part of such estate.**—If the advancement is made in real estate, the value thereof, for the purposes of the preceding section, is to be considered as part of the real estate to be divided; and if it is made in personal property, it is to be considered as part of the personal estate to be distributed; and if in either case it exceeds the share of real or personal estate to which the heir, child, or descendant so advanced would have been entitled, he is not required to refund any part of it, but receives so much less out of the other

part of the estate as will make his whole share equal to those of the other heirs in the same degree.

See citations to second preceding section.

1466 (1928) (2265) (1901) (1585). **How value determined.**—If the value of the estate, real or personal, is expressed in the conveyance, or in the charge thereof made by the intestate, or in the receipt given by the person receiving such advancement, it is to be considered as of that value in the division and distribution of the estate; otherwise, it is estimated according to its value when given.

Wilks v. Greer, 14 Ala. 437; Turner v. Kelly, 67 Ala. 173.

1467 (1929) (2266) (1902) (1586). **Descendant of party receiving advancement takes subject thereto.**—If any child or other lineal descendant so advanced die before the person making such advancement, leaving descendants or other heirs, such advancement must be taken into consideration in the division and distribution of the estate; and the amount thereof must be allowed accordingly by the representatives of the heir so advanced as so much received towards their share of the estate, as if the advancement had been made directly to them.

Andrews v. Hall, 15 Ala. 85; Wilson v. Wilson, 18 Ala. 176; Wheat v. Wheat, 24 Ala. 429; Marsh v. Marsh, 43 Ala. 677.

1468 (1930) (2267) (1903) (1587). **What not an advancement.** Maintaining, educating, or giving money to a child or other lineal descendant, without intending it as a portion or settlement in life, is not an advancement.

See citations to section 1463.

1469 (1931) (2268) (1904). **Controversy as to advancements; how issue made up and tried.**—Controversies as to advancements are cognizable before the probate court, on the application, either of a party who has received an advancement, or of a party in interest, who alleges that an advancement has been made; and upon demand of either party, an issue in writing shall be made up under the direction of the court, and tried by a jury as in other cases of contested fact.

Mitchell v. Mitchell, 8 Ala. 414; Andrews v. Hall, 15 Ala. 85; Wilson v. Wilson, 18 Ala. 176; Smith v. Smith, 21 Ala. 761; Gaillard v. Duke, 57 Ala. 619; Malone v. Malone, 106 Ala. 567.

1470 (1932) (2269) (1905). **Discovery of advancements.**—Pending administration of an estate, on the application of the executor or administrator, or some one interested in the estate, to the probate court where the administration is, alleging on oath that an advancement had been made by the decedent, and that the value of such advancement is not expressed in any conveyance or receipt, within the applicant's knowledge, or in any charge made by the decedent, the judge of probate must issue citation to the distributee or heir alleged to have received such advancement, requiring him, within a specified time, not less than thirty, nor more than sixty days, to report on oath a list of the property received, the time when, and the value of the same when received, or to deny on oath

having received any advancement from the decedent. If the party alleged to have received the advancement is a non-resident of the state, notice must be given by publication once a week for three successive weeks in some newspaper published in the county, or if no paper is published in the county, then in one published in the adjoining county, requiring him to answer within a specified time, not less than forty, nor more than ninety days.

1471 (1933) (2270) (1906). **Proceedings and answer on death of distributee.**—In case of the death of any distributee or heir alleged to have received advancements, his legal representatives or heirs at law shall be required to report or answer in the same manner as set forth in the preceding section; and if they are residents of this state, notice must be given by citation, and if non-residents, by publication, as provided for in cases embraced in the preceding section; and if any of the heirs at law of such deceased distributee or heir are minors, or persons of unsound mind, the probate court must appoint a suitable guardian ad litem for them, who shall deny the allegations contained in such application, and demand proof thereof.

1472 (1934) (2271) (1907). **Contest of answer; hearing and notice.**—Upon the rendition of the report or answer of the distributee or heir alleged to have received an advancement, or of his legal representatives or heirs, if deceased, if the executor or administrator, or any of the parties interested in such estate are not satisfied with the report or answer, on the ground that the same does not set forth all the property received or advanced, or does not set forth the true value of the property at the time it was received or advanced, or is not satisfied that the report or answer is true, then, in either case, such party may file objections thereto, stating the grounds of the objections, and the judge of probate must set a day, at such time as he may think proper, for hearing and determining, according to the evidence, as to the amount of property advanced, the time when advanced, and its value when received; and he must give all the parties interested notice of such objections, and of the time set for hearing the same, by citation, if residents of this state, or if non-residents, by publication in some newspaper published in the county, or if no paper is published in the county, then in one published in an adjoining county, once a week for three successive weeks.

1473 (1935) (2272) (1908). **Consequence of failure to answer.** In case any distributee or heir, or the legal representatives or heirs at law of any distributee or heir alleged to have received an advancement, and on whom a citation has been personally served as above provided, fail or neglect to return a report, as required, or fail to answer such application, denying that he has received any advancement, such failure or neglect to report or answer shall be considered by the probate court as prima facie evidence that such person has received his full proportionate part of such estate; and in case any non-resident against whom publication has been made fails or neglects to return a report, as required, or to answer such application,

denying that he has received any advancement, the court may proceed to take evidence ex parte as to the matters alleged in such application.

Taylor v. Reese, 4 Ala. 121; Malone v. Malone, 106 Ala. 567.

CHAPTER 36.

DETINUE. 1474–1484.

1474 (2717) (2942) (2593) (2192). **Writ of seizure in detinue.** When a suit is brought for the recovery of personal chattels in specie, if the plaintiff, his agent or attorney, make affidavit that the property sued for belongs to the plaintiff, and execute a bond in such sum, and with such surety as may be approved by the clerk, with condition that if the plaintiff fail in the suit he will pay the defendant all such costs and damages as he may sustain by the wrongful complaint, it is the duty of the clerk to indorse on the summons that the sheriff is required to take the property mentioned in the complaint into his possession, unless the defendant give bond payable to the plaintiff, with sufficient surety, in double the value of the property, with condition that if the defendant is cast in the suit he will, within thirty days thereafter, deliver the property to the plaintiff, and pay all costs and damages which may accrue from the detention thereof.

The statutory action for the recovery of chattels in specie is governed generally by the rules applicable to the common-law action of detinue. **Hence, plaintiff must show a general or special property in the chattel and the right to immediate possession.**—Cooper v. Watson, 73 Ala. 252; Seals v. Edmondson, Ib. 295; Russell v. Walker, Ib. 315; Huddleston v. Huey, Ib. 215; Graham v. Myers, 74 Ala. 432; Jones v. Anderson, 76 Ala. 427; Baker v. Swift, 87 Ala. 530; Boulden v. Estey Co., 92 Ala. 182; Stewart v. Tucker, 106 Ala. 319. **Beneficial incidents of common-law replevin also attach to this action.** Rich v. Lowenthal, 99 Ala. 487. **Equitable title will not support.**—Reese v. Harris, 27 Ala. 301; Gluck v. Cox, 75 Ala. 310; Jones v. Anderson, 76 Ala. 427; Wilkinson v. Ketler, 69 Ala. 435; Collier v. Faulk, Ib. 58; Lucas v. Pittman, 95 Ala. 616. **Plaintiff's title must be exclusive.**—Bell v. Hogan, 1 Stew. 536; Miller v. Eatman, 11 Ala. 609; Price v. Talley, 18 Ala. 21; Parsons v. Boyd, 20 Ala. 112; Noles v. Marable, 50 Ala. 366. **When prior possession alone will support.**—Stoker v. Yerby, 11 Ala. 322; Bryan v. Smith, 22 Ala. 534; Miller v. Jones, 26 Ala. 247; Gafford v. Stearns, 51 Ala. 434; Jackson v. Rutherford, 73 Ala. 155; Huddleston v. Huey, Ib. 215; Wortham v. Gurley, 75 Ala. 356; McIntosh v. Parker, 82 Ala. 238; Behr v. Gerson, 95 Ala. 438. **Can be maintained only against person in possession.**—Lindsey v. Perry, 1 Ala. 203; Walker v. Fenner, 20 Ala. 192; Fenner v. Kirkman, 26 Ala. 650; Miller v. Hampton, 37 Ala. 342; Henderson v. Felts, 58 Ala. 590; Lightfoot v. Jordan, 63 Ala. 224; Gilbreath v. Jones, 66 Ala. 129; Street v. McClerkin, 77 Ala. 580; Behr v. Gerson, 95 Ala. 438; Bolling v. Fannin, 97 Ala. 619; Kyle v. Swem, 99 Ala. 573; Berlin Mach. Wks. v. Ala. City F. Co., 112 Ala. 488. **When outstanding title may be shown.**—Gafford v. Stearns, 51 Ala. 434; Hall v. Chapman, 35 Ala. 553; Dozier v. Joyce, 8 Port. 303; Foster v. Chamberlain, 41 Ala. 158; McIntosh v. Parker, 82 Ala. 238; Behr v. Gerson, 95 Ala. 438. **Measure of damages.**—Johnson v. Marshall, 34 Ala. 522; Holly v. Flournoy, 54 Ala. 99; Wortham v. Gurley, 75 Ala. 356; White v. Sheffield Co., 90 Ala. 253. **Damages for injury or deterioration.**—Freer v. Cowles, 44 Ala. 314; Wortham v. Gurley, 75 Ala. 356; Heard v. Hicks, 101 Ala. 102. **Tenant in common cannot maintain against co-tenant.**—Smith v. Rice, 56 Ala. 417. **Office of affidavit.** Jacobs v. State, 61 Ala. 448. **Damages recoverable on bond.**—Hudson v.

Young, 25 Ala. 376; Savage v. Gunter, 32 Ala. 467; Miller v. Garrett, 35 Ala. 96; Mills v. Long, 58 Ala. 458; Foster v. Napier, 74 Ala. 393; Schaefer v. Austin, 109 Ala. 373. **Counsel fees in supreme court.**—Bolling v. Tate, 65 Ala. 417 (overruling Ferguson v. Baber, 24 Ala. 402). **Complaint on bond.**—Baker v. Pope, 49 Ala. 415. **Verdict and judgment.**—Haynes v. Crutchfield, 7 Ala. 189; Wittick v. Keiffer, 31 Ala. 199; Robinson v. Richards, 45 Ala. 354; Wilson v. Barnes, 49 Ala. 134; Greene v. Lewis, 85 Ala. 221; Auerbach v. Blackman, 57 Ala. 616; Rambo v. Wyatt, 32 Ala. 363; Miller v. Jones, 29 Ala. 174; Wiggins v. Witherington, 96 Ala. 535; McCullough v. Floyd, 103 Ala. 448; Barnhill v. Howard, 104 Ala. 412. **Wife may maintain against husband.**—Bruce v. Bruce, 95 Ala. 563. **Bailee may defend on bailor's title.**—Thompson v. Union Warehouse Co., 110 Ala. 499. **Plaintiff must prove defendant's possession at commencement of suit.**—Berlin Mach. Works v. Alabama City F. Co., 112 Ala. 488. **General issue**; what is.—Ib.

1475 (2718) (2943) (2594) (2193). **Provisions for delivery of property to parties.**—If the defendant neglect for five days to give such bond, the property sued for must be delivered to the plaintiff, on his giving bond with sufficient surety, in double the value of the property, payable to the defendant, with condition to deliver the property to the defendant within thirty days after judgment, in case he fail in the suit, and to pay damages for the detention of the property and costs of suit. If the plaintiff fail to give such bond for five days after the expiration of the time allowed the defendant, the property must be returned to the defendant.

Fowler v. Banks, 21 Ala. 679; Hudson v. Young, 25 Ala. 376; Gay v. Burgess, 59 Ala. 575; Thorn v. Kemp, 98 Ala. 417; Jacobs v. Nathan, 83 Ala. 271; Rotten v. Collier, 105 Ala. 581.

1476 (2719) (2944) (2595) (2194). **Assessment of value and damages.**—Upon the trial, the jury must, if they find for the plaintiff, assess the value of each article separately, if practicable, and also assess damages for its detention; if they find for the defendant, they must in like manner assess the value, and, if in the possession of the plaintiff, assess damages for its detention. Judgment against either party must be for the property sued for, or its alternate value, with damages for its detention to the time of trial.

Generally it is error not to assess each article separately.—Cummings v. Tindall, 4 Stew. & Port. 357; Bell v. Pharr, 7 Ala. 807; Averett v. Milner, 75 Ala. 505; Jones v. Anderson, 76 Ala. 427; s. c., 82 Ala. 302; Tait v. Murphy, 80 Ala. 440; Savage v. Russell, 84 Ala. 103; Southern Co. v. Johnson, 85 Ala. 178; Wollner v. Lehman, Ib. 274; Henry v. Powell, 90 Ala. 440; Gerson v. Norman, 111 Ala. 433. **But not where property is in possession of successful party.** Jones v. Pullen, 66 Ala. 306; Miller v. Jones, 29 Ala. 174; Lucas v. Daniels, 34 Ala. 188; Dykes v. Clarke, 98 Ala. 657. **When assessment waived.**—Eslava v. Dillihunt, 46 Ala. 698; Wilson v. Barnes, 49 Ala. 134. **Where number of articles are not to be distinguished one from another.**—Haynes v. Crutchfield, 7 Ala. 189; Townsend v. Brooks, 76 Ala. 308.

1477 (2720). **Suit by mortgagee or vendor.**—If the suit is by a mortgagee, or his assignee, against a mortgagor or one holding under him, or by a vendor who has made a conditional sale reserving title until the entire purchase-money shall be paid, or his assignee, against his vendee or one holding under him, the defendant may, upon suggestion, require that the jury ascertain the amount of the mortgage debt, or the unpaid balance of the purchase price of the article sold; and if the debt due is ascertained to be less than the value of the property sued for as assessed by the jury, judgment must be rendered for the property sued for, or if that is not to be had, then for the amount of the debt as ascertained by the jury. The court must also

Feb. 21, 1893, p. 1127.

make an order that, if the debt so ascertained, interest and costs, be paid within thirty days, no execution or other process shall issue on the judgment; and on payment thereof to the plaintiff or to the clerk for his use, the clerk must, on the face of the record of the judgment, indorse the fact of such payment, and thereafter the plaintiff shall be deemed the unsuccessful party within the meaning of section 1479 (2721).

Jacobs v. Nathan, 83 Ala. 271; Thompson v. Greene, 85 Ala. 240; Powell v. Henry, 96 Ala. 412; Brandon v. Montgomery Iron Works, 96 Ala. 506; Lewis v. Simon, 101 Ala. 546; Foster v. Smith, 104 Ala. 248; Powell v. Crawford, 110 Ala. 294; Hooper v. Birchfield, Ala. (22 So. 68). **Form of judgment.**—Collier v. White, 97 Ala. 615.

Ib. **1478. What may be pleaded in such case.**—The defendant in any action under the provisions of this chapter brought by a mortgagee or by a vendor in a contract of conditional sale, or by their assignee, in addition to any defenses appropriate to the action of detinue, may plead any matter of defense that he might have pleaded if the action had been on the debt, except the statute of limitations.

1479 (2721) (2945) (2596) (2195). **Failure of unsuccessful party to deliver property.**—If the unsuccessful party, who has given bond and taken the property into possession, fails, for thirty days after the judgment, to deliver the property, and to pay the damages assessed for the detention thereof, and the costs, the sheriff must upon the bond make return of the fact of such failure; and thereupon, the bond has the force and effect of a judgment, on which execution may issue against any or all the obligors therein for the alternate value of the property as assessed by the jury, the damages assessed for its detention and the costs; if the property be delivered, and the damages assessed for its detention and the costs be not paid, the sheriff must upon the bond make return of the fact, and execution must issue against any or all of the obligors for such damages and costs, or for either, as either may be unpaid.

Wood v. Coman, 56 Ala. 283; Masterson v. Matthews, 60 Ala. 260; Rose v. Pearson, 41 Ala. 253; Garrott v. Fuller, 36 Ala. 179; Ernst v. Hogue, 86 Ala. 502; Traweek v. Heard, 97 Ala. 715; Harrison v. Hamner, 99 Ala. 603; Rand v. Gibson, 109 Ala. 266.

Dec. 12, 1888, p. 14. **1480. When suit is by mortgagee or vendor.**—When the suit is by a mortgagee, or by a vendor in a contract of conditional sale, or their assignee, against the mortgagor or the vendee, or one holding under them, and suggestion is made as provided in section 1477 (2720), if the amount of the debt is ascertained to be less than the value of the property sued for, and the defendant has given bond and taken the property into his possession, and fails for thirty days after the judgment to deliver the property, or pay the amount found to be due, to the sheriff, execution may issue against the obligors in the bond for the amount of the debt assessed and the costs in like manner as provided in the preceding section.

1481 (2722) (2946) (2597) (2196). **Bonds returned in ten days; penalty for neglect.**—All bonds taken under this chapter must be returned within ten days thereafter to the clerk of the court in which the suit is pending; and on failure, the sheriff is liable to the suc-

cessful party to the amount of the value of the property, and the damages for its detention as assessed by the jury, with interest thereon from the rendition of the judgment, to be recovered on motion to the court in which such judgment was rendered, on three days' notice, or the sheriff may, at any time, be compelled, by attachment, to make such return.

1482. When plaintiff is in possession and suit is dismissed or abated.—When the property sued for is in the possession of the plaintiff, and the suit is dismissed or abated, the court shall cause a jury to assess the alternate value of the property, and also the value of the hire or use thereof during the time it was in the possession of the plaintiff, and shall render judgment for the defendant for the recovery of the property, or its alternate value and damages for the use or hire thereof. Feb. 28, 1887, p. 131.

1483 (2723) (2947) (2598) (2197). **Delivery compelled by attachment or distringas.**—Any party recovering specific property may compel its restoration when practicable, by a writ of distringas, or moving for an attachment.

1484. Interposition of claim by person not a party to suit.—When a suit is brought for the recovery of personal property in specie under the provisions of section 1474, and the defendant shall neglect for five days to give bond as therein provided, if the property seized is claimed by a person not a party to the suit, and affidavit and bond is executed as required by law in cases of trial of right of property when levied on by writ of fieri facias, the property must be delivered to the claimant, and the affidavit and bond returned by the officer having in charge the property claimed with the summons, and thereupon the same proceedings must be had as in other trials of the right of property. Feb. 26, 1889, p. 57.

Keyser v. Maas, 111 Ala. 390.

CHAPTER 37.

DIVORCE AND ALIMONY, 1485-1503.

1485 (2322) (2685) (2351) (1961). **Divorce; by what court, and on what grounds granted.**—The court of chancery has power to divorce persons from the bonds of matrimony, upon bill filed by the aggrieved party, for the causes following:

1. In favor of either party, when the other was, at the time of the marriage, physically and incurably incapacitated from entering into the marriage state.

2. For adultery.

3. For voluntary abandonment from bed and board for two years next preceding the filing of the bill.

4. Imprisonment in the penitentiary of this or any other state, for two years, the sentence being for seven years or longer.

5. The commission of the crime against nature, whether with mankind or beast, either before or after marriage.

6. For becoming addicted after marriage to habitual drunkenness.

Physical incapacity.—Anonymous, 89 Ala. 291. **Examination of person may be compelled.**—Ib. **But after publication passed a matter of discretion.** Anonymous, 35 Ala. 226. **Allegation of adultery.**—Holston v. Holston, 23 Ala. 777; Farley v. Farley, 94 Ala. 501. **Proof of adultery.**—Richardson v. Richardson, 4 Port. 467; Mosser v. Mosser, 29 Ala. 313; Powell v. Powell, 80 Ala. 595; Farmer v. Farmer, 86 Ala. 322; Morrison v. Morrison, 95 Ala. 309. **Condonation.**—Farmer v. Farmer, 86 Ala. 322. **Insanity excuses adultery.** Wray v. Wray, 19 Ala. 522; Mims v. Mims, 33 Ala. 98. **What constitutes abandonment.**—Hardin v. Hardin, 17 Ala. 250; Hanberry v. Hanberry, 29 Ala. 719; Jones v. Jones, 95 Ala. 443; Allen v. Allen, 84 Ala. 367; Morris v. Morris, 20 Ala. 168; Crow v. Crow, 23 Ala. 583; Crossman v. Crossman, 33 Ala. 486; Anonymous, 55 Ala. 428; Jones v. Jones, 95 Ala. 443. **When evidence outside of issue allowable.**—Ribet v. Ribet, 39 Ala. 348. **Reciprocal causes of divorce defeat each other.**—Ib. **Jurisdiction not dependent upon place** where ground of divorce occurred.—Hanberry v. Hanberry, 29 Ala. 719. **But pertains to the domicil of complainant.**—Thompson v. Thompson, 91 Ala. 591; Thompson v. State, 28 Ala. 12. **Bill may be filed in county of defendant's residence.** Reese v. Reese, 23 Ala. 785; Wiley v. Wiley, 27 Ala. 704. **Wife may acquire domicil separate from that of her husband.**—Hanberry v. Hanberry, 29 Ala. 719; Turner v. Turner, 44 Ala. 437. **What sufficient proof of marriage.** Morris v. Morris, 20 Ala. 168; Weatherford v. Weatherford, Ib. 548. **Effect of decree in favor of wife on rights of husband.**—Boykin v. Rain, 28 Ala. 332. **Bill not demurrable because it alleges two distinct grounds.**—Morris v. Morris, 20 Ala. 168; Quarles v. Quarles, 19 Ala. 363. **Allowance to wife of solicitor's fees.**—Pearson v. Darrington, 32 Ala. 227; Jeter v. Jeter, 36 Ala. 391; Turner v. Turner, 44 Ala. 437; Edwards v. Edwards, 80 Ala. 97. **Insanity** at the time **avoids marriage,** but a **decree of divorce is proper** in such case. Rawdon v. Rawdon, 28 Ala. 565. **When decree reviewed.**—Golden v. Golden, 102 Ala. 353. **What proof of adultery necessary.**—Morrison v. Morrison, 95 Ala. 309; Jeter v. Jeter, 36 Ala. 391.

1486 (2323) (2686) (2352) (1962). **To husband, when wife is pregnant at time of marriage.**—In favor of the husband, when the wife was pregnant at the time of marriage, without his knowledge or agency.

1487 (2324) (2687) (2353) (1963). **To wife in case of cruelty by husband.**—In favor of the wife, when the husband has committed actual violence on her person, attended with danger to life or health, or when from his conduct there is reasonable apprehension of such violence.

What is violence under the statute.—Hughes v. Hughes, 19 Ala. 307; Goodrich v. Goodrich, 44 Ala. 670; Hughes v. Hughes, Ib. 698; Smedley v. Smedley, 30 Ala. 714; Turner v. Turner, 44 Ala. 437; Folmar v. Folmar, 69 Ala. 84; Edwards v. Edwards, 80 Ala. 97; Wood v. Wood, 80 Ala. 254; Farmer v. Farmer, 86 Ala. 322. **Particularity of allegation required.**—Reese v. Reese, 23 Ala. 785; Smedley v. Smedley, 30 Ala. 714. **Condonation is always conditional.**—Hughes v. Hughes, 19 Ala. 307; Reese v. Reese, 23 Ala. 785; Turner v. Turner, 44 Ala. 437. Recrimination.—David v. David, 27 Ala. 222; King v. King, 28 Ala. 315; Hanberry v. Hanberry, 29 Ala. 719.

1488 (2325) (2688) (2354) (1964). **Mode of proceeding in divorce suits.**—The proceedings must, in all respects, be conducted as other suits in chancery, except as herein otherwise directed. The cause for which the divorce is sought must be alleged in the bill, to which the other party must be made defendant; and if a non-resident, publication made as in other chancery suits. And in making his decree in the cause, the chancellor shall, as the evidence and the nature of the case may warrant, direct whether the party against whom the decree of divorce is made be permitted to marry again, and where, in decrees now or hereafter rendered, no order is made allowing or dis-

allowing the divorced party to marry again, it shall be competent for the chancellor, upon petition and proper proof, to allow or disallow the petitioner to marry again, as justice may seem to require.

Prohibition against second marriage has no extraterritorial operation. Fuller v. Fuller, 40 Ala. 301; Wilson v. Holt, 83 Ala. 528. **Decree dissolves relation,** notwithstanding attempt to suspend until costs paid.—Mickle v. State, Ala. (21 So. 66).

1489 (2326) (2689) (2355) (1965). **Answer; effect of.**—The defendant is not required to verify the answer by oath; and whether sworn to or not, it is not evidence in the cause, and can have no other effect than to put in issue the allegations of the bill.

Hughes v. Hughes, 44 Ala. 698.

1490. Wife may sue in her own name.—The wife may file her bill for any purpose under this chapter in her own name and without the intervention of a next friend.

1491 (2327) (2690) (2356) (1966). **Cases in which divorces are to be refused.**—No decree can be rendered on the confession of the parties, or either of them; or if it appear that adultery was committed by either, with the consent of the other, for the purpose of obtaining a divorce; or where both parties have committed adultery; or where there has been a condonation of adultery by the admission of the offending party to conjugal embraces, after knowledge of the commission of the crime; or when the husband knew of, or connived at the adultery of the wife.

1492 (2328) (2691) (2357) (1967). **For abandonment, three years' residence to be proved.**—No bill can be filed for a divorce on the ground of voluntary abandonment, unless the party applying therefor, whether husband or wife, has bona fide been a resident of this state for three years next before the filing of the bill, which must be alleged in the bill and proved.

Hendricks v. Hendricks, 72 Ala. 132.

1493 (2329) (2692) (2358) (1968). **In what court bill must be filed.**—Bills for divorce may be filed in the chancery district in which the defendant resides, or in the district in which the parties resided when the separation occurred; if the defendant is a non-resident, then in the district in which the other party to the marriage resides.

Reese v. Reese, 23 Ala. 785; Wiley v. Wiley, 27 Ala. 704; Edwards v. Edwards, 30 Ala. 394; Crossman v. Crossman, 33 Ala. 486; Turner v. Turner, 44 Ala. 437.

1494 (2330) (2693) (2359) (1969). **If defendant a non-resident, a year's residence by plaintiff must be proved.**—When the defendant is a non-resident, the other party to the marriage must have been a bona fide resident of this state for one year next before the filing of the bill, which must be alleged in the bill and proved.

Crossman v. Crossman, 33 Ala. 486.

1495 (2331) (2694) (2360) (1970). **Allowance to wife pending suit.**—Pending a suit for divorce, the court must make an allowance for the support of the wife out of the estate of the husband, suitable to his estate and the condition in life of the parties.

Matter of right, not of discretion.—Ex parte King, 27 Ala. 387; Edwards v. Edwards, 80 Ala. 97; s. c., 84 Ala. 361; Jeter v. Jeter, 36 Ala. 391; Richardson v. Richardson, 4 Port. 467; Wray v. Wray, 33 Ala. 187; Ex parte Smith, 34 Ala. 455. **Amount.**—Turner v. Turner, 44 Ala. 437. **Decree allowing, not a final decree.**—Jeter v. Jeter, 36 Ala. 391.

1496 (2332) (2695) (2361) (1971). **Allowance to wife on decree of divorce.**—If the wife has no separate estate, or if it be insufficient for her maintenance, the chancellor, upon granting a divorce, must decree the wife an allowance out of the estate of the husband, taking into consideration the value thereof and the condition of his family.

Alimony may be decreed independently of proceedings for divorce.—Glover v. Glover, 16 Ala. 440; Mims v .Mims, 33 Ala. 98; Wray v. Wray, Ib. 187; Kinsey v. Kinsey, 37 Ala. 393; Hinds v. Hinds, 80 Ala. 225; Murray v. Murray, 84 Ala. 363; Downey v. Downey, 98 Ala. 373. **But after divorce a vinculo suit for alimony cannot be maintained.**—Downey v. Downey, 98 Ala. 373; Golden v. Golden, 102 Ala. 353. **Amount.**—Jeter v. Jeter, 36 Ala. 391; Turner v. Turner, 44 Ala. 437; Jones v. Jones, 95 Ala. 443; Golden v. Golden, 102 Ala. 353. **After decree of divorce amount cannot be changed.**—Smith v. Smith, 45 Ala. 264. **But see** Edwards v. Edwards, 84 Ala. 361; Murray v. Murray, Ib. 363. **Conveyance in fraud of alimony.**—Hinds v. Hinds, 80 Ala. 225; Turner v. Turner, 44 Ala. 437.

1497 (2333) (2696) (2362) (1972). **Allowance when decree in favor of wife.**—If the divorce is in favor of the wife for the misconduct of the husband, the allowance must be as liberal as the estate of the husband will permit, regard being had to the condition of his family and to all the circumstances of the case.

Jones v. Jones, 95 Ala. 443; Jeter v. Jeter, 36 Ala. 391; Lovett v. Lovett, 11 Ala. 763. Sharrit v. Sharrit, 112 Ala. 617.

1498 (2334) (2697) (2363) (1973). **Allowance, when against wife.** If in favor of the husband for the misconduct of the wife, the allowance must be regulated by the ability of the husband and the nature of the misconduct of the wife.

1499 (2336) (2699) (2365) (1975). **Divorce for pregnancy bastardizes issue.**—When a divorce is granted the husband for the pregnancy of the wife at the time of the marriage, the issue is thereby bastardized.

1500 (2337) (2700) (2366) (1976). **Effect of divorce on wife's separate estate.**—A divorce deprives the husband of all control over the separate estate of his wife.

1501 (2338) (2701) (2367) (1977). **Custody of children on decree of divorce.**—Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper, having regard to the moral character and prudence of the parents, the age and sex of the children; and pending the suit may make such orders in respect to the custody of the children as their safety and well-being may require. But in cases of abandonment of the husband by the wife, he shall have the custody of the children after they are seven years old, if he is a suitable person to have such charge.

Original jurisdiction of chancery over infants unimpaired.—Hansford v. Hansford, 10 Ala. 561; Bryan v. Bryan, 34 Ala. 516; Striplin v. Ware, 36 Ala. 88; Lee v. Lee, 55 Ala. 590; Anonymous, Ib. 428. **Welfare of children the controlling consideration.**—Cornelius v. Cornelius, 31 Ala. 479; Anonymous, 55 Ala. 428.

1502 (2339) (2702) (2368) (1979). **Cases of divorce from bed and board.**—The chancellor may decree a divorce from bed and board for cruelty in either of the parties, or for any cause which would justify a decree from the bonds of matrimony, if the party applying therefor desires only a divorce from bed and board.

1503 (2340) (2703) (2369) (1980). **Proceedings in such cases.** The proceedings in such cases are the same in all respects, and the court has the same power to make an allowance to the wife out of the estate of the husband, and provide for the custody and education of the children of the marriage, as provided in this chapter for divorces from the bonds of matrimony.

CHAPTER 38.

DOWER.

ARTICLE 1.—IN WHAT DOWER CONSISTS, AND HOW RELINQUISHED. 1504–1514.
2.—ASSIGNMENT OF DOWER. 1515–1528.

ARTICLE 1.

IN WHAT DOWER CONSISTS, AND HOW RELINQUISHED.

1504 (1892) (2232) (1624) (1354). **Dower defined; of what lands widow is dowable.**—Dower is an estate for the life of the widow in a certain portion of the following real estate of her husband, to which she has not relinquished her right during the marriage:

1. Of all lands of which the husband was seized in fee during the marriage.

2. Of all lands of which another was seized in fee to his use.

3. Of all lands to which, at the time of his death, he had a perfect equity, having paid all the purchase-money therefor.

Of lands of which the husband was seized in fee; what within.—Boyd v. Hunter, 44 Ala. 705; Flinn v. Barber, 64 Ala. 193; Brewer v. Browne, 68 Ala. 210; Norton v. Norton, 94 Ala. 481; Morgan v. Hendren, 102 Ala. 245. **What not within.**—Eslava v. Lepretre, 21 Ala. 504; Edmondson v. Welsh, 27 Ala. 578; Boynton v. Sawyer, 35 Ala. 497; Brooks v. Woods, 40 Ala. 538; Edwards v. Bibb, 54 Ala. 475. **Of lands of which another was seized in fee to his use.** Harrison v. Boyd, 36 Ala. 203; King v. King, 61 Ala. 479. **Of lands to which he had a perfect equity.**—Gillespie v. Somerville, 3 S. & P. 447; Lewis v. Moorman, 7 Port. 522; Edmondson v. Montague, 14 Ala. 370; Crabb v. Pratt, 15 Ala. 843; Boyd v. Harrison, 36 Ala. 533; Mattox v. Feagan, 57 Ala. 274; Lipscomb v. DeLemos, 68 Ala. 592; Pettus v. McKinney, 74 Ala. 108. **Governed by law of force at death of husband.**—Boyd v. Harrison, 36 Ala. 533; Ware v. Owens, 42 Ala. 212. **When no rightful seizin in husband.**—Tillman v. Spann, 68 Ala. 102. **Proof of seizin.**—Steele v. Brown, 70 Ala. 235. **Sale and conveyance under execution no bar.**—Irvine v. Armistead, 46 Ala. 363; Wood v. Morgan, 56 Ala. 397; Jackson v. Isbell, 109 Ala. 100; Sanders v. Wallace, Ala. (21 So. 947). **Right of widow of deceased heir on sale for division.**—Chaney v. Chaney, 38 Ala. 35: Hunter v. Law, 68 Ala. 365. **When dower not merged in fee.**—Humes v. Scruggs, 64 Ala. 40. **Conveyance in fraud of dower right.**—Kelly v. McGrath, 70 Ala. 75. **How present value of contingent right estimated.**—Gordon v. Tweedy, 74 Ala. 232. **Right not forfeited by refusal to live with husband.**—Potier v. Barclay, 15 Ala. 439.

1505 (1893) (2233) (1625) (1355). **Extent of widow's dower interest.**—The quantity of the dower interest is as follows:

1. When the husband dies leaving no lineal descendants, and his estate is not insolvent, his widow is entitled to be endowed of one-half his lands.

2. If in such case his estate is insolvent, to one-third part thereof.

3. When there are lineal descendants, then to one-third part thereof, whether the estate be solvent or not.

1506 (2354) (2715) (2380) (1991). **Effect of separate estate on dower.**—If any woman having a separate estate survive her husband, and such separate estate, exclusive of the rents, income and profits, is equal to, or greater in value than her dower interest and distributive share in her husband's estate, estimating her dower interest in his lands at seven years' rent of the dower interest, she shall not be entitled to dower in, or distribution of her husband's estate.

Does not affect homestead exemption.—Johnston v. Davenport, 42 Ala. 317. **Nor dower in land aliened by husband.**—Jackson v. Isbell, 109 Ala. 100. **Does not refer to contract separate estate.**—Smith v. Smith, 30 Ala. 642; Huckabee v. Andrews, 34 Ala. 646; Harris v. Harris, 71 Ala. 536. **Separate estate and dower must be estimated as of the time of the husband's death.**—Billingslea v. Glenn, 45 Ala. 540 (overruling Glenn v. Glenn, 41 Ala. 571, and Steadman v. Steadman, 41 Ala. 473). **Reference to ascertain amount.**—Barnes v. Carson, 59 Ala. 188. **When statute has no application.**—Gordon v. Tweedy, 74 Ala. 232. See also Wiggins v. Newberry, 72 Ala. 240; Dolan v. Dolan, 91 Ala. 152. **Policy of insurance payable to wife within statute.**—Wadsworth v. Miller, 103 Ala. 130; Williams v. Williams, 68 Ala. 405; but see Harris v. Harris, 71 Ala. 536. **And a vested remainder in widow.**—Zachry v. Lockard, 98 Ala. 371. **And dower right in estate of former husband.**—Sheppard v. Sheppard, 87 Ala. 560.

1507 (2355) (2716) (2381) (1992). **When separate estate less than dower and distributive share.**—If her separate estate be less in value than her dower, as ascertained by the rule furnished by the preceding section, and her distributive share, so much must be allowed her as, with her separate estate, would be equal to her dower and distributive share in her husband's estate, if she had no separate estate.

Dubose v. Dubose, 38 Ala. 238.

1508 (2335) (2698) (2364) (1974). **Divorce bars dower.**—A divorce from the bonds of matrimony bars the wife of her dower, and of any distributive share in the personal estate of her husband.

Hinson v. Bush, 84 Ala. 368 (overruling Williams v. Hale, 71 Ala. 83).

1509 (1894) (2234) (1626) (1356). **Relinquishment of dower; how made.**—The wife, if of the age of eighteen years, may relinquish her right to dower in land, by joining with her husband in a conveyance thereof, or by joining with her husband in a power of attorney, authorizing the attorney to convey the lands, or subsequently to a conveyance thereof by the husband, by a separate instrument executed by her alone; and in either case, her signature must be witnessed or acknowledged in the manner prescribed by this Code for the attestation or acknowledgment of other conveyances.

By joining in deed with husband.—Owen v. Paul, 16 Ala. 130; Snodgrass v. Clark, 44 Ala. 198; Pepper v. George, 51 Ala. 190; Curry v. Am. Freehold Land Mortgage Co., 107 Ala. 429. **Supported by consideration to husband.**—Bailey

v. Litten, 52 Ala. 282. **After sale, but before deed by husband, upheld.**—Nelson v. Holly, 50 Ala. 3. **A conveyance of the inchoate right of dower,** otherwise than to heir or terre-tenant by way of release, **is void at law.**—Saltmarsh v. Smith, 32 Ala. 404; Barber v. Williams, 74 Ala. 331; Johnson v. Smith, 70 Ala. 108; Turnipseed v. Fitzpatrick, 75 Ala. 297; Lytle v. Sandefur, 93 Ala. 396. **But equity will protect alienee.**—Reeves v. Brooks, 80 Ala. 26; Wilkinson v. Brandon, 92 Ala. 530. **Nor is inchoate right available as a set-off.** Saltmarsh v. Smith, 32 Ala. 404; Martin v. Wharton, 38 Ala. 637; Johnston v. Smith, 70 Ala. 108. **Wife cannot create bar by agreement with husband during coverture.**—Martin v. Martin, 22 Ala. 86.

1510 (1895) (2235) (1627) (1357). **When she is out of the state.** Married women, residing or living beyond the limits of this state, may in like manner convey or release their right of dower to any land within this state, such conveyance being acknowledged by them as other conveyances executed beyond this state.

1511 (1896.) **Relinquishment when wife insane.**—If the wife is, and has been by a court of competent jurisdiction adjudged insane, the court of probate of the county of the residence of the husband may, on his application, appoint a suitable person commissioner, with authority for her and in her name to execute a relinquishment of her right of dower in the lands, or any part of the lands of the husband.

Does not provide for relinquishment after death of the husband.—Clancy v. Stephens, 92 Ala. 577.

1512 (1897). **Contents of application; proceedings thereon.** The application must be in writing and verified by affidavit; must describe the lands in which it is proposed the dower of the wife shall be relinquished, and must state the age and health of the wife, and the estimated value of the lands, and also the age of the husband, and state of his health. The court must take the testimony of two or more credible witnesses in writing as to the value of the lands, and as to the sanity of the wife, and as to the age and health of husband and of wife, and ascertain the value of the right of dower. If the wife has a general guardian, notice of the application must be given to such guardian; and if she have no such guardian, notice must be given to such person as may have her care and custody; or if she have no guardian, or resides with and under the care and custody of the husband, or if he be her guardian, notice for her must be given to some suitable person of the appointment of the court. In all cases a guardian ad litem must be appointed to represent and defend for the wife.

1513 (1898). **Guardian appointed for wife.**—If the court ascertains that the wife is insane, and has been so adjudged by a court of competent jurisdiction, and she has not a general guardian, the court must appoint a guardian for her, to whom the value of her right of dower, as ascertained by the court, must be paid; but if she have a general guardian, the court may order such value to be paid to such guardian. On the payment thereof and the report of the fact of payment filed in the court, an order must be entered, appointing a commissioner with authority for, and in the name of the wife, to execute a relinquishment of her dower; and such relinquishment, when executed, has the same force and effect a relinquishment executed by

the wife, if sane, would have. The costs of such proceeding must be paid by the applicant.

1514 (1899) (2237) (1629). **Wife joining in husband's conveyance not bound by warranty.**—Neither the wife individually, nor her separate estate is bound by the covenant of warranty contained in any deed conveying land belonging to the husband, executed by such wife in connection with her husband; but such deed shall have the effect only of a relinquishment of dower, unless there be in such deed a special covenant of the wife, expressing her intention to bind her separate estate.

Curry v. American Freehold Land Mortg. Co., 107 Ala. 429.

ARTICLE 2.

ASSIGNMENT OF DOWER.

1515 (1900) (2238) (1630) (1359). **Widow may retain dwelling, etc., until assignment of dower.**—The widow may retain possession of the dwelling-house where her husband most usually resided next before his death, with the offices and buildings appurtenant thereto, and the plantation connected therewith, until her dower is assigned her, free from the payment of rent.

When not entitled to possession of plantation.—Smith v. Smith, 13 Ala. 329; McAllister v. McAllister, 37 Ala. 484; Waters v. Williams, 38 Ala. 680; Clary v. Sanders, 43 Ala. 287; Ogbourne v. Ogbourne, 60 Ala. 616; Melton v. Andrews, 76 Ala. 586. **Quarantine not an estate which can be sold under execution or alienated.**—Norton v. Norton, 94 Ala. 481; Boynton v. Sawyer, 35 Ala. 497; Wallace v. Hall, 19 Ala. 367; Cook v. Webb, 18 Ala. 810. **Residence of the husband the controlling fact.**—Clancy v. Stephens, 92 Ala. 577. **Depends on fact, not quantum of dower.**—Billingslea v. Glenn, 45 Ala. 540. **Widow's rights and duties when administratrix.**—Benagh v. Turrentine, 60 Ala. 557. **Her right to complete a growing crop.**—Blair v. Murphree, 81 Ala. 454. **When duty of heir to have dower assigned.**—Shelton v. Carrol, 16 Ala. 148. **Character of quarantine interest.**—Barber v. Williams, 74 Ala 331; Norton v. Norton, 94 Ala. 481; Robinson v. Allison, 97 Ala. 596; Lowery v. Rowland, 104 Ala. 420; Foy v. Wellborn, 112 Ala. 160. **Marriage does not forfeit.** Shelton v. Carrol, 16 Ala. 148. **Not dependent upon wife's actual possession.** Oakley v. Oakley, 30 Ala. 131; Inge v. Murphy, 14 Ala. 289. **Husband's alienation does not affect.**—Shelton v. Carrol, 16 Ala. 148; Oakley v. Oakley, 30 Ala. 131. **Attaches only to premises of which widow is dowable.**—Slatter v. Meek, 35 Ala. 528; Harrison v. Boyd, 36 Ala. 203; Pizzala v. Campbell, 46 Ala. 35. **As to rent or mesne profits.**—Inge v. Murphy, 14 Ala. 289; Shelton v. Carrol, 16 Ala. 148; Cook v. Webb, 18 Ala. 810; Pharis v. Leachman, 20 Ala. 662; McLaughlin v. Godwin, 23 Ala. 846; Oakley v. Oakley, 30 Ala. 131; Boynton v. Sawyer, 35 Ala. 497; Perrine v. Perrine, 35 Ala. 644; Slatter v. Meek, 35 Ala. 528; Waters v. Williams, 38 Ala. 680; Boyd v. Hunter, 44 Ala. 705; Benagh v. Turrentine, 60 Ala. 557; Tillman v. Spann, 68 Ala. 102; Steele v. Brown, 70 Ala. 235; Jenks v. Terrell, 73 Ala. 238; Reeves v. Brooks, 80 Ala. 26; Clancy v. Stephens, 92 Ala. 577. **Possession under dower right, unexplained, not hostile to reversioner.**—Robinson v. Allison, 97 Ala. 596; Foy v. Wellborn, 112 Ala. 160.

1516 (1901) (2239) (1631) (1360). **Dower assigned by metes and bounds in probate court.**—When the dower interest can be assigned by metes and bounds, the widow, heir, or personal representative of the husband may petition the court of probate of the county where the land in which the dower is claimed, or any portion thereof, lies, to cause assignment of dower to be made.

Jurisdiction of probate court.—Snodgrass v. Clark, 44 Ala. 198; Benagh v. Turrentine, 60 Ala. 557; Humes v. Scruggs, 64 Ala. 40; Bradford v. Bradford, 66 Ala. 252; Turnipseed v. Fitzpatrick, 75 Ala. 297. **Jurisdiction of chancery court not affected.**—Owen v. Slatter, 26 Ala. 547; Brooks v. Wood, 40 Ala. 538; Irvine v. Armistead, 46 Ala. 363; Wood v. Morgan, 56 Ala. 397. **Jurisdiction exclusive to award compensation in lieu of dower or mesne profits.**—Barney v. Frowner, 9 Ala. 901; Beavers v. Smith, 11 Ala. 20; Smith v. Smith, 13 Ala. 329; Thrasher v. Pinckard, 23 Ala. 616; Slatter v. Meek; 35 Ala. 528; Waters v. Williams, 38 Ala. 680; Humes v. Scruggs, 64 Ala. 40; Tygh v. Dolan, 95 Ala. 269. **Description by numbers designated in government survey sufficient.** Adams v. Barron, 13 Ala. 205.

1517 (1902) (2240) (1632) (1361). **What petition must contain.** The petition must contain—

1. The facts on which the widow's claim to dower rests, with a description of the land in which dower is claimed, by its designation at the land-office, when that can be done; if not, by metes and bounds, or such other description thereof as will identify it.

2. When the land in which dower is claimed has been aliened in the life of the husband, the name of the alienee, and his residence, if known; if he is not in possession of the land, the name of the person in possession.

3. The names of the widow and heirs at law, stating which are minors and married women, and the name of the personal representative of the husband, stating the county in which each resides, if resident in this state, and which of them, if any, are non-residents.

Allegations of the petition.—Green v. Green, 7 Port. 19; Martin v. Martin, 22 Ala. 86; Forrester v. Forrester, 38 Ala. 119; s. c., 39 Ala. 320.

1518 (1903) (2241) (1633) (1362). **Notice to parties; day fixed for hearing.**—Ten days' notice must be given to those adversely interested of the time when such petition will be filed, and an order for the assignment prayed; and thereupon, if the persons so notified are of full age, the court must proceed without delay to hear and determine the right to dower, unless good cause be shown for continuance.

1519 (1904) (2242) (1634) (1363). **Guardians ad litem appointed for minors.**—If any of the persons adversely interested are minors, guardians ad litem must be appointed to protect their interests.

1520 (1905) (2243) (1635) (1364). **Proceedings when notice not given.**—If such notice has not been given, the court must appoint a time for hearing the petition, and cause all persons interested to be cited then to appear. If any are non-residents, publication must be made of the time when the petition will be heard, once a week for three successive weeks, in a newspaper published in the county; if there be none, then in the county nearest to the court-house thereof, which shall be notice.

1521 (1906) (2244) (1636) (1365). **What decree must contain, if widow entitled to dower.**—If, on the hearing of the petition, the court considers the widow entitled to dower in the lands described, a decree must be made that she is entitled to dower in certain lands, describing them, and of what portion thereof, and directing the sheriff to summon five freeholders, not connected with the parties by consanguinity or affinity, to allot and set off, by metes and bounds, the

widow's dower, having regard to the improvements and quality of the land, as well as the quantity of the dower.

1522 (1907) (2245) (1637) (1366). **Oath of commissioners; dower set off by metes and bounds; return.**—Before proceeding to made the assignment, the commissioners must take an oath, which may be administered by the sheriff, impartially, and to the best of their skill and ability, to assign the dower pursuant to the decree. They must set off and allot, by metes and bounds, the lands assigned by them as dower, and make return thereof in writing, subscribed by them, to the judge of probate, which, if confirmed by the court, must be recorded, and vests in the widow an estate for her life in the lands so assigned as dower.

Johnson v. Neil, 4 Ala. 166; Adams v. Barron, 13 Ala. 205; Austin v. Willis, 90 Ala. 421.

1523 (1908) (2246) (1638) (1367). **Dwelling-house assigned to widow, if estate solvent.**—When the estate of the husband is solvent, and the heirs will not thereby be prejudiced, the entire dwelling-house may be assigned to the widow as part of her dower in lieu of a corresponding portion of her dower in the land, equal in value to that portion of the dwelling-house of which she is not dowable as matter of right.

Langdon v. Stephens, 6 Ala. 730.

1524 (1909) (2247) (1639) (1368). **Jurisdiction when lands lie in different counties; exception.**—Land of which the widow may be endowed, lying in several counties, may be embraced in the same petition, and in such case the judge of probate may direct his writ to the sheriff of such counties, to summon five freeholders, as in other cases, to allot dower of the lands in their county (specifying them), according to the provisions of section 1521 (1906). But the court of probate has no jurisdiction to direct the allotment of dower out of the county, when the land has been aliened during the life of the husband.

1525 (1910) (2248) (1640) (1369). **When chancery court alone has jurisdiction.**—When land, out of which dower is demanded, has been aliened by the husband, and from improvements made by the alienee, or from any other cause, an assignment of dower by metes and bounds would be unjust, the court of probate must decline jurisdiction, and application must be made to the court of chancery.

When assignment by metes and bounds unjust.—Sanders v. McMillian, 98 Ala. 144; Morgan v. Hendren, 102 Ala. 245; Sheppard v. Sheppard, 87 Ala. 560. **To bill for dower in lands sold under execution against the husband, all persons claiming interest must be made defendants; need not negative testamentary provision.**—Sanders v. Wallace, Ala. (21 So. 947). See also citations to section 1516.

1526 (1911) (2249) (1641) (1370). **Dowable of value of land; interest paid annually, unless certain sum agreed to.**—In such case the widow is dowable of the value of the land at the time of the alienation, the interest on one-third part thereof from the death of the husband, to be paid to her annually, during her life, and secured, if

necessary, by a lien on the land, unless the parties agree to a compensation in gross, which the court must give effect to.

Springle v. Shields, 17 Ala. 295; Francis v. Garrard, 18 Ala. 794; Ware v. Owens, 42 Ala. 212; Wood v. Morgan, 56 Ala. 397; Melton v. Andrews, 76 Ala. 586; Sanders v. McMillian, 98 Ala. 144.

1527 (1912) (2250) (1642) (1371). **When judge of probate incompetent, petition may be made to circuit court.**—When the judge of probate is, from any cause, incompetent to sit, the petition may, if the party so elect, be filed in the circuit court, which is hereby invested with all the powers conferred on the court of probate, and such court must proceed and make such order as the judge of probate should have done.

1528 (1913) (2251) (1643) (1372). **Dower barred in three years.** All proceedings or suits for dower, when the claim or rights of an alienee of the husband, or any one claiming under such alienee, are involved in such suit or proceedings, must be commenced within three years after the death of the husband, and not after.

Except as against alienee, there is no statutory bar, and the lapse of **twenty years only will bar.**—Ridgeway v. McAlpine, 31 Ala. 458; Owen v. Campbell, 32 Ala. 521; Barksdale v. Garrett, 64 Ala. 277; Elyton Land Co. v. Denny, 96 Ala. 336; Robert Graves Co. v. McDade, 108 Ala. 420. **Recovery of mesne profits.**—Boynton v. Sawyer, 35 Ala. 497; Slatter v. Meek, Ib. 528. See also Martin v. Martin, 35 Ala. 560.

CHAPTER 39.

EJECTMENT. 1529–1555.

1529 (2695) (2970) (2621). **Action of ejectment.**—A plaintiff suing for the recovery of lands, or of the possession thereof, has an election to proceed by an action of ejectment, or by an action in the nature of an action of ejectment, as is provided in the succeeding section.

1530 (2696) (2959, 2960) (2610, 2611) (2209, 2210). **Action in the nature of ejectment.**—An action for the recovery of lands, or the possession thereof, in the nature of an action of ejectment, may be maintained without a statement of any lease or demise to the plaintiff, or ouster by a casual or nominal ejector; and the complaint is sufficient if it alleges that the plaintiff was possessed of the premises, or has the legal title thereto, properly designating or describing them, and that the defendant entered thereupon, and unlawfully withholds and detains the same.

Applies only where ejectment was previously the remedy.—Henry v. Thorpe, 14 Ala. 103. **Suit must be against actual occupant.**—Smith v. Gayle, 58 Ala. 600; Morris v. Beebe, 54 Ala. 300. **Person in possession and not sued, not bound by judgment.**—Hooper v. Payne, 94 Ala. 223; Smith v. Gayle, 58 Ala. 600. **Plaintiff must show title and right to possession at commencement of suit.**—Williams v. Hartshorn, 30 Ala. 211; Goodman v. Winter, 64 Ala. 410; Slaughter v. McBride, 69 Ala. 510; Cofer v. Schening, 98 Ala. 338. **If plaintiff's title determines before trial he cannot recover.**—Bruce v. Bradshaw, 69 Ala. 360; Scranton v. Ballard, 64 Ala. 402. **But adverse holder cannot set up con-**

veyance by plaintiff to another in bar of suit.—Davis v. Curry, 85 Ala. 133; Brunson v. Morgan, 86 Ala. 318; Pearson v. King, 99 Ala. 125. **Grantee of land adversely held may sue in name of grantor.**—Pearson v. King, 99 Ala. 125. **Superior legal title must prevail,** regardless of equities.—Kelly v. Hendricks, 57 Ala. 193; Searcey v. Oates, 68 Ala. 111; Downing v. Blair, 75 Ala. 216; Harrison v. Parmer, 76 Ala. 157; Hooper v. C. & W. Ry. Co., 78 Ala. 213; Simmons v. Simmons, Ib. 365. **Equitable title will not support action.**—You v. Flinn, 34 Ala. 409; Caldwell v. Parmer, 56 Ala. 405; Farley v. Whitehead, 63 Ala. 295; Eureka L. Co. v. Brown, 103 Ala. 140. **Parties claiming title from common source each estopped from disputing that title.**—Pendley v. Madison, 83 Ala. 484; Foster v. Winchester, 92 Ala. 497; Sullivan v. McLaughlin, 99 Ala. 60; Bernheim v. Horton, 103 Ala. 380. **Tenant estopped from disputing title of landlord.**—Russell v. Erwin, 38 Ala. 44; Elliott v. Dycke, 78 Ala. 150. **Unless relation repudiated.**—Wells v. Sheerer, 78 Ala. 142; Abbett v. Page, 92 Ala. 571; Ponder v. Cheeves, 104 Ala. 307. **Personal representative may maintain action.**—Tarver v. Smith, 38 Ala. 135; McRae v. McDonald, 57 Ala. 423; Wells v. Elliott, 68 Ala. 183; Landford v. Dunklin, 71 Ala. 594; Morgan v. Casey, 73 Ala. 222; Pendley v. Madison, 83 Ala. 484. But cannot join with heir or devisee.—Tarver v. Smith, supra. **When action lies between tenants in common.**—Southern, etc., Co. v. Henshaw, 89 Ala. 448. **What purchaser at sheriff's sale must show** in order to recover.—Hendon v. White, 52 Ala. 597; Elliott v. Dycke, 78 Ala. 150; Carrington v. Richardson, 79 Ala. 101. **Defeated for want of interest subject to levy.**—Clements v. Pearce, 63 Ala. 284. **Chancery decree between parties, vesting title, will support action.**—Brunson v. Morgan, 86 Ala. 318. **And so as to arbitration and award.**—Moore v. Helms, 74 Ala. 368; Payne v. Crawford, 97 Ala. 604. **Mortgagee purchasing at sale under power may recover.**—Hambrick v. N. E. Mortgage Security Co., 100 Ala. 551. **Proof of prior possession,** even though for less than the statutory period, **will support action against trespasser.**— Anderson v. Melear, 56 Ala. 621; Doe v. Clayton, 73 Ala. 359; Strange v. King, 84 Ala. 212; L. & N. R. Co. v. Philyaw, 88 Ala. 264; Lucy v. T. & C. R. Co., 92 Ala. 246; Payne v. Crawford, 102 Ala. 387. **But not against person in possession under color of title.**—Bernheim v. Horton, 103 Ala. 380; Gist v. Beaumont, 104 Ala. 347. **Adverse possession for ten years, with or without color of title, confers title** on the occupant.—Smith v. Roberts, 62 Ala. 83; Wilson v. Glenn, 68 Ala. 383; Burks v. Mitchell, 78 Ala. 61; Lucy v. T. & C. R. Co., 92 Ala. 246; Murray v. Hoyle, Ib. 559; Normant v. Eureka Co., 98 Ala. 181; N. C. & St. L. R. v. Hammond, 104 Ala. 191. **But such possession does not affect the rights of the government.**—Wiggins v. Kirby, 106 Ala. 262; Swann & Billups v. Gaston, 87 Ala. 569; Ala. St. L. Co. v. Kyle, 99 Ala. 474. **Successive trespasses, without writing cannot be linked.**—Black v. Pratt, etc., Co., 85 Ala. 504; s. c., 93 Ala. 109. **Possession under color of title co-extensive with boundaries described;** trespasser limited to actual occupancy.—Black v. Tenn., etc., Co., 93 Ala. 109; Burks v. Mitchell, 78 Ala. 61. **What is color of title.**—Lamar v. Minter, 13 Ala. 31, 41; **Possession of purchaser entitled to deed co-extensive with his purchase.**—Newsome v. Snow, 91 Ala. 641; Normant v. Eureka Co., 98 Ala. 181. **Parol evidence to identify land admissible.**—Bullock v. Malone, Minor, 400. Also to remove latent ambiguity in description.—Dane v. Glennon, 72 Ala. 160; Chambers v. Ringstaff, 69 Ala. 140. **Possession or occupancy of land is a fact to which a witness may testify.**—Steed v. Knowles, 97 Ala. 573; Eagle, etc., Co. v. Gibson, 62 Ala. 369; Woodstock Iron Co. v. Roberts, 87 Ala. 436. **Unrecorded or defectively executed deed, when admissible to prove boundaries.**—McInery v. Irwin, 90 Ala. 275; Alexander v. Savage, 90 Ala. 383; Ala. State Land Co. v. Kyle, 99 Ala. 474; Gist v. Beaumont, 104 Ala. 347; Postal Tel. Co. v. Brantley, 107 Ala. 683; Higdon v. Kennemer, 112 Ala. 351. **When several plaintiffs join, there can be no recovery by one alone.**—Oates v. Beckworth, 112 Ala. 356.

1531 (2697) (2961) (2612). **Abstract of title; right to demand.** In an action of ejectment, or in an action in the nature of an action of ejectment, the defendant may, by notice in writing to the plaintiff or his attorney, not less than ten days before the trial of the cause, demand an abstract in writing of the title or titles on which he will rely for a recovery, and the plaintiff must be confined to the proof of such title or titles; and when such abstract is demanded by the defendant, he must tender, if demanded by the plaintiff or his attorney, five days before the trial, an abstract of the title or titles on which he will rely for defense, and on the trial shall be confined to such title or titles.

Defendant may introduce evidence not supporting his own title but disproving plaintiff's title, although **not embraced in abstract furnished by him.** Robbins v. Gilligan, 86 Ala. 254.

1532 (2698) (2962) (2613) (2212). **Effect of pleading general issue.**—The general issue in an action in the nature of an action of ejectment is "not guilty," and under it the defendant may give in evidence the same matters which may be given in evidence under such plea in an action of ejectment; the general issue is an admission that the defendant is in possession of the premises sued for.

Plea of not guilty equivalent to consent rule and **admits defendant's possession at commencement of suit.**—King v. Kent, 29 Ala. 542; Bernstein v. Humes, 60 Ala. 582; McQueen v. Lampley, 74 Ala. 408; Swann v. Kidd, 78 Ala. 173; Torrey v. Forbes, 94 Ala. 135. **Not guilty is the only proper plea.**—Richardson v. Stephens, Ala. (21 So. 949); Smith v. Cox, Ala. (22 So. 78). **Under such plea defendant may show title by adverse holding, bona fide purchase, or any fact going to the title.**—Bynum v. Gold, 106 Ala. 427; Lomb v. Pioneer S. & L. Co., 106 Ala. 591. **Possession of life-tenant not adverse to remainder-man.**—Pickett v. Pope, 74 Ala. 122; Bass v. Bass, 88 Ala. 408; Gindrat v. Western Ry., 96 Ala. 162; McLeod v. Bishop, 110 Ala. 640. **When defendant may show outstanding paramount title.**—Snedicor v. Freeman, 71 Ala. 140; Guilmartin v. Wood, 76 Ala. 204; Crosby v. Pridgen, Ib. 385; Lucy v. T. & C. R. Co., 92 Ala. 246. **Defendant may set up title acquired after suit brought.**—Pollard v. Hanrick, 74 Ala. 334. **Conveyance from plaintiff pending suit.**—pleaded puis darrein continuance.—Alexander v. Collins, 7. Ala. 480. **Purpose and effect of consent rule.**—Sledge v. Swift, 51 Ala. 386; King v. Kent, 29 Ala. 542; Morris v. Beebe, 54 Ala. 300. See citations to next section.

1533 (2699) (2963) (2614) (2213). **Disclaimer of possession.** The defendant may, in an action of ejectment, or in an action in the nature of an ejectment, disclaim possession of the premises sued for, in whole or in part, and, upon such disclaimer, the plaintiff may, if he so elects, take issue; and, if the issue be found for him, he is entitled to judgment as if the defendant had, in an action of ejectment, entered into the consent rule, confessing possession as well as lease, entry and ouster, or, in an action in the nature of an action of ejectment, had pleaded "not guilty," admitting possession.

Plea of not guilty and disclaimer as to same land inconsistent and not permissible.—Bernstein v. Humes, 60 Ala. 582; McQueen v. Lampley, 74 Ala. 408; Kirkland v. Trott, 66 Ala. 417; Buxbaum v. McCorley, 99 Ala. 537. **Going to trial on such inconsistent pleas waives disclaimer.**—Alexander v. Wheeler, 69 Ala. 332; Callan v. McDaniel, 72 Ala. 96; Crosby v. Pridgen, 76 Ala. 385. **Possession of disclaiming defendant may be proved by his acts and declarations.**—Kirkland v. Trott, 66 Ala. 417. **Estoppel against ejectment.**—Kelly v. Hendricks, 57 Ala. 193; Harris v. Miller, 71 Ala. 26; Gimon v. Davis, 36 Ala. 589; N. O. & S. R. Co. v. Jones, 68 Ala. 48; Hooper v. C. & W. Ry. Co., 78 Ala. 213; Forney v. Calhoun Co., 84 Ala. 215; S. & N. Ala. R. Co. v. A. G. S. R. Co., 102 Ala. 236.

1534 (2700) (2955) (2606) (2205). **Landlord made party on motion.**—When the suit is against a tenant, the landlord must be made a defendant to the suit on motion of the tenant, or, upon the landlord's application in writing, supported by affidavit that the defendant is his tenant by demise in writing, or is in the occupancy of the land sued for with his consent, or of some portion thereof, which must be specified in the application.

Construed liberally; extends to all persons claiming title consistently with possession of occupier.—Ex parte Webb, 58 Ala. 109; Faulkner v. Jones, 12 Ala. 165; Thompson v. Ives, 11 Ala. 239; Noble v. Coleman, 16 Ala. 77. **Limitation** same as if landlord had been made a party at commencement of suit.

Turner v. White, 97 Ala. 545. **Landlord not bound by judgment unless he had notice or defended.**—Patton v. Pitts, 80 Ala. 373; Smith v. Gayle, 58 Ala. 600. **Landlord defending unsuccessfully charged with rents.**—McCaskle v. Amarine, 12 Ala. 17.

1535 (2701) (2965) (2616) (2215). **Tenant liable only for rent in arrear.**—A tenant in possession, asserting his right thereto under a lease or license from another, is not liable beyond the rent in arrear at the commencement of the suit, and that which may accrue during the continuance of his possession.

1536 (2702) (2951) (2602) (2201). **Suggestion of adverse possession for three years; proceedings on.**—When a suit is brought to recover land or the possession thereof, the defendant may, at any time before the trial, suggest upon the record that he and those whose possession he has, have for three years next before the commencement of the suit, had adverse possession thereof, which must be construed to mean the same character of possession as will put in operation the statute of limitations. In such case, if the jury find for the plaintiff, they must also ascertain by their verdict whether such suggestion be true or false.

Suggestion of three years' adverse possession incompatible with one year limitation under fourth subsequent section and both cannot be insisted on. Hairston v. Dobbs, 80 Ala. 589; s. c., Ib. 594; Southern, etc., Co v. Henshaw, 89 Ala. 448; Turnipseed v. Fitzpatrick, 75 Ala. 297; Kerr v. Nicholas, 88 Ala. 346. **Burden on defendant to prove truth of suggestion,** value of improvements and value of land.—Kerr v. Nicholas, supra; Stephens v. Westwood, 25 Ala. 716. Under statute, **defendant gets full value for improvements and plaintiff full rents or damages.**—Turnipseed v. Fitzpatrick, supra; Kerr v. Nicholas, supra. **Does not repeal common law** authorizing defendant to set off value of improvements against rents or damages.—Kerr v. Nicholas, supra; Gordon v. Tweedy, 74 Ala. 232; Hollinger v. Smith, 4 Ala. 367.

1537 (2703) (2952) (2603) (2202). **Verdict and judgment on suggestion.**—If they find it to be false, they must return a verdict for the damages as in ordinary cases. If they find it to be true, they must assess the value, at the time of trial, of the permanent improvements made by the defendant, or those whose estate he has, and also ascertain by their verdict the value of the lands, and of the use and occupation thereof, not including the increased value by reason of such improvements; if the value of the use and occupation as assessed exceed the value of the permanent improvements made, judgment must be rendered against the defendant for the excess.

Sufficiency of verdict and judgment.—Foster v. Foster, 2 Stew. 356; Hamner v. Eddins, 3 Stew. 192; Sawyer v. Fitts, 4 S. & P. 365, 2 Port. 9; Sturdevant v. Murrell, 8 Port. 317; Bennett v. Morris, 9 Port. 171; McRae v. Tillman, 6 Ala. 486; Crommelin v. Minter, 9 Ala. 594; Henley v. Br. Bank, 16 Ala. 552; Gager v. Doe, 29 Ala. 341; Sims v. Thompson, 30 Ala. 158; Chapman v. Holding, 60 Ala. 522; Betz v. Mullin, 62 Ala. 365; Bishop v. Lalouette, 67 Ala. 197; Alexander v. Wheeler, 69 Ala. 332; s. c., 78 Ala. 167; Coltart v. Moore, 79 Ala. 361; Carlisle v. Killebrew, 91 Ala. 351; Bell v. Otts, 101 Ala. 186; Wiggins v. Steiner, 103 Ala. 655.

1538 (2704) (2953) (2604) (2203). **If value of improvements greater than rents, possession retained for one year.**—If the value of the improvements exceeds the value of the use and occupation, no writ of possession shall issue for one year after the rendition of the judgment, unless the plaintiff, or his legal representative, pay the defendant, or deposit with the clerk for him, the excess of the assessed value of the improvements over the value of the use and occupation.

1539 (2705) (2954) (2605) (2204). **When, on non-payment of excess, plaintiff barred of his writ.**—If the plaintiff, or his legal representative, neglect for the term of one year to pay such excess, and the defendant, or his legal representative, within three months after the expiration of the year, pays to the plaintiff, or to the clerk for him, the value of the land and of the use and occupation thereof as assessed by the jury, the plaintiff is forever barred from his writ of possession, and from maintaining any action whatever against the defendant, his heirs, or assigns, to recover such land or the possession thereof.*

1540 (2706) (2966) (2617) (2216). **Persons having color of title bona fide, liable for only a year's rent.**—Persons holding possession under color of title, in good faith, are not responsible for damages or rent for more than one year before the commencement of the suit.

Ormond v. Martin, 37 Ala. 598; Sanders v. Robertson, 57 Ala. 465; Dozier v. Mitchell, 65 Ala. 511; Allen v. Kellam, 69 Ala. 442; Ferris v. Montgomery, etc., Co., 94 Ala. 557. See citations to fourth preceding section.

1541. Adverse possession; when notice thereof must be filed in probate office.—Any person who, without color of title or bona fide claim of inheritance or of purchase, enters upon real estate and asserts adverse possession thereof, must give notice of such adverse possession and claim by filing, in the office of the judge of probate of the county in which the land lies, a declaration in writing subscribed by him, setting forth such claim and particularly describing the real estate of which he claims to be in the adverse possession; and such declaration must be recorded in a book to be kept by the judge of probate for that purpose. Feb. 11, 1893, p. 478.

1542. Form of declaration.—Such declaration must be substantially in the following form: "I (A. B.), hereby give notice that I am in adverse possession of the following described real estate (describing particularly the real estate) situated in —— county, Alabama. Given under my hand this —— day of ———.

A. B." Ib.

1543. Declaration recorded.—Such declaration must be recorded and the record thereof certified as conveyances of real estate, and is effectual as notice from the time of its delivery to the judge of probate. Ib.

1544. Declaration or copy thereof evidence.—When so recorded and certified, such declaration, or a certified copy of the record thereof, is evidence of the fact that such notice was given at the date of the filing thereof, but is not evidence of the fact of possession. Ib.

1545. Possession without notice not adverse.—Until the filing of such declaration, no such possession of real estate shall be deemed adverse to any one; and no evidence of such adverse possession prior to the time of filing such declaration shall be received in any suit Ib.

*As amended by joint committee.

involving the title to such real estate, except as provided in the next section.

Ib. **1546. Exceptions.**—Any continuous adverse possession for ten years or more prior to the eleventh day of February, 1893, may be proved without the filing of such declaration; and any person who, prior to the date aforesaid, had been in such adverse possession of real estate for a time less than ten years and who has continued in such adverse possession, may adduce evidence covering the entire period of his possession if, prior to the commencement of the suit, he shall have filed the declaration as provided in this chapter and shall have further stated in such declaration, the time when his adverse possession began and that the same had continued unbroken from such time to the date of the filing of such declaration; but the time elapsing between the eleventh day of February, 1893, and the date of the filing of such declaration must not be computed as a portion of the time necessary to create a bar under the statute of limitations.

1547 (2707). **Action by mortgagee against mortgagor.**—If the action be by a mortgagee, or his assignee, against the mortgagor, or any one holding under him, the defendant may plead payment of the mortgage debt, or the performance of the condition of the mortgage, or any matters which might be pleaded to a direct action at law for the recovery of the mortgage debt except the statute of limitations; and the jury must pass upon such pleas, and must ascertain the amount of the mortgage debt if any is found to exist; if the verdict be for the defendant, judgment must be rendered for him, but if the verdict ascertain an amount due on the mortgage debt, judgment must be rendered for the plaintiff for the possession of the land, and the costs, and the amount of the mortgage debt as ascertained by the jury must be stated in the judgment; and if, within thirty days after the rendition of the judgment, the defendant shall pay to the plaintiff, or to the clerk for his use, such debt, interest and costs, then a writ of possession must not issue, and the clerk shall indorse upon the face of the record of the judgment, the fact of such payment.

Sanders v. Cassady, 86 Ala. 246; McKinnon v. Lessley, 89 Ala. 625; Lampley v. Knox, 92 Ala. 625; Johnson v. Beard, 93 Ala. 96; Matkin v. Marx, 96 Ala. 501; Lomb v. Pioneer S. & L. Co., 106 Ala. 591.

1548 (2708) (2968) (2619) (2218). **Judgment by default.**—A judgment by default against a defendant is an admission of title in the plaintiff; but to recover costs against the defendant, the plaintiff must prove defendant's possession of the premises, or some part thereof, at the commencement of the suit.

Sims v. Thompson, 30 Ala. 158; Ivey v. Perry, 97 Ala. 583.

1549 (2709) (2967) (2618) (2217). **Verdict for plaintiff; what should specify.**—If the verdict is for the plaintiff, it must specify whether it is for the whole or a part only of the premises, and, if for a part, must describe such part, and judgment must be rendered accordingly.

Hamner v. Eddins, 3 Stew. 192; Sawyer v. Fitts, 4 Stew. & Port. 365; s. c., 2

Port. 9; Sturdevant v. Murrell, 8 Port. 317; Bennett v. Morris, 9 Port. 171; Crommelin v. Minter, 9 Ala. 594; Henley v. Br. Bank, 16 Ala. 552; Stephens v. Westwood, 25 Ala. 716; Chapman v. Holding, 60 Ala. 522: Betz v. Mullin, 62 Ala. 365; Alexander v. Wheeler, 69 Ala. 332; s. c., 78 Ala. 167; Coltart v. Moore, 79 Ala. 361; Carlisle v. Killebrew, 91 Ala. 351.

1550 (2710) (2964) (2615) (2214). **When several defendants, damages assessed severally.**—When there are more defendants than one, the jury may assess the damages arising from the detention of the land, and the injury thereto, in severalty against each defendant for distinct damages.

Bishop v. Lalouette, 67 Ala. 197; Foster v. Foster, 2 Stew. 356; Rowland v. Ladiga, 21 Ala. 9; Torrey v. Forbes, 94 Ala. 135.

1551 (2711) (2958) (2609) (2208). **Rent accrued after judgment recovered on motion.**—The plaintiff may have judgment against the defendant for the rent of the premises which accrues after judgment, and before the delivery of possession, by motion in the circuit court where the judgment was rendered, on ten days' notice in writing, unless the judgment is stayed by appeal and supersedeas, in which case the motion may be made after affirmance of the judgment.

Kirkland v. Trott, 75 Ala. 321.

1552 (2712) (2949) (2600) (2199). **If land recovered with growing crops, possession retained on giving bond.**—If the defendant has a crop planted or growing on the premises, and the jury find for the plaintiff, they must also ascertain the rental value of the premises during the current year, and no writ of possession can be issued until the expiration of the year, if the defendant executes a bond in double the amount of such rent, payable to the plaintiff, with surety approved by the clerk, conditioned to pay the rent so assessed at the expiration of the year.

Carlisle v. Killebrew, 89 Ala. 329.

1553 (2713) (2950) (2601) (2200). **Effect of bond.**—The bond must be filed in the office of the clerk, and, if the rent be not paid at the expiration of the year, has the force and effect of a judgment, and thereon execution for the amount of the rent must issue against all the obligors, or such of them as may be living.

1554 (2714) (2969) (2620) (2219). **Two judgments bar further suit.**—Two judgments in favor of the defendant in an action of ejectment, or in an action in the nature of an action of ejectment, between the same parties, in which the same title is put in issue, is a bar to any action for the recovery of the land, or any part thereof, between the same parties or their privies, founded on the same title.

Jones v. DeGraffenreid, 60 Ala. 145; Camp v. Forrest, 13 Ala. 114; Boyle v. Wallace, 81 Ala. 352; Heard v. Pulaski, 80 Ala. 502; Hawes v. Rucker, 94 Ala. 166; Winston v. Hodges, 102 Ala. 304; Shumake v. Nelms, 25 Ala. 126. Second suit stayed until cost of first suit paid.—Ex parte Shear, 92 Ala. 596.

1555 (2716) (2957) (2608) (2207). **Damages to time of verdict.** Damages in actions for the possession, or for the use and occupation of land, must be computed to the time of the verdict.

Turnipseed v. Fitzpatrick, 75 Ala. 297.

CHAPTER 40.

ELECTIONS.

ARTICLE 1.—ELECTORS. 1556–1559.
2.—REGISTRATION. 1560–1572.
3.—GENERAL ELECTIONS; WHAT OFFICERS ELECTED, AND WHEN. 1573–1579.
4.—PRECINCTS AND POLLING-PLACES. 1580–1587.
5.—OFFICERS OF ELECTION; THEIR APPOINTMENT AND DUTIES. 1588–1597.
6.—SPECIAL ELECTIONS. 1598–1604.
7.—THE BALLOT. 1605–1615.
8.—CONDUCT OF THE ELECTION. 1616–1636.
9.—COUNTING THE VOTE; MAKING RETURNS; DECLARING THE RESULT. 1637–1649.
10.—CERTIFICATES OF ELECTION. 1650–1652.
11.—ELECTORS FOR PRESIDENT AND VICE-PRESIDENT; REPRESENTATIVES IN CONGRESS. 1653–1658.
12.—ELECTIONS IN NEW COUNTIES. 1659–1661.
13.—ELECTIONS ON AMENDMENTS TO THE CONSTITUTION. 1662–1664.
14.—PENALTY FOR FAILING TO MAKE RETURNS. 1665, 1666.
15.—CONTESTING ELECTIONS; PROVISIONS COMMON TO ALL CONTESTS. 1667–1671.
16.—CONTESTING ELECTIONS OF STATE OFFICERS. 1672–1685.
17.—CONTESTING ELECTIONS OF MEMBERS OF THE GENERAL ASSEMBLY, CHANCELLOR, CIRCUIT JUDGE, ANY OFFICE FILLED BY THE VOTE OF A SINGLE COUNTY, JUSTICE OF THE PEACE OR CONSTABLE. 1686–1703.

ARTICLE 1.

ELECTORS.

1556 (319) (224). **Qualification of electors.**—Every male citizen of the United States, and every male person of foreign birth, who has been naturalized, or who may have legally declared his intention of becoming a citizen of one of the United States before he offers to vote, who is twenty-one years old, or upwards, who shall have resided in this state at least one year, in the county for three months, and in the precinct or ward for thirty days next immediately preceding the election at which he offers to vote, is, unless within the disabilities imposed by the provisions of this article, a qualified elector, and may vote in the precinct or ward of his actual residence, and not elsewhere, for all officers elected by the people; but electors, qualified as aforesaid, who have resided in any incorporated city in this state having a population of more than five thousand inhabitants for thirty days immediately preceding any election, and have within such thirty days removed their residence from one precinct to another in the same city, shall, after a residence therein of one day, be entitled to vote in the precinct in which they reside at the time of the election; but each of such electors must first deposit with the inspectors of election in said precinct the certificate of the judge of probate that said elector is duly registered in the precinct from which he has removed.

1557 (320). **Disqualification of electors.**—Those who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary, and idiots or lunatics shall not be permitted to vote in this state at any election by the people; provided, that on the application of any person disqualified by reason of conviction for any of the crimes mentioned in this section except treason, whether the conviction was had in a state or federal court, accompanied by the recommendation of fifty reputable citizens of the county of the residence of the petitioner, the governor is authorized to restore such person to all the rights and privileges of citizenship. As amended Dec. 14, 1894, p. 204.

Anderson v. State, 72 Ala. 187; Washington v. State, 75 Ala. 582; Gandy v. State, 82 Ala. 61, 86 Ala. 20.

1558 (321) (226). **Loss or acquisition of residence.**—No person shall lose or acquire a residence either by temporary absence from his place of residence without the intention of remaining, or by being a student of any institution of learning, or by navigating any of the waters of this state, the United States, or the high seas, without having acquired any other lawful residence, or by being absent from his place of residence in the civil service of the state, or the United States; neither shall any soldier, sailor, or marine, in the military or naval service of the United States, acquire a residence by being stationed in this state.

1559. Residence; right to select in certain cases.—When the place of residence of any person is located partly in two or more counties or precincts, such person may select the county or precinct of his residence, and, to that end, may file a statement in writing in the office of the judge of probate of the county selected, setting forth the locality of his residence and the lines passing through the same together with the county or precinct selected for residence, which statement, when filed and recorded, shall establish the residence of the person filing it in the county or precinct of his selection. Feb. 1, 1895, p. 346.

ARTICLE 2.

REGISTRATION.*

1560. Judges of probate superintend.—The judges of probate Feb. 21, 1893, p. 837, §1.

*On the 16th of February, 1897, an act was approved (Acts 1896-7, p. 1186), entitled "An act to regulate the registration of electors in the State of Alabama," which is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That no registered elector of this state shall again be registered, or be required to register, so long as or while he may reside or continue to reside within the election precinct or ward in which he is registered for the last general election of state officers: *Provided*, that this act shall not apply to cities and towns having a population of five thousand or more.

"SEC. 2. *Be it further enacted*, That the registrar of each election precinct or ward shall be present at the polling-place in such precinct or ward on the day of any general or special election, and shall then register all such qualified electors, entitled to vote in such precinct or ward at such election, as have not been previously registered in the said precinct or ward.

"SEC 3. *Be it further enacted*, That all laws and parts of laws in conflict with this act be and the same are hereby repealed."

shall superintend the registration of electors in their respective counties.

Ib. §2. **1561. Governor appoints county registrars.**—The governor shall appoint one competent person as registrar for each county, and such registrar shall hold office for four years, and shall appoint a competent person as precinct registrar for each precinct in their respective counties, who shall hold office for four years or for the unexpired term of their predecessors in office, in the event of an appointment to fill a vacancy. The governor shall have power to fill any vacancy in the office of county registrar, and the county registrar shall have power to fill any vacancy in the office of precinct registrar. Such county and precinct registrars before entering on their duties shall take an oath of office as prescribed in article fifteen of the constitution of Alabama, which oath may be administered by any officer authorized by law to administer oaths in this state, and must be filed in the office of the judge of probate of the county. Such county and precinct registrars are authorized to administer the registration oath, and it shall not be lawful for any other officer or person to administer the same. The county registrar may, if he sees fit, act as registrar of the precinct in which he resides.

Ib. §3. **1562. Precinct registrars to make registration.**—It shall be the duty of the precinct registrars within the several precincts for which they are appointed respectively, in each year in which any general state or federal election is to be held, to make registration of the electors residing in their precincts upon blank forms provided for that purpose, and they shall not register in any other way or in any other form than that herein prescribed. The registrar may register himself by entering his name on the list and issuing to himself a registration certificate.

Ib. 4. **1563. Time of registration.**—The precinct registrars in each precinct shall begin registration on the first Monday in May, and shall continue the same for eighteen successive days, Sundays excepted, except in cities of five thousand or more inhabitants, when thirty days' time for registration shall be given, Sundays excepted.

Feb. 18, 1895, p. 676, §1. **1564. Registration on the day of election.**—It shall not be lawful to register any elector in any precinct in this state after the time herein prescribed for registration; but the precinct registrars shall be present at the polling-places in the precincts for which they are respectively appointed on the day of any general or special election to register such persons as may have reached the age of twenty-one years since the last registration; such other persons as had not, at the time of the last general registration, become qualified by reason of residence in the state and county for the time prescribed by law; but who have become so qualified since such general registration; such other persons as may make oath that they were unable by reason of absence from the county or by reason of sickness which confined them to their houses during the time appointed by law for general registration; such other persons as may make oath that they

became bona fide residents of the precinct in which they propose to register not less than thirty days before the day of election and since the last general registration; but electors having the constitutional qualifications who may have resided in any incorporated city in this state having a population of more than five thousand inhabitants as determined by the next preceding federal census, for thirty days immediately preceding any election and have within such thirty days removed their residence from one precinct to another in the same city, shall, after a residence therein of one day, be entitled to vote in the precinct in which they reside at the time of the election; but each of said electors herein last provided for must first deposit with the inspectors of election in said precinct the certificate of the judge of probate that said elector is duly registered in the precinct from which he has removed, and no other person than those provided for in this section shall be permitted to register on the day of any election. The precinct registrar shall furnish to each elector who may register on the day of election a certificate of registration which shall be substantially in this form:

"State of Alabama, }
County of —— } Precinct No. ——

I, ——, precinct registrar, do hereby certify that —— —— has this day duly registered before me as an elector. Dated ———.

—— —— Registrar
Precinct No. ——."

If the precinct registrar fails to attend, or there is a vacancy in the office, the county registrar shall appoint some competent person as precinct registrar for that day, and if no appointment is made by ten o'clock of that day, then the inspectors of election, or any two of them, may appoint a precinct registrar who may act as such for that day; but nothing in this article shall be construed as repealing, altering or amending the ordinances of any municipal corporation, chartered by the general assembly, providing for the separate registration of electors for municipal elections.

1565. Certificate of registration.—The precinct registrar shall furnish to each elector who may register a certificate of registration, which shall be in the following form substantially: Feb. 21, 1893, p. 837, §6.

"State of Alabama, }
County of —— }

I, ——, precinct registrar, do hereby certify that —— —— has this day registered before me as an elector in precinct No. ——.

Witness my hand this —— day of ———, 18—

—— —— Registrar
Precinct No. ——."

1566. Copy of registration-list.—The precinct registrar shall, within two weeks after the expiration of the time prescribed for registration, make a true copy of the list of names registered, which copy, along with the original registration-list, he must return to the office of the judge of probate of the county. Ib. §7.

1567. Judge of probate to make lists.—The judge of probate Ib. §8.

shall, from the registration-list of electors returned to his office, make correct alphabetical lists of the electors registered by precincts, which lists shall be certified by him officially to be a full and correct copy of the lists of registered electors for each precinct respectively as the same appear from the returns of the registrars on file in his office. One copy of said list for each precinct the judge of probate shall deliver to the inspectors in each precinct immediately preceding every election.

Ib. §9. **1568. Judge of probate to furnish books and blanks.**—The judge of probate must furnish, previous to the first day of May of each year in which any general state or federal election is to be held, to the precinct registrars, the books and blank forms necessary for the registration of electors.

Ib. §9. **1569. Form of registration-book.**—Each page of the registration-book shall be in the following form:

"State of Alabama, }
County of —— }

We, the undersigned, registered electors, each for himself, do solemnly swear (or affirm) that we will support and maintain the constitution of the United States and the constitution and laws of the State of Alabama; that we are not excluded from registering and voting by any clauses of section 3 of article eight of the constitution of the State of Alabama, and that we are qualified electors under the constitution and laws of this state.

NO.	DATE.	NAMES OF ELECTORS.	WHITE OR COLORED.	REGISTRAR'S ATTESTATION.	RESIDENCE.	EMPLOYER'S NAME, AND REMARKS.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

I, —— ——, registrar for precinct No. ——, in the county of ——, do hereby certify that the above and foregoing names of registered electors, from number one to number —— inclusive, were duly registered by me according to law, and that each of said electors so registered took and subscribed before me the above and foregoing oath on the dates set opposite to their several names.

Witness my hand this —— day of ——, 18—

—— —— Precinct Registrar."

Ib. §§10, 11. **1570. Compensation of judges and registrars.**—Each judge of probate shall be paid for his services about the registration and certification of electors, such reasonable compensation as may be allowed by the court of county commissioners or the board of revenue, in no case less than two cents for each elector registered and certified, and in addition thereto the necessary expense of printing and purchasing the books and blanks required. And the precinct registrars

shall be paid by the county three cents for each elector registered and certified.

St. Clair Co. v. Smith, 112 Ala. 347.

1571. Precinct registrar failing to act, county registrar appoints.—When any precinct registrar fails or refuses to perform the duties of his office, or if there is a vacancy in the office of precinct registrar, the county registrar must appoint some competent person to act in his stead. Ib. §12.

1572. Where electors must register.—It shall be unlawful to register any elector except in the precinct in which he is entitled to vote, and the precinct registrar, when he has no personal knowledge of the identity or residence of the person offering to register, shall examine him under oath touching the same, which oath shall be administered by the precinct registrar. Ib. §13.

ARTICLE 3.

GENERAL ELECTIONS; WHAT OFFICERS ELECTED, AND WHEN.

1573 (338) (243). **Officers elected by the people.**—The following officers in this state shall be elected by the qualified electors thereof: Governor, secretary of state, state treasurer, state auditor, attorney-general, superintendent of education, commissioner of agriculture, senators and representatives in the general assembly, chief justice and associate justices of the supreme court, judges of the circuit courts, chancellors, judges of the probate court, judges of other inferior courts in cases not otherwise provided for by law, sheriffs, coroners, clerks of the circuit courts, tax-assessors, tax-collectors, county treasurers, county superintendents of education, county commissioners, constables, justices of the peace, representatives in congress, and electors for president and vice-president of the United States.

1574 (339) (244). **General elections.**—General elections throughout this state shall be held for governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of education, commissioner of agriculture, chief justice and associate justices of the supreme court, and electors for president and vice-president of the United States; for a member of congress in each congressional district; a chancellor in each chancery division; a judge of the circuit court in each judicial circuit; a senator for each senatorial district; a representative or representatives in the general assembly, a judge of the probate court, sheriff, clerk of the circuit court, tax-assessor, tax-collector, a county treasurer in every county where such office exists, coroner and county commissioners, in each county; justices of the peace and constables in each precinct of each county.

1575 (340) (245). **Time of electing state officers, executive and legislative.**—The governor, secretary of state, state treasurer, state auditor, attorney-general, superintendent of education, com-

missioner of agriculture, and representatives in the general assembly shall be elected on the first Monday in August, 1898, and every second year thereafter; senators from the odd numbered districts shall be elected on the first Monday in August, 1898, and every fourth year thereafter; senators from even numbered districts shall be elected on the first Monday in August, 1900, and every fourth year thereafter.

1576 (341). **Time of electing county officers.**—One sheriff, one coroner, four county commissioners, one tax-assessor, one tax-collector, one county treasurer, where such office exists, two justices of the peace and one constable for each election precinct shall be elected on the first Monday in August, 1900, and every fourth year thereafter; but as to county commissioners and treasurers, this section shall not apply to counties where special laws as to those officers are in force.

1577. Time of electing county superintendent of education.—One county superintendent of education shall be elected, except in cases otherwise provided for by special laws, on the first Monday in August, 1898, and every two years thereafter.

1578 (342) (247). **Time of electing judicial and ministerial officers.**—The judges of the supreme court, chancellors, judges of the circuit and probate courts and judges of city and other inferior courts, clerks of the circuit and city courts, except in cases otherwise provided for by law, shall be elected on the first Monday in August, 1898, and every sixth year thereafter.

1579 (343) (248). **Time of electing presidential electors and members of congress.**—Electors for president and vice-president of the United States shall be elected on the first Tuesday after the first Monday in November, 1900, and every fourth year thereafter; a member of congress from each congressional district shall be elected on the first Tuesday after the first Monday in November, 1898, and every second year thereafter.

ARTICLE 4.

PRECINCTS, POLLING-PLACES AND BOXES.

1580 (344) (251). **Election precincts.**—The counties in this state, as now divided into election precincts, and the boundaries of such precincts, as now defined, shall so remain until changed by an order of the court of county commissioners, or by an act of the general assembly.

1581 (345) (252) (228) (185). **Establishment, change and abolition.**—The courts of county commissioners may, in their respective counties, establish, change, or abolish election precincts, and places of voting therein, and may change the boundary lines thereof, as the convenience of the voters in such precincts may, in their judgment, require; but no order under this section shall take effect, unless made at least sixty days before any election, nor until three months

after notice thereof has been posted up at the court-house door of such county.

1582 (346) (253) (227). **Two places of voting in the same precinct.**—The several courts of county commissioners, within their respective counties, may establish two places of voting in the same election precinct, when it is deemed necessary to the convenience of the voters therein; but no such change shall be made within less than thirty days before an election.

1583 (347) (254) (229) (186). **Orders for same to be recorded.** All orders made under the provisions of the two preceding sections must be recorded within three days after the adjournment of the court at which the same were made.

1584 (348) (255) (226) (184). **How numbers and boundaries of precincts and places of voting are known.**—The numbers and boundaries of precincts and the places of holding elections must be known and designated as entered upon the records of the court of county commissioners.

1585 (349) (256). **Places of voting.**—The court-house is the place of holding elections in the precinct in which it is situated, and elections must be held at such places in the other precincts as are now designated by law for that purpose, or may be designated hereafter by the court of county commissioners.

1586 (350) (257). **Notice of change in precincts and places of voting.**—Whenever a change has been made by the court of county commissioners in the number or boundaries of precincts, or in the places of voting therein, it shall be the duty of the judge of probate, within five days thereafter, to give notice of such change, to be posted by the sheriff at the court-house door, and at two public places in such precinct. Such notice must describe such precinct by its number, and must specify the place where elections are to be held therein, and the change or changes, if any, in the boundaries or number thereof.

1587 (351) (258). **Number of ballot-boxes and by whom provided.**—The judge of probate, sheriff, and clerk of the circuit court of each county in this state shall provide one ballot-box, and where it is deemed necessary, shall provide more than one, and not more than three, at each place of voting.

ARTICLE 5.

OFFICERS OF ELECTION; THEIR APPOINTMENT AND DUTIES.

1588 (352) (259). **Inspectors and precinct returning-officers, how appointed.**—The judge of probate, sheriff, clerk of the circuit court, or any two of them, must, at least thirty days before the holding of any election in their county, appoint three inspectors for each place of voting, two of whom shall be members of opposing political parties, if practicable, and one returning-officer for each precinct, to act at the place of holding elections in each precinct; and it shall be

the duty of the sheriff to notify such inspectors and returning-officers of their appointment within ten days after such appointment.

Taylor v. Kolb, 100 Ala. 603.

1589 (353) (260). **Sheriff is county returning-officer.**—The sheriff of each county, or the person discharging the duties of such office, is the returning-officer for his county.

1590 (354) (261). **Notice of election given by sheriff.**—The sheriff must give notice, at least thirty days before each election, by publication in some newspaper in his county, if any is published therein, and if not, by writing posted at the court-house door, and three other public places in the county, of the time of holding, and the offices to be filled by such election.

1591 (355) (262). **Duties of inspectors and returning-officers; how places supplied on failure to attend.**—It shall be the duty of the inspectors and the returning-officers appointed to meet at the place of holding elections in the several precincts for which they have been appointed, by eight o'clock of the morning of the day of election, and, before nine o'clock, open the several polling-places as designated; and on the failure of any inspector or returning-officer to attend at the hour of eight, such as may be present may complete the number. If none of the inspectors appointed are present, the returning-officer of the precinct shall appoint three inspectors to act, who, in every such instance shall be qualified electors who are entitled to vote at that polling-place; and if there should be no inspector or returning-officer present by the hour of eight, at any polling-place, then any three qualified electors who are entitled by law to vote at that polling-place in the election then to be held, may open the polls and act as inspectors during the election.

1592 (356) (263). **Returning-officer absent, inspectors appoint.** If the returning-officer is not present at the hour appointed, the inspectors, or those acting as such, must appoint one to serve during the election.

1593 (357) (264) (243) (201). **Clerks of election.**—The inspectors, before opening the polls, must select two persons to act as clerks.

Feb. 18, 1895, p. 676, §3. **1594. Markers.**—Upon opening the polls the inspectors must appoint two or more markers, or assistants for illiterate and disabled electors, one from each of the opposing political parties who may have candidates to be voted for at the election, and each of whom must be a discreet person able to read and write, and the inspectors, or any two of them, shall, in like manner from time to time as often as may be necessary to give every illiterate elector and every physically disabled elector an opportunity to vote, appoint a marker who must be selected as provided for the selection of the first two.

Ib. **1595. Clerks and markers appointed from lists.**—Clerks and markers must be appointed from a list of persons, not less than six nor more than ten in any one precinct, who may be suggested for that purpose by the duly constituted authorities respectively of the opposing political parties having candidates to be voted for at the

election, and the opposing political parties shall each have the right to suggest a list of names, not less than six nor more than ten in each precinct, to act as clerks and markers. If no lists are furnished, the inspectors shall appoint clerks and markers from opposing political parties.

1596. Residence of inspectors, clerks and markers.—No inspector, clerk or marker shall be appointed, nor shall act as such, except in the precinct of his residence at the time of the election. Ib.

1597 (358) (265) (244) (202). **Oath of inspectors, clerks and markers.**—Before entering upon their duties the inspectors, clerks and markers must take an oath to perform their duties at the election according to law, and such oath may be administered by any person authorized by law to admipister oaths or by any one of the inspectors. Ib.

ARTICLE 6.

SPECIAL ELECTIONS.

1598 (359) (249). **Special elections; when and for what offices held.**—Special elections are to be held in the following cases:

1. When a vacancy occurs in the office of senator or representative in the general assembly, when the general assembly will be in session prior to the next general election for that office.

2. When a vacancy occurs in the office of representative in the congress of the United States, by which the state may be deprived of its full representation at any time congress will be in session prior to the next general election for that office.

3. Whenever any general or special election for members of the general assembly, or for representatives in congress, is not held.

4. When any vacancy occurs in any state or county office filled by election of the people, not otherwise provided for by the constitution or laws of this state.

5. In such other cases as are, or may be provided for by law.

1599 (360) (250). **Day for holding special elections.**—All special elections shall be held on such day as the governor may direct.

1600 (361) (266) (233) (191). **Special elections ordered by governor.**—All special elections, provided for by this article, are to be ordered by the governor, who must issue writs of election, directed to the sheriffs of the counties in which such election is required to be held; and must specify therein the district or county in which, and the day on which, such election is to be held; the cause and object of the same; the name of the person in whose office the vacancy has occurred; and in all cases in which a special election is directed in a district composed of more than one county, such election must be directed to be held on the same day in each county.

1601 (362) (267). **Proclamation of election for congress or state officers.**—The governor must give notice of any special election for representatives in congress, or state officers, by proclamation.

1602 (363) (268). **Sheriff to give notice of elections in his county.** Whenever the sheriff of any county receives a writ of election directing a special election to be held, or receives notice of a special election for representatives in congress, or for any state or county officers, such sheriff must immediately give notice by proclamation of the time, place and object of such election as provided by law.

1603 (364) (269). **Sheriff must notify probate judge and clerk.** When any special election is ordered by the governor, the sheriffs of the counties in which such election is to be held, must, within three days after receiving notice thereof, notify the probate judge and clerk of the circuit court of their respective counties of such special election.

1604 (365) (270) **How conducted and certificates given.**—Special elections are to be held and conducted, the returns thereof made, and certificates given, and, unless otherwise expressly provided, regulated in all respects by the provisions in relation to general elections.

ARTICLE 7.

THE BALLOT.

Feb. 21, 1893, p. 887, §14.

1605. Voting shall be by secret official ballot.—In all elections held in this state on any subject which may be submitted by law to a vote of the people, and for all or any state, county, district or municipal officers, the voting shall be by secret official ballots printed and distributed as provided in this article, and no ballot shall be received or counted in any election except it be provided as herein prescribed.

Ib. §16.

1606. Nominations; certifying the same.—The probate judge of each county shall cause to be printed on the ballots to be used in their respective counties the names of all candidates who have been put in nomination by any caucus, convention, mass-meeting, primary election or other assembly of any political party or faction in this state and certified in writing and filed with him not more than sixty nor less than twenty days previous to the day of election. The certificate must contain the name of each person nominated and the office for which he is nominated and must be signed by the presiding officer and secretary of such caucus, convention, mass-meeting, or other assembly, or by the canvassing-board of such primary election, and their signatures must be duly acknowledged by one or more of them before an officer authorized by law to take acknowledgments. The judge of probate shall also cause to be printed upon the ballots the name of any qualified elector who has been requested to be a candidate for any state, county, municipal or federal office by written petition signed, in case of a candidate for a state or federal office by at least five hundred electors, and in case of a county or municipal office, by at least twenty-five electors qualified to vote in the election to fill said office, when such petition has been filed with him not more than sixty nor less than twenty days previous to the election.

In case of a person to be voted for by the electors of the whole state, or of an entire congressional district or judicial circuit or division, the certificate of nomination or the petition must be filed in the office of the secretary of state not less than thirty days before the day of election; and the secretary of state must thereupon immediately certify, to the judge of probate of each county in the state in case of an officer to be voted for by the electors of the whole state, and to the judges of probate of the counties composing the circuit, division or district in case of an officer to be voted for by the electors of a circuit, division or district, upon suitable blanks to be prepared by him for that purpose, the fact of such nomination and the name of the nominee or nominees, and the office to which he or they may be nominated. In case of a person to be voted for by the electors of a senatorial district, the petition or certificate of nomination must be filed with the judge of probate of each county composing the senatorial district.

1607. Contents of the ballot.—The ballots printed in accordance with the provisions of this article shall contain the names of all candidates nominated by caucus, convention, mass-meeting, primary election or other assembly of any political party or faction, or by petition of electors, and certified to him as provided in the preceding section; but the name of no person shall be printed upon the ballots who may, not less than twenty days before the election, notify the judge of probate, in writing acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination or petition of electors. And in addition to the names printed upon said ballots, and whether there be any names printed thereon or not, there shall be printed under the title of each office to be filled at the election, blank lines in number equal to the number of persons who may be elected to fill that office. The order in which the titles of the several offices to be filled may be arranged upon the ballots shall be left to the discretion of the judge of probate, but the names of all candidates for the same office must be printed together and arranged alphabetically according to the initial letters of their surnames irrespective of party. Ib. §§16, 19.

1608. Constitutional amendments, how printed.—Whenever a constitutional amendment or other public measure is submitted to a vote of the people, the substance of such amendment or other public measure must be twice in the same language clearly indicated upon the ballot after the list of candidates, followed in one case by the word "Yes," and in the other by the word "No." Ib. §20.

1609. Pay for printing.—The printing and delivery of the ballots and cards of instructions to voters shall, in municipal elections, be paid for by the several cities or towns, and in all other elections by the several counties respectively. Ib. §15.

1610. Preserving certificate and petitions of nomination.—The probate judge shall cause to be preserved all certificates and petitions of nomination filed in his office under the provisions of this article Ib. §18.

for six months after the election for which such nominations are made.

Ib. §21. **1611. Form of the ballot.**—All ballots provided by the judge of probate of any county for an election shall be alike, printed in plain type, in straight lines, upon plain white paper of such thickness that the printing cannot be distinguished from the back, with a slender line between each name and extending sufficiently to the left of the names to easily permit making a cross-mark (X) before each name, and in the appropriate place the words "Vote for one" (or two, or other number, as the case may be), to indicate the number which may be elected to each office, and shall be substantially in the following form, except the order in which the several offices to be filled are stated, namely:

OFFICIAL BALLOT, ELECTION —— 18—.

(*Make a cross-mark (X) before the name of the candidate of your choice.*)

Vote for one.	*For Governor.*
	Henry Fisher.
	William Jones.
	John Smith.
Vote for one.	*For Sheriff.*
	Thomas Jones.
	William King.
Vote for two.	*For Representatives in the General Assembly.*
	William Daniels.
	John Doe.
	Thomas Moore.
	James White.
	School Amendment to the Constitution. Yes.
	School Amendment to the Constitution. No.
	Road Bonds. Yes.
	Road Bonds. No.

Ib. §22. **1612. Ballots bound together.**—All ballots for use in each precinct shall be fastened together in convenient numbers in books or blocks in such manner that each ballot may be detached and removed separately. Each ballot shall have attached to it a stub of sufficient size to enable one of the inspectors to write or stamp his name or initials thereon and so attached to the ballot that when the same is folded the stub can be detached therefrom without injury to the ballot or exposing the contents thereof.

1613. Number provided.—There shall be provided for each voting-place at least one hundred ballots for each fifty registered electors at that place. Ib. §23.

1614. When judge of probate fails to do his duty.—In the event the judge of probate of any county is unable, or neglects, or fails, or refuses to perform the duties prescribed in this article, the duties, responsibilities and authority of the judge of probate shall devolve upon the clerk of the circuit court of the county. Ib. §45.

1615. Municipal elections, duties of mayor.—In case of any municipal election held at a time different from a general state or federal election, the duties herein prescribed for the judge of probate in respect to receiving nominations, printing and distributing ballots and cards of instruction, shall be discharged under the same sanctions by the mayor or other chief executive officer of the city or town. Ib. §47.

ARTICLE 8.

CONDUCT OF THE ELECTION.

1616. Voting-booths.—The sheriff of each county, at the expense of the county, or in case of a municipal election, the mayor or other chief executive officer, at the expense of the city or town, shall provide at each polling-place a room or covered inclosure, and in such room or covered inclosure, shall provide booths or compartments, one booth or compartment for each one hundred or fraction of one hundred over fifty electors registered in the precinct for that election, and shall furnish each booth with a shelf or table for the convenience of electors in the preparation of their ballots. Each booth or compartment shall be so arranged that it will be impossible for one elector at a shelf or table in one compartment to see an elector at a shelf or table in another compartment in the act of marking his ballot. Each voting shelf or table shall be kept supplied with conveniences for marking the ballots. Ib. §24.

1617. Cards of instruction.—The judge of probate shall cause to be printed in large type cards of instruction for the guidance of electors in preparing their ballots. He shall furnish to the sheriff twelve, or more, if necessary, such cards for each precinct, and it shall be the duty of the sheriff to post one of such cards in each booth or compartment for the preparation of ballots, and not less than three in prominent places elsewhere about and outside of the polling-place on the day of election. Such cards shall be printed in large clear type, and shall contain full instructions to electors as to what should be done: First, to obtain ballots for voting; second, to prepare the ballot for deposit in the ballot-box; third, to obtain a new ballot in place of one accidentally spoiled. Ib. §26.

1618 (366) (271). **Hours of opening and closing the polls.**—The polls must be opened at each place of voting, in each precinct, between the hours of eight and nine o'clock in the morning, and be

kept open without intermission or adjournment until the hour of five in the afternoon and no longer.

1619 (367) (272). **Proclamation to be made.**—The inspectors, before they commence receiving ballots, must cause it to be proclaimed aloud at the place of voting, that the election is opened.

1620 (368) (273). **Elector must be registered and must vote in his precinct.**—At all elections by the people of this state the elector must vote in the county and precinct of his residence and nowhere else, and must have registered as provided in this chapter; and if any elector attempts to vote in any precinct other than that of his residence or without having registered for that election his vote must be rejected.

(See note, page 509.)

Feb. 21, 1893, p. 837, §28.

1621. Persons permitted in the polling-place.—Except as electors are admitted, one at a time, to vote, and except the sheriff, or his deputy, the inspectors and clerks of election, as many electors as there may be booths or compartments, and as many markers as may be necessary to give every physically disabled or illiterate voter an opportunity to vote, no person shall be permitted within fifty feet of the polling-place.

Ib. §32.

1622. Preparing the ballot.—Each elector, upon entering the polling-place, shall be given one ballot by the inspectors. Before delivering the ballot to the elector at least one of the inspectors shall write or stamp, or shall have already stamped or written, his name or the initials of his name on the stub attached to the ballot; on receiving the ballot the elector shall forthwith, and without leaving the polling-place, retire alone to one of the booths or compartments provided for that purpose, and there prepare his ballot by marking with pen and ink or pencil or stencil in the appropriate place or margin a cross-mark (X) before the name of the candidate of his choice for each office to be filled, or by filling in the name of the candidate of his choice in the blank space provided therefor and marking a cross-mark (X) in the appropriate margin, and likewise by marking a cross-mark before the answer he desires in case of a constitutional amendment or other question submitted to a vote of the people.

Ib. §§33, 34.

1623. Assistance to electors.—Any elector applying to vote, who shall declare on oath, which may be administered by any one of the inspectors, that by reason of his inability to read the English language, or by reason of blindness, or the loss of the use of his hand or hands, he is unable to prepare his ballot, may have the assistance of a marker to be selected by him from the number of markers appointed by the inspectors, or, in the event no markers are available, of an inspector to be selected by him, in the preparation of his ballot, and the marker or inspector so selected shall retire to a booth or compartment with the elector and there mark the elector's ballot by marking with pen and ink or pencil or stencil cross-marks (X) before the names of each candidate for each office to be given to him by the elector without suggestion or interference from the marker or inspector. The marker or inspector assisting the elector shall then

deliver the ballot to the elector and withdraw from the booth or compartment. In all other respects he shall vote as is required of other electors; but no candidate for election shall act as marker or inspector in assisting any elector in the preparation of his ballot; and in all cases any elector asking assistance in the preparation of his ballot, before retiring to the booth, may have one of the clerks of election to read over to him the titles of the offices to be filled and of the candidates therefor.

1624. When elector spoils his ballot.—Any elector who shall by accident or mistake spoil a ballot so that he cannot conveniently or safely vote the same, may return it to the inspectors and receive another in lieu thereof. In no case shall any person be permitted to carry a ballot outside of the polling-place. Ib. §40.

1625 (371) (275). **Depositing the ballot.**—After preparing his ballot the elector shall fold the same so as to conceal the face thereof and show the stub thereto attached with the name or initials of the inspector, and hand it to the receiving-inspector. The inspector must receive the ballot folded, and call the name of the elector audibly and distinctly, and the name of each elector whose ballot has been received must be immediately taken down by each clerk on separate lists, which shall be headed "names of voters," and called "poll-lists"; and the number of the order in which such elector votes must at the same time be entered by each clerk against his name, the first elector voting being numbered one, the second, two, and so on, to the last elector voting. Ib. §41.

1626 (372) (276). **Duty of inspector as to ballot.**—The inspector receiving the ballot, shall detach the stub and pass the ballot to each of the other inspectors, and it must then, without being opened or examined, be deposited in the proper ballot-box. Ib.

1627. Time booth may be occupied.—When all the booths or compartments are occupied and other electors are waiting to vote, no elector shall occupy a booth or compartment for a longer time than five minutes. No elector shall be allowed to occupy a booth or compartment already occupied by another, nor to speak or converse with any one, except as herein provided, while in the polling-place. Ib. §30.

1628. Elector to withdraw from booth.—After having voted, or declined or failed to vote within five minutes, the elector shall immediately withdraw from the polling-place and go beyond the prohibited distance and shall not enter the polling-place again. Ib. §31.

1629 (373) (277). **Challenges.**—Any qualified elector of the precinct in which any person proposes to vote, shall have the right to challenge such person so offering to vote, who, he may know or suspect, is not entitled and duly qualified as an elector to vote at the precinct where he offers to vote. The challenge shall be communicated to the inspectors before the person is permitted to vote, by the sheriff or some other officer or person in attendance and in charge of admission to the polling-place, when his right to vote must be determined as provided in the next section. Ib. §29.

1630 (374) (278). **Oaths administered by inspectors in case of**

challenge.—When any person offering to vote is challenged by any qualified elector, before such person shall be allowed to vote, he shall take and subscribe an oath which one of the inspectors shall tender and administer to him, and which shall be in the following form:

"State of Alabama, } I, —— ——, do solemnly swear (or affirm)
County of ——. } that I am a duly qualified elector under the constitution and laws of the State of Alabama, and that I have resided in the State of Alabama one year next preceding this election, three months in this county, and have actually resided thirty days in this precinct next preceding this day (or in case of change of residence provided for by section 1556, have resided in the state one year, three months in this county, thirty days in this city and one day in this precinct), all immediately preceding this election, and that I am twenty-one years of age, or upwards, and that I have not voted on this day at any general or special election at any place of voting, and that I have not been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or any crime punishable by law with imprisonment in the penitentiary; so help me God."

And in addition to such oath, if the person so challenged is not personally known to one of the inspectors to have the qualifications required by law, then one of them shall require such person, before he shall be allowed to vote, to prove his identity and residence in the state, county and precinct in which he offers to vote, by the oath of some elector personally known to some one of such inspectors to be a qualified elector, which oath shall be administered by one of the inspectors, and be in the following form:

"State of Alabama, } I, —— ——, do solemnly swear (or affirm)
County of ——. } that I have known (here insert the name of the person offering to vote) for the last twelve months preceding this election, and that he has been a resident of this state for said time, three months in this county, and that he has actually resided in this precinct for the last thirty days preceding this election (or in case of the change of residence provided for by section 1556, that he has resided in this state for one year, three months in this county, thirty days in this city, and one day in this precinct), all immediately preceding this election; and I believe that he is twenty-one years of age, or upwards, and that he has not voted before on this day at any general or special election; so help me God."

And upon such oath being duly taken and subscribed, the ballot of the person offering to vote, if he has registered, must be received and deposited as other ballots of qualified electors. And it shall be the duty of the inspectors to file all the oaths so taken and subscribed; and when the election is closed, forward them in a sealed package to the judge of probate who shall lay them before the next grand jury sitting for the county.

1631 (375) (279). **Inspector must inform person challenged of penalty.**—When any person offering to vote at any election in this state has been challenged, before administering the oath prescribed,

it shall be the duty of one of the inspectors to inform such person that if he takes the oath willfully and falsely, he is guilty of perjury, and, on conviction, may be imprisoned in the penitentiary for not less than two years.

1632 (376) (280). **Rejected ballot marked and laid aside.**—If the person challenged refuses to take the oath, or if he fails to prove his identity and residence when and in the manner required, or if it appears that he has not registered for that election, if it be a general election, his vote shall be rejected and the ballot, marked with his name, shall be laid aside by the inspectors.

1633 (377) (281). **Sheriff and deputies to attend.**—It shall be the duty of the sheriff of each county, on each day of election, to be present in person or by deputy at all election precincts where elections are held in his county, and it shall be his duty to preserve good order; and in order that every elector who desires to vote may do so without interference or interruption, and to maintain good order, such sheriff or his deputy, may especially deputize a sufficient force to act at all election precincts on the day of any election that he may deem necessary, and, in case of necessity, may raise a posse comitatus to put down all riots or attempted riots, or disturbances. Feb. 21, 1893, p. 837, §46.

1634 (378) (282). **Arrest of elector on day of election.**—An elector must not be arrested on the day of election unless it be for a felony or for a breach of the peace attempted or committed on that day, or for a violation on that day of a provision of the election law. For such breach of the peace or attempted breach of the peace or violation of the provisions of the election law, the sheriff or his deputy may arrest without process and commit to jail until the offender shall give bond with good and sufficient surety, to be approved by the sheriff, for his appearance at the next term of the circuit or city court to answer any indictment which may be found against him.

1635 (379) (283). **Arrest of persons intoxicated.**—Any person found drunk or intoxicated about any polling-place during any election, shall be arrested by the sheriff or his deputy and dealt with as prescribed in the preceding section.

1636 (380) (284). **Unlawful to sell or give away liquor.**—It shall be unlawful for any person to sell or give away any liquors of any kind or description during the day on which any election may be held, or on the preceding day; and it shall be the duty of the sheriff, deputy-sheriff, or any constable to arrest any person violating the provisions of this section and deal with them as above prescribed.

ARTICLE 9.

COUNTING THE VOTE; MAKING THE RETURNS; DECLARING THE RESULT.

1637 (381) (285). **Counting the votes.**—It is the duty of all inspectors of election in the election precincts, immediately on the closing of the polls, to count the votes polled.

As amended Feb. 21, 1893, p. 837, §42.

1638 (382) (286) (264) (222). **Manner of counting.**—In counting, the returning-officer, or one of the inspectors, must take the ballots, one by one, from the box in which they have been deposited, at the same time reading aloud the names of the persons written or printed thereon before whose names a cross-mark shall have been made, and the office for which such persons are voted for; they must separately keep a calculation of the number of votes each person receives and for what office he receives them; if the elector has marked more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the elector's choice for any office to be filled, his ballot shall not be counted for such office, but this shall not vitiate the ballot so far as properly marked, nor shall any ballot be rejected for any technical error which does not make it impossible to determine the elector's choice, and nothing in the election law shall be construed so as to prevent any elector from voting for any qualified person other than those whose names are printed on the ballot.

1639 (383) (287). **Statement of votes and one poll-list certified, sealed up and delivered to returning-officer.**—As soon as the ballots are all counted, the inspectors must ascertain the number of votes received for each person and for what office, and must make a statement of the same in writing, which statement must be signed by them; they must also certify in writing on one of the poll-lists, that such poll-list is the poll-list of the election precinct at which they were inspectors, the day and year on which such election was held, and for what offices, which certificates must be signed by them; and such statement of the poll-lists and votes, thus certified, must be sealed up, together with a list of the registered voters in such precinct at such election, on such day, in a box to be furnished by the sheriff of the county, one or more for each precinct, and to consist of wood, tin, or sheet iron, and securely fastened by locks, directed to the sheriff of the county, if there be one, and if none, then to the person discharging the duties of such office, and immediately deliver the same to the returning-officer of the precinct.

1640 (384) (288). **Ballots and other poll-list disposed of.**—The inspectors must count the ballots deposited in the box, and as soon as all the ballots contained in the box are counted, the inspectors shall roll up the ballots so counted and label the same so as to show for what officer or officers the ballots contained therein were received and, when so rolled up and labeled, shall be securely sealed; the rejected ballots, if any, shall also be rolled up and labeled as rejected ballots and sealed up as the other parcels; and the packages so sealed up and labeled, together with one poll-list, which shall also be securely sealed up, shall be returned to, and securely fastened up in the box from which such ballots were taken and counted and which shall also be sealed and labeled so as to show the nature of its contents, and shall be kept by one of the inspectors for sixty days; and then the packages shall be taken out of the box, without opening or unsealing the packages, and destroyed, unless within that time,

the inspector having them in custody is notified that the election of some officer for which the election was held will be contested, in which case he must preserve the box containing the ballots cast for such contestant until such contest is finally determined, or until such box is demanded by some other legally constituted custodian during such contest.

1641 (385) (289). **Statement and poll-lists returned to county returning-officer.**—The statement of votes and the poll-list delivered to the returning-officer of the precinct must be delivered to the returning-officer of the county within forty-eight hours after the election.

1642. No person permitted in the polling-place.—No person shall be permitted under any pretext whatever to come within fifty feet of any door or window of any polling-place from the opening of the polls until the completion of the count of the ballots and certification of the returns, except as provided in section 1621. Feb. 21, 1893, p. 837, §25.

1643 (386) (290). **Compensation of returning-officer, inspectors and clerks.**—The returning-officer, the inspectors and the clerks shall each be entitled to one dollar and fifty cents; and the returning-officer, in addition, to five cents a mile in going to, and returning from the county-site, computing the distance from the place of holding the election; the several claims to be paid out of the county treasury, on proper proof of the service rendered, and to be preferred claims, payable from any money in the treasury not specially otherwise appropriated.

1644 (387) (291). **Vote of county estimated.**—On Saturday next after the election, at the hour of twelve, meridian, the returning-officer of the county, in person or by deputy, and the judge of probate and clerk of the circuit court shall assemble at the court-house; or if there is no such judge or clerk, or if either of them fails to attend, or if either of them is interested by reason of having been a candidate at such election, his place must be supplied by a respectable freeholder or householder of the county; and if all such officers are of the same political party, then the returning-officer of the county must summon three reputable persons, resident householders or freeholders of the county, members of the opposite political party, to attend at such time and place; and in the presence of such other persons as choose to attend, the board of supervisors shall make a correct statement from the returns of the vote from the several precincts of the county, of the whole number of votes given therein for each officer, and the persons to whom such votes were given.

Leigh v. State, 69 Ala. 261; State v. Hamil, 97 Ala. 107; State v. Cobb, 108 Ala. 9.

1645 (388) (292). **Declaration of the result.**—Within ten days after ascertaining the result of an election of county officers, including members of the house of representatives of the general assembly, the board of supervisors must make in writing a public declaration of the result, stating the name of each officer elected and the office to which he was elected. The declaration must be signed by at least

two of the supervisors and must be published by filing the original in the office of the judge of probate and by posting a copy thereof at the court-house door, and at three other public places in the county.

1646 (389) (292). **Certificate as to certain officers sent to secretary of state.**—The board of supervisors must, as soon as they have ascertained the result of an election, make, on blanks furnished by the secretary of state, certificates stating the exact number of votes cast in the county for each person voted for, and the office for which such person was voted for, and file the certificates with the judge of probate, who must immediately forward such certificates, as to all other officers than the governor, secretary of state, auditor, treasurer, and attorney-general, to the secretary of state.

1647 (390). **Counting returns sent to secretary of state; proclamation of result.**—All returns of elections required by law to be sent to the secretary of state, must, within fifteen days after an election, be opened and counted in the presence of the governor, secretary of state and attorney-general, or two of them, and of the result of the election as thus ascertained, except as to officers provided for in section 1645 (388), the governor must give notice by proclamation published in some newspaper at the seat of government.

1648 (391) (292). **Certificates in certain cases sent to speaker of the house of representatives.**—The certificates of the board of supervisors as to the election for governor, secretary of state, auditor, treasurer and attorney-general, must be by the judge of probate forwarded to the governor for the speaker of the house of representatives at least ten days before the time fixed for the next meeting of the general assembly, and must be by the governor delivered, unopened, to the speaker on his election.

1649 (392) (293). **Poll-lists and lists of registered voters to be filed in the office of the judge of probate.**—After having ascertained the result of an election, made declarations thereof, and made the certificates provided for in sections 1646 (389) and 1648 (391) the board of supervisors must file the poll-lists and lists of registered voters in the office of the judge of probate, which shall be open to the inspection of any elector of the county.

ARTICLE 10.

CERTIFICATES OF ELECTION.

1650 (393) (294). **Certificates of election.**—It shall be the duty of the secretary of state, within ten days after receiving the returns of election from the judge of probate of each county, to furnish, from a count of the actual vote cast, as the same appears by the returns certified to him, certificates of election to members of the general assembly and to members of congress.

1651 (394) (295). **Speaker of house opens returns and proclaims results; returns filed.**—It shall be the duty of the speaker of the house of representatives, within the first five days of the ses-

sion of the general assembly, in the presence of a majority of the members of the general assembly, to open the returns furnished him under section 1648 (391), ascertain and proclaim the result of such election, after which such returns shall be filed and kept in the office of the secretary of state subject to the inspection of any elector of the state. The person having the highest number of votes for either of said offices, shall be declared duly elected; but if two or more shall have an equal and the highest number of votes for the same office, the general assembly, by joint vote, without delay, shall choose one of said persons for said office.

1652 (395) (297). **Tie vote in other cases; how decided.**—In all elections where there is a tie between the two highest candidates for the same office, for all precinct or county officers, it shall be decided by the sheriff of the county; and in case of the office of circuit judge, chancellor, or any state officer not otherwise provided for in the preceding section, it shall be the duty of the secretary of state, in the presence of the governor and such other electors as may choose to be present, to decide the tie by lot.

ARTICLE 11.

ELECTORS FOR PRESIDENT AND VICE-PRESIDENT; REPRESENTATIVES IN CONGRESS.

1653 (435) (342) (388) (339). **Presidential electors and representatives in congress to be elected.**—On the day prescribed by this Code, there are to be elected, by general ticket, a number of electors for president and vice-president of the United States, equal to the number of senators and representatives in congress to which this state is entitled at the time of such election; and there shall be elected one representative in congress for each congressional district.

1654 (436) (343). **Supervisors make return to secretary of state.** In all elections for electors for president and vice-president, and for representatives in congress, the board of county supervisors of each county must, within five days after making the statement of the county vote, return the result of the same to the secretary of state.

1655 (437) (344). **Governor estimates returns and gives notice of election.**—Within fifteen days after the time for making the returns, the governor, in the presence of the secretary of state and attorney-general, or either of them, in the absence of the other, must estimate the returns, ascertain who are elected, and notify them by proclamation.

1656 (438) (345) (391) (342). **In case of tie, governor gives casting vote.**—If, on such estimate, it is found that an election of the number of electors to which the state is entitled is not made by reason of two or more persons having received an equal number of votes, the governor must forthwith decide between those having an equal number of votes.

1657 (439) (346) (394) (345). **Electoral meeting and supply of**

vacancies.—The electors of president and vice-president are to assemble at the seat of government at ten in the morning on the first Wednesday in December next after their election, or at that hour on such other day as may be fixed by congress, to elect such president and vice-president; and those of them present at that hour must at once proceed by ballot and plurality of votes, to supply the places of those who failed to attend on that day and hour.

1658 (440) (347). **Compensation of electors.**—Each elector for president and vice-president shall receive eight dollars for each day he necessarily attends at the seat of government, and twenty cents for every mile traveled to and from the same, to be estimated in the same manner as is provided by law in relation to members of the general assembly from his county, to be paid, on oath of such elector, by a warrant on the state treasurer.

ARTICLE 12.

ELECTIONS IN NEW COUNTIES.

1659 (441) (348) (397) (348). **New county; suffrage; representation.**—Every new county, as to the right of suffrage and representation in elections for the general assembly and for congress, is to be considered as part of the county or counties from which it was taken, until the right of separate representation is given by act of the general assembly.

1660 (442) (349) (398) (349). **Right of elector to vote in new county.**—No elector can vote at any precinct in any new county, for representative in congress, or members of the general assembly, until an act of the general assembly is passed, giving to such county a separate representation, unless such elector would have been entitled to vote at such precinct for such officers before the formation of such new county.

1661 (443) (350) (399) (350). **Returns of elections to congress and general assembly in new county.**—The inspectors and returning-officers of each election precinct in any new county must, until such county is entitled to a separate representation, make returns of the elections of representatives in congress and members of the general assembly to the returning-officer of the county in which such precinct was situated before the formation of such new county; for all other officers the returns must be made to the returning-officer of such new county.

ARTICLE 13.

ELECTIONS ON AMENDMENTS TO THE CONSTITUTION.

1662 (445) (352) (401) (352). **Counting and returning the vote on constitutional amendment.**—The vote on an amendment proposed to the constitution shall be counted and return made thereof

as is counted and returned the vote for members of the general assembly, the amendments, if more than one, being designated by substantially the language used to designate them on the official ballot.

1663 (446) (354) (403) (354). **Returns made to secretary of state.**—The board of supervisors shall ascertain the number of votes given in their respective counties for and against the proposed amendment when ascertaining the vote given for officers; the returning-officers of such county shall thereupon make return of such vote to the secretary of state immediately, together with a certificate, prepared from the poll-lists, of the total number of qualified electors in said county who voted at such election.

1664 (447). **Returns counted; result proclaimed.**—The secretary of state shall, in the presence of the governor and attorney-general, or of one of them, open such certificates and therefrom ascertain whether a majority of all the qualified electors of the state who voted at such election, voted in favor of such amendment or amendments; and the result of said election shall be made known by proclamation of the governor.

ARTICLE 14.

PENALTY FOR FAILING TO MAKE RETURNS.

1665 (448) (3372) (406) (357). **Penalty declared.**—If any officer required to make returns of any election to the secretary of state or to the speaker of the house of representatives, fails to make such returns within the time prescribed, he forfeits to the state five hundred dollars, recoverable by motion to be made by the solicitor of the proper circuit, in the name of the state, in the circuit court of the county of such returning-officer, upon three days' notice of such motion; and the certificate of the secretary of state, or of the speaker of the house of representatives, as the case may be, setting forth that such return has not been received, is presumptive evidence of the failure of such officer to make such return.

1666 (449) (3373) (407) (358). **Notice to the solicitor.**—Whenever the return of any officer, required to be made to the secretary of state or to the speaker of the house of representatives, is not received within the time prescribed, the secretary of state or speaker of the house of representatives must give notice thereof to the solicitor of the proper circuit and furnish him with the certificate specified in the preceding section.

ARTICLE 15.

CONTESTING ELECTIONS; PROVISIONS COMMON TO ALL CONTESTS.

1667. Contest of elections; grounds of contest.—The election of any person declared elected to the office of governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of edu- Feb. 10, 1893, p. 468, §1. Feb. 16, 1895, p. 757, §1.

cation, commissioner of agriculture, senator or representative in the general assembly, chancellor, judge of the circuit court, or to any office which is filled by the vote of a single county, or to the office of justice of the peace, or constable, may be contested by any person who was at the time of either of the said elections a qualified elector, for any of the following causes:

1. Malconduct, fraud, or corruption on the part of any inspector, clerk, marker, returning-officer, board of supervisors, or other person.*

2. When the person whose election to office was not eligible thereto at the time of such election.

3. On account of illegal votes.

4. On account of the rejection of legal votes.

5. Offers to bribe, bribery, intimidation, or other malconduct calculated to prevent a fair, free and full exercise of the elective franchise.

Clark v. Jack, 60 Ala. 271; Leigh v. State, 69 Ala. 261; Taliaferro v. Lee, 97 Ala. 92; State v. Cobb, 108 Ala. 9.

Ib. §2. **1668. When election not annulled.**—No malconduct, fraud or corruption on the part of any inspector, clerk, marker, returning-officer, board of supervisors, or other person, nor any offers to bribe, bribery, intimidation or other malconduct, which prevented a fair, free and full exercise of the elective franchise, can annul or set aside any election unless thereby the person declared elected, and whose election is contested, be shown not to have received the highest number of legal votes, nor must any election contested under the provisions of this Code be annulled or set aside because of illegal votes given to the person whose election is contested, unless it appears that the number of illegal votes given to such person, if taken from him, would reduce the number of votes given to him below the number of legal votes given to some other person for the same office. Nor must any election be annulled or set aside because of the rejection of legal votes unless it appears that such legal votes, if given to the person intended, would increase the number of his legal votes to or above the number of legal votes received by any other person for the same office.*

Feb. 10, 1893, p. 468, §4. Feb. 16, 1895, p. 757, §11. **1669. Any voter must answer as to his qualifications.**—Any person examined as a witness may be required to answer if he voted at the election contested, and to answer touching his qualifications; and if he was not at such election a qualified voter, he may be required to answer for whom he voted. But if he should thereafter be prosecuted for voting illegally at such election, his answer to such question shall not be offered or received in evidence against him.

Feb. 10, 1893, p. 468, §4. Feb. 16, 1895, p. 757, §10. **1670. Either party may have copy of registration and poll lists.** It shall be the duty of the judge of probate of any county, upon the application of either party to any contest, or his agent, or attorney, to deliver to the party, his agent or attorney, a certified copy of the registration-lists and poll-lists (one or both) of his county or of any

*As amended by joint committee.

election precinct therein upon the payment of his fees for certifying and copying the same at the rate of fifteen cents a hundred words written by him in making such copy; and such copies, duly certified, shall be received as presumptive evidence of the facts therein stated, the registration-lists that the persons therein named were duly registered, and the poll-lists that the persons therein named voted at the election and precinct therein named.

1671 (407) (314). **Jurisdiction denied courts of chancery in election contests; appeal.**—No jurisdiction exists in or shall be exercised by any chancellor, chancery court, or any officer exercising chancery powers, to entertain any cause or proceeding for ascertaining the legality, conduct, or results of any election, except so far as authority to do so shall be specially and specifically enumerated and set down by statute; and any injunction, process, order, or decree from any chancellor, chancery court, or officer in the exercise of chancery powers, whereby the results of any election are sought to be inquired into, questioned, or affected, or whereby any certificate of election is sought to be inquired into, or questioned, save as may be specially and specifically enumerated and set down by statute, shall be null and void, and shall not be enforced by any officer, or obeyed by any person; and should any chancellor or other officer hereafter undertake to fine, or in anywise deal with any person for disobeying any such prohibited injunction, process, order or decree, such attempt shall be null and void, and an appeal shall lie forthwith therefrom to the supreme court then sitting, or next to sit, without bond, and such proceedings shall be suspended by force of such appeal; and the notice to be given of such appeal shall be five days.

ARTICLE 16.

CONTESTING ELECTIONS OF STATE OFFICERS.

1672. Contest of state office; statement; bond.—When any elector shall choose to contest any election for the office of governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of education, or commissioner of agriculture, he must, within ten days after the speaker of the house of representatives shall have opened the returns and proclaimed the result of the election for governor, secretary of state, state auditor, state treasurer and attorney-general as provided in this chapter, file with the speaker of the house of representatives a written statement of the grounds of such contest and a bond with good and sufficient sureties payable to the State of Alabama and conditioned for the payment of such costs as may accrue upon such contest in the event such contest shall result in favor of the contestee. Such bond must be in the sum of five thousand dollars and must be subject to the approval of the speaker of the house, and such bond when it shall be approved, shall be filed and recorded in the office of the secretary of state.

Feb. 16, 1895, p. 757, §3.

Ib. §4. **1673. Same; contents of statement; verification; service; amendments.**—The written statement of the grounds of contest must set forth specifically—

1. The name of the person contesting and that he was a qualified voter when the election was held.

2. The office which said election was held to fill and the time of holding the same.

3. The particular grounds of the contest. The statement shall set forth the name of the counties in which any of the alleged grounds of contest may have occurred, and shall state with particularity the names of the election precincts in each of such counties in which the grounds of contest may be alleged to have occurred. The statement must set out with particularity the grounds on which the declared vote of each of the named election precincts in each county is contested. Such statement of the grounds of contest must be sworn to by the elector making the contest before some officer authorized to administer oaths in the State of Alabama, and may be amended from time to time as may be determined by the two houses of the general assembly in joint convention assembled. The speaker of the house shall cause the clerk of the house forthwith to serve a copy of the statement on the person who may have been declared to have been elected to the contested office.

Ib. §5. **1674. Tried by joint convention of house and senate.**—The two houses of the general assembly in joint convention assembled and presided over by the speaker of the house of representatives shall constitute the tribunal for the trial of all contests for the office of governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of education, or commissioner of agriculture, and such joint convention shall fix a day for the trial which may be adjourned from day to day, and from time to time, as may be determined by the joint convention. A majority of the joint convention shall be competent to try all issues involved in the contest and render judgment on all questions arising during the progress of the trial including a final judgment on the contest. The proceedings of the joint convention, as well as all judgments rendered, shall be entered upon the journals of the senate and the house of representatives, and the final judgment of the joint convention upon the contest shall thereupon become effective as a judgment and shall have the force and effect of vesting the title to the office which may be the subject of contest in the person in whose favor the judgment may be rendered.

Ib. §6. **1675. Commission elected to take testimony.**—When any contest shall have been commenced under the provisions of this Code for any of the officers mentioned in the preceding section, it shall be the duty of the general assembly, in joint convention, to elect by ballot three senators and five representatives who shall act as a commission to take the testimony to be submitted on the contest. Every member of the joint convention, at such time as may be fixed by resolution of the two houses, shall vote for two senators and three

representatives as members of the commission, and the three senators and five representatives who receive the highest number of votes shall be declared elected commissioners.

1676. Sitting of commission.—The commission provided for in the preceding section shall sit at such times and places as may be directed by the joint convention, and shall be presided over by a chairman of its own selection, and each member of the commission shall receive four dollars per diem during the time of actual sitting when the general assembly is not in session, and necessary expenses, to be paid by the auditor's warrant drawn upon the treasurer when the chairman of the commission shall certify the same to the auditor. Ib. §7.

1677. Commission take testimony.—The commission shall take testimony on the part of the contestant and also on the part of the contestee, and shall have power to send for witnesses, books and papers anywhere in the State of Alabama; shall have power to issue warrants, under the hand of the chairman, to any judge, justice of the peace, clerk of any court of record, or such other competent and discreet person as the commission may appoint to take the deposition of witnesses at such time and place as the warrant shall direct, and the points as to which the testimony is to be taken shall be set forth in such warrant. The evidence taken in the case of a contest of the election of one officer may be used in the contest of the election of any other officer voted for at the same election and contested before the general assembly; provided, notice that such evidence will be used, or offered, shall be given to the party or parties interested in such other office, so that all parties interested may be present and participate in the taking of such testimony, and provided, the party instituting the contest does not object by filing his written objection with the commission. Ib. §8.

1678. Notice to adverse party.—Whenever either party shall apply to the commission to examine witnesses either before the commission or by warrant issued from the commission, the adverse party shall have five days' notice of said application and of the time and place of taking such depositions. Ib. §9.

1679. Commission has power to punish for contempt.—If any witness, being summoned, fails to attend, or being summoned with a subpœna duces tecum, fails and refuses to produce the paper or document required to be produced by the subpœna, the commission shall have the right and authority to punish said witness for contempt by a fine not exceeding five hundred dollars or by imprisonment in any county jail in the state for a period not to exceed thirty days, one or both, and in case any witness shall fail to appear or produce any book or document before any judge, justice of the peace, clerk of court, or other person having a warrant from the commission, the judge, justice of the peace, clerk of court, or other person, must certify the fact to the commission, which may thereupon punish such witness for contempt as provided in this section. Ib. §12.

Ib. §13. **1680. Evidence confined to the allegations.**—No evidence shall be taken on the part of the contestant unless to sustain some one of the specific allegations of the original or amended statement of grounds of contest. Nor shall any evidence be taken on the part of the contestee except in rebuttal of the specific allegations of the original or amended statement of the grounds of contest. But upon five days' notice the contestee shall have the right to take evidence of (1) any malconduct, fraud or corruption on the part of any inspector, clerk, marker, returning-officer, board of supervisors, or other person; (2) of illegal votes cast for some other person than the contestee; (3) of the rejection of legal votes cast for the contestee; (4) of offers to bribe, bribery, intimidation, or other malconduct which prevented a fair, free and full exercise of the elective franchise in any election precinct in the State of Alabama, the election in which is not put in issue by the original or amended statement of the grounds of contest; and when the contestee shall take evidence as herein provided, the contestant shall be permitted to take evidence in rebuttal.

Ib. §14. **1681. Each party entitled to be present.**—Each party shall have the right to be present at the taking of any evidence, in person, or by agent or attorney.

Ib. §15. **1682. Commission to report its conclusions and the evidence.** It shall be the duty of the commission to examine the evidence adduced upon the contest and shall report its conclusions to the joint convention of the two houses and all evidence taken under the provisions of this article shall be returned by the commission to the speaker of the house at such time as the joint convention may direct.

Ib. §16. **1683. Pay of witnesses.**—The witnesses shall be allowed for their attendance seventy-five cents a day and three cents a mile coming and going from their place of residence to where such depositions are taken by the route most usually traveled.

Ib. §17. **1684. Duty of sheriffs.**—The sheriffs of Alabama in their respective counties are required to serve subpœnas and such other writs as the commission may have authority to issue, and shall be allowed the same compensation as is now allowed by law for similar services performed at the command of the courts.

Ib. §18. **1685. Execution for costs.**—After the determination of the contest, the clerk of the house of representatives must tax the costs accrued and certify the amount of each separate item, the name of the person entitled thereto, and the result of such contest and the names of the sureties on the bond for contest to the clerk of the circuit court of Montgomery county and said clerk must thereupon issue execution against the unsuccessful party, which execution must be made returnable to the term of court next after its issue; and alias and pluries executions may be issued as often as may be necessary. And if it be certified that the determination of the contest was against the contestant the execution must issue against the sureties on the bond for contest as well as against the contestant.

ARTICLE 17.

CONTESTING ELECTIONS OF MEMBERS OF THE GENERAL ASSEMBLY, CHANCELLOR, CIRCUIT JUDGE, ANY OFFICE FILLED BY THE VOTE OF A SINGLE COUNTY, JUSTICE OF THE PEACE OR CONSTABLE.

1686. Statement of grounds of contest.—When any elector chooses to contest the election of any person declared to be elected to the office of senator, representative in the general assembly, chancellor, judge of the circuit court, any office which is filled by the vote of a single county, justice of the peace, or constable, he must make a statement in writing, setting forth specifically— Feb. 10, 1892, p. 468, §3.

1. The name of the party contesting and that he was a qualified voter when the election was held.

2. The office which said election was held to fill, and the time of holding the same.

3. The particular grounds of said contest. This statement must be verified by the affidavit of such contesting party to the effect that the same is believed to be true. If the reception of illegal votes is alleged as a cause of contest, it is a sufficient statement of said cause to allege that illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of legal votes given to him to or below the number of legal votes given to some other person for the same office.

Parks v. Owens, 100 Ala. 634; Turnipseed v. Jones, 101 Ala. 593; Wade v. Oates, 112 Ala. 325.

1687. Notice of nature of evidence.—No testimony must be received of any illegal votes, or of the rejection of any legal votes in any contested election commenced under the provisions of this article, unless the party complaining thereof has given to the adverse party notice in writing of the number of illegal votes and by whom given, and for whom given, and at what precinct or voting-place cast, or the number of legal votes rejected, and by whom offered, and at what precinct or voting-place cast, which he expects to prove on the trial. Such notice must be served personally or left at the residence or usual place of business of the adverse party at least ten days before the taking of the testimony in reference to such votes. Ib. §2.

1688. When contest commenced; security for costs.—All contests of elections provided for in this article must be commenced within twenty days after the result of the election is declared, except as in this article otherwise provided; and at the time of commencing such contest and of the filing the statement in writing, the party contesting must give security for the costs of such contest, to be filed and approved as in this article provided. Ib. §3.

Hilliard v. Brown, 103 Ala. 318.

1689. Contest of senator or representative.—If the contest be of the election of a senator or representative in the general assembly, the elector contesting must file in the office of the clerk of the circuit court of any county of the senatorial district, if such contest be Ib. §5.

of the election of a senator, or in the office of the clerk of the circuit court of the county in which the election was held, if the contest be of the election of a representative in the general assembly, a statement in writing of the grounds of contest as provided in this article, and must give good and sufficient security for the costs of such contest to be taken and approved by the clerk. Of the statement in writing the person whose election is contested must have ten days' notice before the taking of the testimony by the service on him of a certified copy of such statement by the sheriff or a constable of the county, and such sheriff or constable must indorse on the original the fact of such service, and such indorsement is presumptive evidence of the fact.

Ib. **1690. Testimony; how taken.**—The testimony in the case of a contest provided for in the preceding section must be taken by deposition under commission issued by the clerk of the court where the statement of contest is filed, which commission must issue on the party applying for the same making and filing an affidavit stating the names of the witnesses, the place of residence of such witnesses, and that the testimony sought and expected is material. The depositions must be taken on interrogatories filed in the office of the clerk after making and filing the affidavit, and of the interrogatories and affidavit and of the names and residence of the commissioner or commissioners proposed to be appointed, ten days' notice must be given the adverse party by service on him personally or by leaving at his usual place of residence or business a copy of the interrogatories and affidavit to which must be appended notice of the name and residence of the commissioner proposed to be appointed. Such service must be made by the sheriff or a constable of the county, and within ten days thereafter such adverse party may file cross-interrogatories, to which the party filing the interrogatories may file rebutting interrogatories; and thereafter commission may issue. Of the time and place of taking the depositions, the commissioner must give each party five days' notice in writing, which notice may be served by the sheriff or a constable of the county. If the witnesses reside, or are to be examined within the county, the adverse party is entitled to demand that they be examined orally, separate and apart from each other, on giving notice within the ten days allowed him to file cross-interrogatories, that such examination is required; and if such notice be given, the commission issued must not be accompanied by the interrogatories filed, and must authorize and direct the commissioner to examine the said witnesses orally, separate and apart from each other, after giving each party five days' notice of the time and place of the examination. In the execution of all commissions to take testimony under this section, the commissioner must conform to and observe the requirements of the statute concerning the taking of depositions in civil suits at law, and has, and may exercise all the power and authority by the statute conferred on commissioners; and against defaulting witnesses all such proceedings may be had and taken as are authorized by said statute.

Roney v. Simmons, 97 Ala. 88.

1691. Depositions returned.—The commissioner must carefully envelope the depositions taken, with the commission attached, writing his name across the sealing of the envelope and indorsing thereon the names of the witnesses and the title and subject-matter of the contest, and direct the envelope to the clerk issuing the commission, and must, within five days after taking the deposition, file the same with the said clerk, or transmit the same by mail through the nearest post-office. The clerk must, within five days after the taking of testimony has been finished, and the depositions received in his office, make and certify under the seal of the court, a true and correct copy of the statement of the grounds of contest and of the return of service thereon, and must inclose the same with the depositions so taken and filed in his office, and must securely envelope the same, indorsing thereon the title and the subject-matter of the contest, and direct the package to the presiding officer of that branch of the general assembly before which the contest is to be tried, at the seat of goverment, and deposit the same, postage paid, in the nearest post-office. Ib.

1692. Costs taxed; execution issued.—The package mailed by the clerk must be opened by the presiding officer, and presented to the house over which he presides for such action as such house may deem proper. On the determination of the contest, the secretary of the senate, or the clerk of the house, as the case may be, must certify the result thereof to the clerk of the court in which the statement of contest was filed. The certificate must be filed in the office of the clerk and shall have the force and effect of a judgment against the unsuccessful party for the costs of the contest. And the clerk having taxed the costs, allowing the fees and costs allowed for similar services in civil cases at law, must issue execution for the amount thereof in the name of the successful party. If the party contesting be the unsuccessful party, execution must issue against him and his sureties for the costs. Ib.

1693. Contest of chancellor.—If the contest be of an election to the office of chancellor, the party contesting must file in the office of the clerk of the circuit court of the county of the residence of the person declared elected, the statement of the grounds of contest as required in this article, and give good and sufficient security for the costs of the contest, to be taken and approved by such clerk. Immediately thereafter the clerk must enter the contest on the trial-docket as a civil cause pending for trial in the circuit court, and the contest shall stand for trial and be heard in precedence of all other causes, civil or criminal, in said court, and must be proceeded in, tried and determined as are other civil causes in courts of law. Ib. § 6.

1694. Same; procedure; testimony.—Within two days after entering the said contest on the docket of said court, the clerk must issue a summons directed to the party whose election is contested accompanied by a certified copy of the statement of the grounds of contest, requiring such party, within ten days after the service of Ib. §§ 6, 7.

the summons, to appear and answer to the statement. The testimony on the contest must be taken by deposition as in civil cases at common law, but no affidavit, other than of the materiality of the testimony of the witnesses proposed to be examined, shall be required. Either party may, on giving five days' notice, require the examination before the commissioner to be oral, and that the witnesses be examined separate and apart from each other. The party against whom the depositions are to be taken, must have at least five days' notice of the time and place of taking such depositions and of the name and residence of the commissioner or commissioners proposed. The circuit court must try the contest at the first term after the commencement thereof, and the contest must be deemed and taken to have been commenced with the service of the summons as provided in this section, if thirty days have intervened after such service; but for good cause shown the trial of the contest may be continued to the next term or to a special term to be appointed by the court; but such contest must be tried at the second term unless continued by the failure of the presiding judge to attend and hold such term or because of his incompetency for legal cause to try and determine the contest. The contest must be heard and determined by the court without the intervention of a jury.

Ib. §8. **1695. Contest of a judge of the circuit court.**—If the contest be of an election to the office of judge of the circuit court, the party contesting must file in the office of the court of chancery of the county or district of the residence of the person declared elected, a statement in writing of the grounds of contest verified by affidavit, as prescribed in this article, and must give good and sufficient security for the costs of the contest, to be approved by the register. On the filing of the statement and the giving of the security, the register must make and certify to the chancellor of the division in which the contestee resides a certified copy of the statement, and on receipt of the copy, the chancellor must indorse thereon an order appointing a day for the trial of the contest, not less than thirty nor more than fifty days from the day of the reception of the certified statement, and fixing the place of trial, which must be at some place in the circuit in which the election was held, and where a court of chancery is required to be held, and must further order the register to issue a summons directed to the person whose election is contested, accompanied with a certified copy of the statement, requiring him to appear within ten days after the service of the summons and make answer to the statement, which summons shall be served by the sheriff or a constable at least twenty days before the day appointed for the trial. The testimony must be taken by deposition as is prescribed for the case of a contest of the election of chancellor.

Ib. §9. **1696. Contest of judge of the probate court.**—If the contest be of an election to the office of judge of the probate court, the party contesting must file in the office of the clerk of the circuit court of the county in which the election was held, a statement in writing verified by affidavit, of the grounds of the contest as provided in this

article, and must give good and sufficient security for the costs of the contest to be approved by the clerk. On the filing of the statement and the giving of the security the clerk must enter the contest on the trial-docket as a civil cause pending in said court for trial, and after having made such entry, the clerk must issue a summons, accompanied with a certified copy of the statement, directed to the party whose election is contested, requiring him within five days after the service of the summons, to appear and make answer to the statement, which summons must be served by the sheriff or by a constable of the county. The contest is triable by the court without the intervention of a jury, and must be heard and tried in precedence of all other causes, civil or criminal, standing for trial in the court. Either party is entitled to subpœna to compel the personal attendance of witnesses on the trial of the contest, and against defaulting witnesses such proceedings may be had as are had against other defaulting witnesses in civil causes pending in the court. Testimony may also be taken by deposition in the case and in like manner as depositions are taken in other civil cases pending in the court.

Taliaferro v. Lee, 97 Ala. 92; Parks v. State, 100 Ala. 634; Hilliard v. Brown, 103 Ala. 318.

Ib. §10.

1697 (417) (324) (346) (301). **Contest of justice of the peace, constable or other office filled by the vote of a single county.**—If the contest be of an election to fill the office of justice of the peace, constable, or any office filled by the vote of a single county not in this article otherwise provided for, the person contesting must file in the office of the judge of probate of the county in which the election was held, within fifteen days after the result of the election has been declared, a statement in writing of the grounds of contest verified by affidavit, as required by this article, and must give security for the costs of the contest to be approved by the judge of the probate court; but in no case of an election contested under the provisions of this section shall the judge of probate require security for more than five hundred dollars; and the judge of probate may, from time to time, as may seem just and proper, require additional or better security; but in no event shall such security exceed five hundred dollars, and when such additional security shall be given and approved, it shall supersede any bond theretofore given and shall stand as security for the entire costs of the contest. The statement having been filed and security for costs given, the judge of the probate court must appoint a day for the trial of the contest and must order a summons to issue to the party whose election is contested, accompanied with a copy of the statement, requiring such party to appear and make answer to the statement, within five days after the service of the summons. The judge of the probate court must appoint a day for the trial of the contest, not exceeding twenty days after the filing of the statement, and of the day appointed the party whose election is contested must have ten days' notice in writing served upon him by the sheriff or a constable of the county.*

*As amended by joint committee.

When judge of probate disqualified by interest.—Medlin v. Taylor, 101 Ala. 239; Morrow v. Russell, 99 Ala. 271.

Ib. **1698. Same; procedure; testimony.**—Either party to the contest is entitled to subpœna to compel the personal attendance of witnesses on the trial, which must be issued on application by the judge of probate, and the same proceedings may be had against defaulting witnesses as in matters litigated in the court of probate, such proceedings being returnable to any regular term of the court within three months after the same are taken. Testimony may also be taken by deposition in such cases and in like manner as in civil cases in courts of law, the commission to be issued by the judge of probate. If the ground of contest of the election be malconduct, fraud or corruption on the part of any inspector, clerk, marker, returning-officer, or other person, or because of bribery or offers to bribe imputed to the party whose election is contested, such party may demand a trial of those grounds by jury. All other grounds of contest may be determined by the judge of probate without the intervention of a jury. In the hearing and determination of the contest the judge of the probate court must be governed by the rules of law applicable to the hearing and determination of civil causes in courts of law.*

Ib. §11. **1699. In all contests ballots may be examined.**—In all contests of elections before the judge of probate, or before the chancellor, or the circuit court, the judge or chancellor presiding is authorized to make an examination of the ballots given or rejected in the election so far as he may deem it necessary to arrive at a correct judgment, and may make and enforce by attachment all necessary orders to obtain possession of the same, and must make all proper orders necessary for the return of the ballots to the proper custody after the same have been examined by him.

Ib. §12. **1700. Judgment rendered.**—If, on the trial of the contest of any election, either before the judge of probate, or the chancellor, or the circuit court, it shall appear that any other person than the one whose election is contested, received, or would have received, had the ballots intended for him and illegally rejected been received, the highest number of legal votes, judgment must be given declaring such person duly elected, and such judgment shall have the force and effect of investing the person thereby declared elected, with full right and title to have and to hold the office to which he is declared elected. If it appears that two or more persons have, or would have had, if the ballots intended for them and illegally rejected had been received, the highest and equal number of votes for such office, judgment must be rendered declaring the fact, and such fact must be certified to the officer having authority to fill vacancies in the office the election to which was contested. If the person whose election is contested is found to be ineligible to the office, judgment must be rendered declaring the election void, and the fact certified to the appointing power. If the party whose election is contested is found to

*As amended by joint committee.

have been duly and legally elected, judgment must be rendered declaring him entitled to have and to hold the office to which he was so elected.

1701. Contest not abated by death of contestant.—In all contests of elections, such contests are not abated by the death of the party commencing them before final judgment, if any qualified elector appears in court and substitutes himself as contestant, and gives good and sufficient security for the costs which have accrued or may accrue on the contest. But if no qualified elector appears and proposes to substitute himself as the party contesting, the contest abates on the death of the contesting party, and judgment must be rendered against his sureties for the costs of the contest which must be collected by execution in the name of the party whose election was contested. In all cases the person whose election is contested, if he be the successful party in such contest, is entitled to judgment for the costs thereof against the party contesting and his sureties, for which execution may issue returnable to the court of probate, or to the court of chancery, or to the circuit court, as the case may be. Ib. §13.

1702. Appeals.—In all contested elections before the judge of the probate court an appeal lies to the supreme court within five days after the rendition of the judgment. From the judgment or decree of the chancellor on the contest of an election of the judge of the circuit court, an appeal lies to the supreme court which must be taken within five days after the rendition of the decree or judgment. From the judgment of the circuit court on the contest of an election of a chancellor or of a judge of probate, an appeal lies to the supreme court within five days after the rendition of the judgment. Ib. §14.

1703. Costs of appeal.—On the taking of an appeal as provided in the preceding section, the appellant must give bond and security for the costs thereof to be approved by the judge of probate, register, or clerk of the circuit court, as the appeal may be taken from the judgment of the judge of probate, chancellor, or circuit court; and the appeal bond must be certified with the record to the appellate court. And if judgment be rendered confirming the judgment of the judge of probate, or of the chancellor, or of the circuit court, the supreme court must render judgment against the appellant and his sureties for the costs. An appeal in any and all cases, suspends the execution of the judgment or decree of the judge of probate, of the chancellor, or of the circuit court. Ib.

CHAPTER 41.

EMBALMERS. 1704–1711.

1704. State board of embalming established.—There is established the state board of embalming which shall consist of five Dec. 12, 1894, p. 108, §1.

members to be appointed by the governor who shall also have power to fill by appointment all vacancies occurring on the board. The members of the board shall be residents of this state and practical embalmers having experience in the business of embalming and the care and disposition of dead human bodies.

Ib. §§2, 3. **1705. Appointment and term of office.**—The governor shall annually on the first day of June, or as soon thereafter as practicable, appoint one member of the board who shall serve for a term of five years from the time of his appointment, and any member of the board shall be eligible for reappointment. The governor shall have power to remove from office any member of the board for neglect of duty, incompetency or improper conduct.

Ib. §4. **1706. Certificate of appointment.**—The governor shall furnish each member of the board a certificate of appointment, and the appointee shall qualify by taking the usual oath of office before an officer authorized by law to administer oaths in this state within ten days after appointment, and this fact must be noted by the officer on the certificate of appointment.

Ib. §5. **1707. Powers and duties of the board.**—For the protection of life and health, to prevent the spread of contagious diseases, and to regulate the practice of embalming and the care and disposition of the dead, the board shall have power and it shall be its duty—

1. To prescribe a standard of proficiency as to the qualifications and fitness of those persons who may engage in the practice of embalming and the care and disposition of dead human bodies.

2. To meet at least once in each year, and oftener as the proper and efficient discharge of its duties may require.

3. To elect annually a president and secretary from the members of the board, who shall serve for one year or until their successors shall be elected and qualified.

4. To adopt a common seal.

5. To adopt rules and regulations and by-laws not inconsistent with the laws of this state or of the United States, whereby the performance of the duties of the board and the practice of embalming dead human bodies shall be regulated.

Ib. **1708. Notice of meeting; quorum.**—At least fifteen days' notice of the time and place of meeting of the board shall be given by publication in at least three daily newspapers published in different cities or towns in the state. Three members of the board shall constitute a quorum for the transaction of business.

Ib. §6. **1709. Embalmers licensed; fee.**—Every person desiring to engage in the practice of embalming dead human bodies in any city or town of fifteen hundred inhabitants, or over, in this state, shall make written application to the state board of embalming for a license, accompanied by a license fee of five dollars, and shall appear before the board at a time and place to be fixed by the board; and if the board shall find, upon examination, that the applicant is of good moral character, and has a knowledge of the venous and arterial systems, the location of the heart, lungs, stomach, bladder, womb

and other organs of the human body; the location of abdominal, pleural and thoracic cavities; the location of the carotid, brachial, radial, ulnar, femoral and tibial arteries; the science of embalming and the care and disposition of the dead, and a reasonable knowledge of sanitation and the disinfection of dead bodies and the apartment, clothing and bedding of the deceased in cases of death from infectious or contagious diseases, the board shall issue to the applicant a license to practice the science of embalming and the care and disposition of the dead, and shall register such applicant as a duly licensed embalmer. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving a license shall have it registered in the office of the judge of probate of the county in which it is proposed to carry on said practice and shall display said license in a conspicuous place in the place where such business is carried on.

1710. Annual dues.—Every registered embalmer must pay annually to the secretary of the board a fee of two dollars for the renewal of registration. Ib. §7.

1711. Unlawful to practice embalming without license.—It shall be unlawful for any person not a registered embalmer to practice embalming, but nothing in this chapter shall be construed so as to apply to any person engaged in furnishing burial receptacles only, nor shall this chapter have effect except in cities and towns having a population of fifteen hundred or more.* Ib. §§9, 10, 12.

CHAPTER 42.

EMINENT DOMAIN.

ARTICLE 1.—CONDEMNATION OF LANDS FOR PUBLIC USES. 1712–1726.
2.—ERECTION OF DAMS FOR MILLS, GINS OR FACTORIES. 1727–1748.

ARTICLE 1.

CONDEMNATION OF LANDS FOR PUBLIC USES.

1712 (3207) (3580). **Application to court of probate for order of condemnation.**—Any corporation organized under the laws of this state, or any person, or association of persons, proposing to take lands, or to acquire an interest, or easement therein, for any uses for which private property may be taken, may, if there be no other mode of proceding prescribed by law, apply to the court of probate of the county in which such lands, or a material portion thereof, may be situate, for an order of condemnation thereof to such uses.

The question of the power of an applicant to condemn is one of law, and for the court.—London v. Sample Lumber Co., 91 Ala. 606. **Probate court**

*The word "only" inserted by joint committee.

has jurisdiction of an application made by a railroad, organized under the general law, to condemn for right of way a part of the right of way of another road, but not of the road-bed.—A. & C. R. Co. v. J. & A. R. Co., 82 Ala. 297; M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 501; M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 520. **But not of a like application by a street-railway without special statutory authority.**—L. & N. R. Co. v. Peoples' S. R. & I. Co., 101 Ala. 331. **A railroad is not bound to adhere to a condemned right of way, but may proceed to further condemnation.**—Cooper v. A. & A. R. Co., 85 Ala. 106. **On appeal, the application may be amended in the circuit court so as to include more land than originally asked.**—Newton v. A. M. Ry. Co., 99 Ala. 468. **A corporation entering on lands without the consent of the owner, and without proceedings for condemnation, is a trespasser.**—N. O. & S. R. Co. v. Jones, 68 Ala. 48; s. c., 70 Ala. 227. **Having acquired possession by trespass, and improved the property,** the corporation may still institute proceedings for its condemnation.—Jones v. N. O. & S. R. Co., 70 Ala. 227.

1713 (3208). **Application and contents.**—The application must be in writing, verified by the oath of the applicant, or by the oath of an agent or attorney, and accompanied with security for the costs, and must state with certainty the name and residence of the applicant, the uses or purposes for which the land is to be taken, or the interest or easement therein to be acquired, and must state the name and residence of the owner, if known, or, if unknown, must show that reasonable diligence has been used to ascertain the same.

The application must describe the lands sought to be taken with sufficient precision to enable a skillful person to locate it.—Brown v. R. & D. R. Co., 86 Ala. 206; London v. Sample Lumber Co., 91 Ala. 606. **Application may be amended on appeal in the circuit court so as to include more land.** Newton v. A. M. Ry. Co., 99 Ala. 468. **A second application may be filed to condemn another right of way,** although one has already been awarded applicant.—Cooper v. A. & A. R. Co., 85 Ala. 106. **If payment be not made of the assessed damages within six months, applicant may file a second application to condemn the same lands.**—A. M. Ry. Co. v. Newton, 94 Ala. 443.

1714 (3209). **Order of court on filing application; notice.**—On the filing of the application, the court must make and enter an order appointing a day for the hearing thereof; and, if the owner of the lands resides in the state, must issue to him notice of the application, and of the day for the hearing thereof, which must be served by the sheriff, or other legal officer, at least ten days before the day appointed for the hearing; if the owner be unknown, or if he resides without the state, notice must be given by advertisement in some newspaper published in the county, or if there be no newspaper published in the county, by posting notice at the court-house door and three other public places, for at least three weeks before the day appointed for the hearing. If the owner be an infant, or be of unsound mind, notice must be served on his guardian, if any he have, resident in the state, but if he resides in the state, and has no such guardian, then upon the person who may have him in charge, or with whom he may reside; if the owner be dead, and the lands are in the possession or under the control of his personal representative, notice must be served on such representative, and on the heirs at law of the decedent.*

1715 (3213). **Infants; persons of unsound mind.**—If the owner of the lands be an infant, or is of unsound mind, the court, on the day appointed for the hearing, must appoint a guardian ad litem to represent him; and the guardian so appointed must file a written ac-

*Married woman clause stricken out by joint committee.

ceptance of the appointment, must appear and protect the rights and interests of such infant, or person of unsound mind; and, if he deems it necessary, may employ counsel to assist him; the compensation of such guardian and of his counsel must be ascertained by the court and taxed as costs of the proceeding.

Damages should not be paid over to the guardian ad litem.—Brown v. R. & D. R. Co., 86 Ala. 206.

1716 (3214). **Owner not appearing.**—If the owner does not appear on the hearing of the application, the court must hear the same, and if the application be granted, must appoint commissioners as herein provided for, and thereafter the same proceedings shall be had as if such owner had appeared. Feb. 18, 1891, p. 1131, §8.

1717 (3211). **Allegations, objections, and proof to be heard; appeal.**—On the day appointed, or any other day to which the hearing may be continued, the court must hear the allegations of the application and any objections which may be filed to the granting thereof, and any legal evidence touching the same, and shall make an order granting or refusing the application. The hearing herein provided for must in all respects be conducted and evidence taken as in civil cases at law, and either party may, by bill of exception, reserve any opinion or decision of the court as in cases in which bills of exception are allowed in civil cases at law; and either party is entitled to an appeal to the supreme court from the order of the court granting or refusing the application, within thirty days from the making thereof. Ib. §§1, 4.

See citations to section 1720 (3215).

1718 (3211). **If application granted, commissioners appointed, damages assessed.**—If the application be granted, the judge of probate must appoint three citizens of the county in which the lands sought to be condemned are situated, who shall possess the qualifications of jurors, who shall be disinterested, and who shall be required to file a certificate along with their award, that neither of them had ever been consulted, advised with or approached by any person in reference to the value of the lands, or the proceedings to condemn the same, prior to the assessment of the damages, and that they knew nothing of the same before their appointment; and the judge of probate is authorized to fill any vacancy occasioned by death, resignation, failure to act, or any disqualification of any of such commissioners from interest, prior knowledge of the subject-matter, or by being consulted, advised with, or approached in reference to the condemnation of such lands prior to appointment or to the assessment of the damages. When the court shall have appointed the commissioners as herein provided, it shall at once issue a notice of such appointment to the sheriff, whose duty it shall be to serve such notice upon the person therein designated within five days of the receipt thereof, and the sheriff shall receive the same compensation for serving such notice as allowed for summoning jurors. It shall be the duty of the commissioners, or a majority of them, thus appointed by the judge of probate, to assess the damages and com- Ib. §1.

pensation to which the owner of the lands is entitled, and they shall be sworn as jurors are sworn. The commissioners may view the lands to be subjected, and must receive all legal evidence that may be offered by either party touching the amount of the damages the owner of the lands will sustain and the amount of compensation he is entitled to receive; but the amount of compensation to which the owner is entitled must not be reduced or diminished because of any incidental benefits which may accrue to him, or to his remaining lands in consequence of the uses to which the land proposed to be taken, or in which an easement is proposed to be acquired, will be appropriated. But nothing in this section shall be construed to prevent any applicant for the condemnation of land, or any landowner whose land is sought to be condemned, from being present in person or by attorney at any of the proceedings or trials provided for in this article.

Commissioners are regarded as an **inferior statutory tribunal.**—M. S. Ry. Co. v. Sayre, 72 Ala. 443. The **owner of attingent property injured** by the construction of a railroad embankment on its right of way, is entitled to damages, but this right does not pass to a vendee.—Evans v. S. & W. Ry. Co., 90 Ala. 54. **The measure of damages is the value of the land at the time of the actual taking, and the diminution in value of contiguous lands.**—Hooper v. S. & M. R. Co., 69 Ala. 529; Jones v. N. O. & S. R. Co., 70 Ala. 227. **And this, when the land was taken by a trespasser who had erected valuable improvements.**—N. O. & S. R. Co. v. Jones, 68 Ala. 48; s. c., 70 Ala. 227. **The value at which the owner assesses the land for taxation is admissible as an evidence of value but is not conclusive.**—Birmingham Min. R. Co. v. Smith, 89 Ala. 305. See also citations to Constitution, Art. XIV., §7.

Ib. §2. **1719** (3212). **Report of the commissioners.**—The commissioners must, within ten days from their appointment, report in writing to the court the amount of the damages and compensation ascertained and assessed by them, and thereupon the court must order the same to be recorded, and must make an order of condemnation in pursuance thereof upon payment of the damages and compensation so assessed and reported, or the deposit of the same in court.*

Irregular, unauthorized and void order.—London v. Sample Lumber Co., 91 Ala. 606.

Ib. §4. **1720** (3215). **Appeal from assessment of damages.**—Either party may appeal from the assessment of damages and compensation by the commissioners to the city or circuit court of the county within thirty days after the making of the order of condemnation upon the report of the commissioners, by filing in the court rendering the judgment a written notice of appeal, a copy of which shall be served on the opposite party, and on such appeal the trial shall be de novo; but no appeal shall suspend the judgment if the applicant shall give bond with good and sufficient surety, to be approved by the judge of probate, to pay such judgment as shall be rendered on appeal.

An appeal and trial by jury of twelve must be secured; appeal under this section must be taken from probate to circuit or city court.—Montgomery S. Ry. Co. v. Sayre, 72 Ala. 443; Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal T. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; M. & C. R. Co. v. B. S. & T. R. Ry. Co., 96 Ala. 571; L. & N. R. Co. v. Peoples' S. Ry. & I. Co., 101 Ala. 331; M. & C. R. Co. v. Hopkins, 108 Ala. 159. See also citations to Constitution, Art. XIV., §7.

*"Or the deposit," etc., inserted by joint committee.

1721 (3216). **Order of condemnation; effect of appeal.**—The order of condemnation upon the payment of the sum ascertained and assessed by the verdict of the jury, or the deposit thereof in court for the defendant, shall vest in the applicant the easement proposed to be acquired for the uses and purposes stated in the application, and for no other uses or purposes. But if an appeal shall be taken by either party, then the person, corporation, or association seeking to acquire such right of way, upon the deposit in the court, for the party whose land is sought to be condemned, of the amount of damages and compensation so assessed, together with the costs of the proceeding, shall be entitled to enter upon the land so condemned, and survey, construct, and operate on the same for the uses and purposes stated in the application; but such easement shall not vest absolutely in such person, corporation, or association until the final determination of the cause and the payment or deposit in court of such damages and compensation as shall then be adjudged. As amended Feb. 10, 1893, p. 462.

In the order of condemnation the same certainty of description is required as in a conveyance.—London v. Sample Lumber Co., 91 Ala. 606. **The payment of compensation before the taking is complete is a condition precedent** without which the title of the owner is not disturbed.—N. O. & S. R. Co. v. Jones, 68 Ala. 48; s. c., 70 Ala. 227; M. & S. Ry. Co. v. Sayre, 72 Ala. 443; Faust v. Mayor, 83 Ala. 279; A. M. Ry. Co. v. Newton, 94 Ala. 443. **Until payment is made the applicant has the right to discontinue proceedings.** A. M. Ry. Co. v. Newton, 94 Ala. 443. **The applicant only acquires an easement in the land;** the fee, buildings, and everything not necessary to its use as a right of way remains with the owner.—Odum v. R. & J. R. Co., 94 Ala. 488. **If the required deposit is made an appeal in nowise hinders or impedes work on the condemned premises.**—Cooper v. A. & A. R. Co., 85 Ala. 106; M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 520. See also citations to Constitution, Art. I., §24; Art. XIV., §7.

1722 (3218). **Time within which damages to be paid; effect of failure to pay.**—The applicant may pay the damages and compensation assessed at any time within six months after the assessment thereof, or, in case an appeal is taken, within six months after the appeal is determined; but if he fails to pay the same within such time, such assessment shall cease to be binding on the owner of the lands, and the rights of the applicant thereunder shall determine; and, upon such failure, the applicant shall be liable to the owner for all damages the latter may have sustained by the institution of such proceedings, including a reasonable attorney's fee for defending the same.

A judgment of condemnation cannot be pleaded as res adjudicata until paid; extent of conclusiveness before payment.—A. M. Ry. Co. v. Newton, 94 Ala. 443. **Methods of enforcing payment of damages and compensation.** Cooper v. A. & A. R. Co., 85 Ala. 106. **Compensation and damages should not be paid to the guardian ad litem of an infant.**—Brown v. R. & D. R. Co., 86 Ala. 206. See also citations to preceding section.

1723 (3219). **Foreign telegraph and telephone company.**—A telegraph or telephone company, incorporated under the laws of another state, proposing to extend connecting lines into this state, may acquire an easement for the uses and purposes of such connecting lines, and may pursue the mode of proceeding prescribed in this article.

1724 (3220). **Railroad crossings.**—Any corporation, person, or association of persons owning a railroad or street-railroad in this Feb. 13, 1893, p. 570.

state and proposing to cross or intersect the line of another railroad or street-railroad may acquire an easement for such purpose and to that end may pursue the mode of proceeding prescribed in this article.

The crossing is a taking, and compensation must be made as in other cases.—M. & C. R. Co. v. B. S. & T. Ry. Co., 96 Ala. 571. See citations to section 1712 and to Constitution, Art. XIV., §21.

As amended Feb. 18, 1891, p. 1131, §6.

1725 (3217). **Costs.**—The costs of the application and proceedings thereunder, including the compensation of commissioners, who shall receive the pay of jurors, must be adjudged against the applicant and his surety for costs, for which execution may be issued. But should the applicant tender to the landowner, prior to the application for condemnation, a sum of money in excess of the award of the commissioners, then the costs of the proceedings before the commissioners shall be against the landowner; but the commissioners shall have no knowledge of the amount so tendered and must certify in their award that they had no knowledge of such tender. The principles of law and rules of justice relative to tender shall apply to all tenders made under the provisions of this section.

Feb. 13, 1893, p. 570.

1726 (3220). **Court of probate open at all times.**—The court of probate must be deemed always open for the filing and trial of all applications made under this article.

ARTICLE 2.

ERECTION OF DAMS FOR MILLS, GINS OR FACTORIES.

1727 (3184) (3555) (2481) (2089). **Dams for water-mills, gins, or factories; by whom erected.**—A dam for any water grist-mill, sawmill, gin, or factory, to be operated for the public, may be erected across any watercourse, not a navigable stream, by the owner in fee of the land on both sides of the stream, or on one side, and of part of the bed thereof, at the place where the dam is proposed to be erected, by proceeding as in this article provided.

There is a settled policy to subordinate the rights of proprietors to build dams to the preservation of the public health.—Ogletree v. McQuaggs, 87 Ala. 580. **The privileges granted by this article are against common right and the law is strictly construed against the applicant; all the requisitions of the statute must be complied with.**—Owen v. Jordan, 27 Ala. 608; Martin v. Rushton, 42 Ala. 289; Bottoms v. Brewer, 54 Ala. 288; Folmar v. Folmar, 68 Ala. 120; s. c., 71 Ala. 136; McAllilley v. Horton, 75 Ala. 491; McCulley v. Cunningham, 96 Ala. 583. **Proposed mill, gin or factory must be operated for the public** to authorize proceedings under this article.—Sadler v. Langham, 34 Ala. 311; Bottoms v. Brewer, 54 Ala. 288; McCulley v. Cunningham, 96 Ala. 583. **The first applicant acquires an inchoate right.**—Hendricks v. Johnson, 6 P. 472. **And his right is not affected by subsequent errors of officers or court causing the writ to be quashed.**—Hendricks v. Johnson, 6 P. 472. **No length of time can confer a prescriptive right to maintain or continue a mill-dam or other obstructions of a public stream.**—Olive v. State, 86 Ala. 88.

1728 (3185) (3556, 3557) (2482, 2483) (2090, 2091). **Application to court of probate.**—For authority to erect such dam, application in writing, verified by affidavit, must be made to the probate court of the county in which it is proposed to erect the mill, gin, or fac-

tory, if by the owner of the land on both sides of the stream, or if by the owner of the land on one side only, to the court of probate of the county in which the land on the opposite side of the stream, abutting the proposed site of the dam, lies.

The jurisdiction of the probate court is special, statutory and limited; the record must show affirmatively a full compliance with the requisitions of the statute.—Owen v. Jordan, 27 Ala. 608; Martin v. Rushton, 42 Ala. 289; Bottoms v. Brewer, 54 Ala. 288; Folmar v. Folmar, 68 Ala. 120; s. c., 71 Ala. 136; McAllilley v. Horton, 75 Ala. 491; McCulley v. Cunningham, 96 Ala. 583.

1729 (3186) (3558, 3559) (2484, 2485) (2092, 2093). **Contents of such application.**—Such application must set forth the right of the applicant to make the same, the purposes for which the dam is to be erected, a description of the land by sectional divisions and subdivisions, township and range, the name of the watercourse, if it have a name, the side on which the mill, gin, or factory is to be erected, and the proposed height of the dam; and if the application is made by the owner of the land on one side only, he shall also set forth therein the name of the owner of the land on the opposite side on which the proposed dam is to abut, and his residence, if known, and whether such owner is a minor or of full age; and if such owner of the land on the opposite side is of unsound mind, that fact must also be stated.

The application must describe the land and the proposed location of the mill, etc.—Folmar v. Folmar, 68 Ala. 120; s. c., 71 Ala. 136. **Must state that the mill, gin or factory is to be operated for the public, and that it is of the character provided for by statute.**—Sadler v. Langham, 34 Ala. 311; Bottoms v. Brewer, 54 Ala. 288; McCulley v. Cunningham, 96 Ala. 583.

1730 (3188) (3561, 3562) (2487, 2488) (2095, 2096). **Notice to owner of opposite land.**—If such application is filed by the owner of the land on one side of the stream only, notice must be given to the owner of the land on the opposite side, by serving him, his tenant, or agent, with a copy of the writ, if to be found in the county, or if not, by posting up a copy of such writ in a conspicuous place on the land, ten days before the day specified in the writ for the meeting of the jury; and if such owner is a minor or person of unsound mind, such service must be on his guardian, or if he has no guardian, the judge of probate must appoint a guardian ad litem to protect his interest.

1731 (3189) (3563) (2489) (2097). **Notice when owner non-resident.**—If such owner is a non-resident of the state, notice must be given by publication in the newspaper published nearest to such land, once a week for three successive weeks.

1732 (3187) (3560) (2486) (2094). **On filing application, writ of ad quod damnum issues.**—On the filing of such application, the judge of probate must issue to the sheriff a writ, setting forth the substantial averments contained in the application, the name of the applicant, and the place where it is proposed to erect the dam, and commanding the sheriff to summon seven disinterested freeholders of the county to meet at the place where the dam is to be erected, on a day to be specified in the writ, not less than fifteen, nor more than

thirty days after the filing of the application, and then and there to inquire touching the matters contained therein.

Jurisdiction attaches on filing the application.—Hendricks v. Johnson, 6 P. 472. **Writ must specify the day on which the jurors are to meet and ought to give place of assemblage.**—Folmar v. Folmar, 68 Ala. 120; s. c., 71 Ala. 136. **If the place where the proposed erection is to be located is not given in the writ** the sheriff should return it unexecuted, giving reasons. Folmar v. Folmar, 68 Ala. 120; s. c., 71 Ala. 136. **The objection that less than fifteen days intervened between the filing of the application and the inquest** cannot be first made in the supreme court.—Bush v. Robinson, 44 Ala. 328. **Persons who served as jurors on a former inquest in regard to the same matter, which was set aside, are incompetent.**—Folmar v. Folmar, 68 Ala. 120; s. c., 71 Ala. 136. **An error of the officer cannot prejudice the applicant.**—Hendricks v. Johnson, 6 P. 472. **Proper method of reaching defects in the writ is by motion to quash.**—Hendricks v. Johnson, 6 P. 472. **If the application is contested the proceedings take the form of a suit inter partes,** and costs go against an unsuccessful contestant.—Folmar v. Folmar, 71 Ala. 136. **The inquest and sheriff's return must show that the jury was sworn as required.**—Owen v. Jordan, 27 Ala. 608; Rushton v. Martin, 43 Ala. 555; McAllilley v. Horton, 75 Ala. 491. **The inquest must be clearly responsive;** falling short of this, it is defective, and the whole proceedings may be quashed.—Owen v. Jordan, 27 Ala. 608; Martin v. Rushton, 42 Ala. 289; McAllilley v. Horton, 75 Ala. 491. **A return, not showing affirmatively that the jury examined the land above and below, is insufficient.**—Owen v. Jordan, 27 Ala. 608; Martin v. Rushton, 42 Ala. 289. **Not showing whether the residence, etc., of any owner will be overflowed, is insufficient.**—Owen v. Jordan, 27 Ala. 608; Martin v. Rushton, 42 Ala. 289; Bush v. Robinson, 44 Ala. 328; McAllilley v. Horton, 75 Ala. 491. **And also, failing to show whether the health of the neighborhood will be affected.** Owen v. Jordan, 27 Ala. 608. **Evidence as to whether health will be affected.** Frost v. Barnes, 47 Ala. 279. **Jurisdiction of equity to protect health.**—Ogletree v. McQuaggs, 67 Ala. 580. **Must examine and return whether any other mill, etc., will be overflowed.**—Owen v. Jordan, 27 Ala. 608. **Extent of overflow which will prevent erection of dam.**—Frost v. Barnes, 47 Ala. 279. **Where one begins the erection of a dam to defeat the application of another, already made, he will not be protected.**—Hendricks v. Johnson, 6 P. 472.

1733 (3190) (3564) (2490) (2098). **Mode of executing writ; charge to and duties of jury.**—The sheriff and the jury must attend on the day appointed; and after the jury are sworn by the sheriff to discharge their duties fairly and to the best of their ability, they must be charged by him—

1. To examine the land above and below belonging to others, which may probably be overflowed or injured, and to ascertain and assess the damages resulting from the erection of such dam to the several owners of such lands.

2. To ascertain whether the residence of any of such owners, or the outhouses, inclosures, gardens, or orchards, thereto immediately belonging, will be overflowed.

3. To ascertain whether the health of the neighborhood will probably be endangered.

4. To ascertain whether any other mill, gin, factory, or waterworks will be overflowed.

1734 (3191) (3565) (2491) (2099). **Value of one acre of land on opposite side to be assessed.**—If the applicant is not the owner of the land on both sides of the stream, the jury must also be charged to ascertain and assess the value of one acre of land on the opposite side to include the place where the proposed dam would abut, and to locate and circumscribe the same by metes and bounds, having a due regard to the interests of all parties.

1735 (3192) (3566) (2492) (2100). **Inquest made, signed and re-**

turned.—The inquest of the jury must be reduced to writing, signed by a majority of them, and delivered to the sheriff and by him returned in five days thereafter to the court of probate.

If inquest is signed by a majority of the jury it is sufficient.—Frost v. Barnes, 47 Ala. 279. **Defects are reached by motion to quash.**—Hendricks v. Johnson, 6 P. 472. See also citations to section 1732 (3187).

1736 (3193) (3567) (2493) (2101). **Parties summoned to show cause against inquest.**—On the return of the inquest, summons must issue from the court of probate to the owner of the acre of land, if the same is assessed by the jury, and also the several owners of the land found by the inquest to be liable to damage, to appear before him on a day named in the summons, and show cause, if any they have, why the applicant should not have permission to erect his dam.

Folmar v. Folmar, 71 Ala. 136.

1737 (3194) (3568) (2494) (2102). **Ten days' notice to be given to owners of land; how given.**—Ten days' notice must be given to the several owners of such land, to show cause, if any they have, against such application, by personal service, if to be found in the county, or if not, by posting up a copy of such notice at a conspicuous place on the several tracts of the owners who cannot be so found.

Does not contemplate the exercise of discretion; if none of the injuries named are likely to ensue, application must be granted.—Hendricks v. Johnson, 6 P. 472. **Evidence as to whether health will be affected.**—Frost v. Barnes, 47 Ala. 279. **In necessary cases equity will interfere to protect health.**—Ogletree v. McQuaggs, 67 Ala. 580. **Extent of overflow of another mill which will prevent application being granted.**—Frost v. Barnes, 47 Ala. 279. **A landowner, apprehending injury, may propound his interest and litigate with applicant at any time before final decree.**—Hendricks v. Johnson, 6 P. 472. **The application, when contested, assumes the form of a suit inter partes,** and an unsuccessful contestant is liable for the costs.—Folmar v. Folmar, 71 Ala. 136.

1738 (3195) (3569) (2495) (2103). **When application rejected; when granted.**—If, on the day appointed to show cause, or any other day to which the matter may be continued, it appears to the court from the inquest, or from evidence introduced, that the residence of any owner, or the outhouses, inclosures, garden, or orchard, immediately belonging thereto, will probably be overflowed, or that the health of the neighborhood will probably be endangered, or that any other mill, gin, factory, or water-works will probably be overflowed, the court must not grant the application; but if such results will not probably ensue, the application must be granted.

1739 (3196) (3570) (2496) (2104). **Payment of assessment.**—If the application is granted, the applicant must, within three months thereafter, pay to the several owners, or to the judge of probate for their use, the sums severally assessed; and a failure to make payment within such time operates a revocation of the grant.

The right is not perfect until payment is made.—Hendricks v. Johnson, 6 P. 472.

1740 (3197) (3571) (2497) (2105). **Conditional fee vests on payment of assessment.**—On making such payment, the applicant is vested with a qualified estate in fee to the acre of land located and

circumscribed by the jury, to become absolute on performance of the following conditions:

1. That the dam or mill, gin or factory, be commenced within one, and finished within three years from the date of the grant.

2. That whenever the dam or mill, gin or factory, is destroyed or materially impaired, the same must be rebuilt or repaired within three years thereafter; but if the owner of such dam is an infant or person of unsound mind, he is allowed the same length of time, after the removal of such disability, to commence, finish, rebuild, or repair.

1741 (3198) (3572) (2498) (2106). **On breach of condition, land reverts.**—On failure to comply with such conditions, the land reverts to its former owner, or his heirs.

1742 (3199) (3573) (2499) (2107). **Proceedings when canal through another's land is necessary.**—When such land joins other lands, and it is necessary for the erection of the mill, gin, or factory, to dig a ditch or canal through such other lands, the application must be made to the court of probate of the county in which the land through which the ditch or canal is proposed to be dug, lie; and the writ must be obtained, inquest held, notice given, inquest returned, the owners of other lands summoned to show cause, the application granted or refused, and damages paid, the same as in other cases provided for in this article.

1743 (3200) (3574) (2500) (2108). **Authority to raise dam higher.**—An owner or proprietor of any dam erected under this article may raise the same on application to the court of probate; and on such application, the same proceedings must be had as on the first application.

Record must show that the dam was originally erected under order of court, or that the mill is operated for the public.—Bottoms v. Brewer, 54 Ala. 288.

1744 (3202) (3576) (2502) (2110). **Who may contest application.** In all applications under this article, any person making affidavit that he is interested against the same, and giving security for the costs if he fail to defeat such application, must, at any time before such application is granted, be permitted to make himself a party, and to contest the same.

On a contest, the proceedings take the form of a suit inter partes, and an unsuccessful applicant is liable for costs.—Folmar v. Folmar, 71 Ala. 136. **A landowner, apprehending injury, may propound his interest** and litigate with the applicant at any time before final decree.—Hendricks v. Johnson, 6 P. 472.

1745 (3203) (3577) (2503) (2111). **Liability for building or raising dam without authority.**—Any person who builds or raises a dam or other obstruction across any watercourse, except as authorized by law, and thereby works any injury to any other person, by overflowing his land, or in any other way, is liable to such person for double damages for such injury; and he may, if the same is a nuisance to the neighborhood, be prosecuted therefor.

1746 (3204) (3578) (2507) (2115). **Deputy-sheriffs may act.**

The duties imposed on the sheriff under this article may be performed by deputy.

1747 (3205) (3579) (2508). **Provisions as to toll.**—All grist-mills established in pursuance of this article are subject to the provisions of this Code touching the order in which grain shall be ground, and the rate of toll to be charged for grinding grain, at public mills.

1748 (3206). **Landowner entitled to appeal to circuit court.** From any assessment of damages made or had under this article, the landowner, if dissatisfied, is entitled to an appeal, as matter of right, to the circuit court of the county, and on such an appeal to a trial de novo by jury; such appeal to be taken within twenty days after the application is granted, on giving security for the costs of the appeal, to be approved by the judge of probate; and on giving such security, the judge of probate must file in the office of the clerk of the circuit court a full and complete transcript of all the proceedings, including the inquest of the jury, within ten days after such appeal is taken.

An appeal to the circuit court waives irregularities and formal defects in the proceedings; and the inquiry is confined to the assessment of damages de novo before the jury; defects of law, appearing on the face of the proceedings, must be reviewed by common-law certiorari.—McCulley v. Cunningham, 96 Ala. 583.

CHAPTER 43.

EMPLOYER AND EMPLOYE. 1749–1751.

1749 (2590). **Liability of master or employer to servant or employe for injuries.**—When a personal injury is received by a servant or employe in the service or business of the master or employer, the master or employer is liable to answer in damages to such servant or employe, as if he were a stranger, and not engaged in such service or employment, in the cases following:

1. When the injury is caused by reason of any defect in the condition of the ways, works, machinery, or plant connected with, or used in the business of the master or employer.

2. When the injury is caused by reason of the negligence of any person in the service or employment of the master or employer, who has any superintendence intrusted to him, whilst in the exercise of such superintendence.

3. When such injury is caused by reason of the negligence of any person in the service or employment of the master or employer, to whose orders or directions the servant or employe, at the time of the injury, was bound to conform, and did conform, if such injuries resulted from his having so conformed.

4. When such injury is caused by reason of the act or omission of any person in the service or employment of the master or employer,

done or made in obedience to the rules and regulations or by-laws of the master or employer, or in obedience to particular instructions given by any person delegated with the authority of the master or employer in that behalf.

5. When such injury is caused by reason of the negligence of any person in the service or employment of the master or employer, who has the charge or control of any signal, points, locomotive, engine, switch, car, or train upon a railway, or of any part of the track of a railway.

But the master or employer is not liable under this section, if the servant or employe knew of the defect or negligence causing the injury, and failed in a reasonable time to give information thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer, unless he was aware that the master or employer, or such superior already knew of such defect or negligence; nor is the master or employer liable under subdivision 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the master or employer, or of some person in the service of the master or employer, and intrusted by him with the duty of seeing that the ways, works, machinery, or plant, were in proper condition.

Substantial copy of the English statute, the judicial construction of which, while not here conclusive, will be accorded great weight.—Birmingham, etc., Co. v. Allen, 99 Ala. 359, 371. **Purpose of statute and principles of construction applied.**—Stewart v. L. & N. R. Co., 83 Ala. 493; M. & B. R. Co. v. Holborn, 84 Ala. 133; C. & W. Ry. Co. v. Bradford, 86 Ala. 574; A. G. S. R. Co. v. Carroll, 97 Ala. 126. **Liability of employer does not spring from contract and cannot be avoided by contract or rule attempting to place risk on employe.**—A. G. S. R. Co. v. Carroll, 97 Ala. 126; Hissong v. R. & D. R. Co., 91 Ala. 514; s. c., 97 Ala. 187; L. & N. R. Co. v. Orr, 91 Ala. 548; R. & D. R. Co. v. Jones, 92 Ala. 218. **Does not apply when injury committed in another state.**—Kahl v. M. & C. R. Co., 95 Ala. 337; A. G. S. R. Co. v. Carroll, 97 Ala. 126. **But right of action accruing in another state may be enforced in this state** against a corporation domiciled here.—Helton v. Ala. Mid. Ry. Co., 97 Ala. 275. **Applies to municipal corporations.**—Sheffield v. Harris, 101 Ala. 564. **And to dummy railroads.**—Birmingham Ry. & Elec. Co. v. Baylor, 101 Ala. 488. **Must be employment, expressed or implied, and the injury must have been received while acting therein.**—G. P. R. Co. v. Propst, 85 Ala. 203; Broslin v. K. C. M. & B. R. Co., Ala. (21 So. 475). **Who is an employe.**—G. P. R. Co. v. Propst, 83 Ala. 518; T. C. I. & R. Co. v. Hayes, 97 Ala. 201; Sheffield v. Harris, 101 Ala. 564; Harris v. McNamara, 97 Ala. 181; Broslin v. K. C. M. & B. R. Co., supra. **When conductor has implied authority to fill vacancies in train-crew.**—G. P. R. Co. v. Propst, 83 Ala. 518; s. c., 85 Ala. 203; s. c., 90 Ala. 1; McDaniel v. Highland Ave. & B. R. Co., 90 Ala. 64. **Accepting benefit of service estops to deny validity of employment.**—Sheffield v. Harris, 101 Ala. 564. **Duty of employer to employe in matter of machinery; notice of latent defects, inherent dangers,** etc.—L. & N. R. Co. v. Allen, 78 Ala. 494; Wilson v. L. & N. R. Co., 85 Ala. 269; L. & N. R. Co. v. Hall, 87 Ala. 708; Williams v. S. & N. R. Co., 91 Ala. 635; Holland v. T. C. & I. Co., 91 Ala. 444; R. & D. R. Co. v. Jones, 92 Ala. 218; Seabord Mfg. Co. v. Woodson, 94 Ala. 143; Bivins v. G. P. R. Co., 96 Ala. 325; L. & N. R. Co. v. Boland, 96 Ala. 626; Schlaff v. L. & N. R. Co., 100 Ala. 377; L. & N. R. Co. v. Banks, 104 Ala. 508; L. & N. R. Co. v. Binion, 107 Ala. 645; Conard v. Gray, 109 Ala. 130; Campbell v. L. & N. R. Co., 109 Ala. 520. **Duty of employe to notify employer of defects;** when continuing in service amounts to assumption of risk.—Eureka Co. v. Bass, 81 Ala. 200; Highland Ave. & B. R. Co. v. Walters, 91 Ala. 435; G. P. R. Co. v. Davis, 92 Ala. 300, 309; Birmingham, etc., Co. v. Allen, 99 Ala. 359; L. & N. R. Co. v. Banks, 104 Ala. 508; L. & N. R. Co. v. Stutts, 105 Ala. 368. **Employer need not warn employe of apparent defects and obvious dangers.**—Holland v. T. C. I. & R. Co., 91 Ala. 444; L. & N. R. Co. v. Boland, 96 Ala. 626; s. c., 106 Ala. 641; E. T. V. & G. R. Co. v. Turva-

ville, 97 Ala. 122; L. & N. R. Co. v. Banks, 104 Ala. 508. **Employer must provide and keep suitable machinery**; is not required to use extraordinary care; is not an absolute insurer.—Wilson v. L. & N. R. Co., 85 Ala. 269; L. & N. R. Co. v. Hall, 87 Ala. 708; Holland v. T. C. I. & R. Co., 91 Ala. 444; L. & N. R. Co. v. Orr, 91 Ala. 548; Mary Lee C. & R. Co. v. Chambliss, 97 Ala. 171; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; Schlaff v. L. & N. R. Co., 100 Ala. 377; R. & D. R. Co. v. Bivins, 103 Ala. 142; L. & N. R. Co. V. Stutts, 105 Ala. 368. **Mere knowledge without opportunity to act upon it does not constitute negligence.**—Seabord Mfg. Co. v. Woodson, 94 Ala. 143; s. c., 98 Ala. 378; Conrad v. Gray, 109 Ala. 130. **Statute does not apply to known risks and dangers of the service** against which human skill and caution cannot provide, nor to accidents incident to the business.—M. & O. R. Co. v. George, 94 Ala. 199; R. & D. R. Co. v. Bivins, 103 Ala. 142, 149. **Running a train at a high rate of speed** may or may not be negligence.—L. & N. R. Co. v. Webb, 97 Ala. 308; Perdue v. L. & N. R. Co., 100 Ala. 535; L. & N. R. Co. v. Woods, 105 Ala. 561. **Statute does not change the doctrine of volenti non fit injuria.**—Birmingham, etc., R. Co. v. Allen, 99 Ala. 359 (overruling M. & B. R. Co. v. Holborn, 84 Ala. 133, and Highland Ave. & B. R. Co. v. Walters, 91 Ala. 435, and restoring Eureka Co. v. Bass, 81 Ala. 201); Bridges v. T. C. I. & R. Co., 109 Ala. 287. **Contributory negligence defeats recovery** for simple negligence. M. & B. R. Co. v. Holborn, 84 Ala. 133; Wilson v. L. & N. R. Co., 85 Ala. 269; C. & W. Ry. Co. v. Bridges, 86 Ala. 448; C. & W. Ry. Co. v. Bradford, 86 Ala. 574; L. & N. R. Co. v. Hall, 87 Ala. 708; s. c., 91 Ala. 112; Holland v. T. C. I. & R. Co., 91 Ala. 444; M. & D. R. Co. v. George, 94 Ala. 199; s. c., 109 Ala. 245; Schlaff v. L. & N. R. Co., 100 Ala. 377; R. & D. R. Co. v. Bivins, 103 Ala. 142; L. & N. R. Co. v. Markee, 103 Ala. 160; L. & N. R. Co. v. Banks, 104 Ala. 508; Davis v. Western Ry., 107 Ala. 626; George v. M. & D. R. Co., 109 Ala. 245; L. & N. R. Co. v. Mothershed, 110 Ala. 143. **Custom and practice cannot justify negligence.**—Warden v. L. & N. R. Co., 94 Ala. 277; Andrews v. Birmingham Min. R. Co., 99 Ala. 438; George v. M. & O. R. Co., 109 Ala. 245; A. G. S. R. Co. v. Roach, 110 Ala. 266. But **employer may acquiesce in breach of rule.** L. & N. R. Co. v. Richardson, 100 Ala. 232; L. & N. R. Co. v. Mothershed, 110 Ala. 143; A. G. S. R. Co. v. Roach, 110 Ala. 266. **Or waive its observance** by inconsistent requirement.—Brown v. L. & N. R. Co., 111 Ala. 275. **Employe must have knowledge or notice of the rule** to make violation contributory negligence.—Ala. Mid. Ry. Co. v. McDonald, 112 Ala. 216; Brown v. L. & N. R. Co., 111 Ala. 275; M. & C. R. Co. v. Graham, 94 Ala. 545; L. & N. R. Co. v. Hawkins, 92 Ala. 241; G. P. Ry. Co. v. Propst, 83 Ala. 518. **Subdivision 1.**—"Ways, works, machinery or plant."—Wilson v. L. & N. R. Co., 85 Ala. 269; C. & W. Ry. Co. v. Bradford, 86 Ala. 574; L. & N. R. Co. v. Crawford, 89 Ala. 240; M. & C. R. Co., v. Askew, 90 Ala. 5; K. C. M. & B. R. Co. v. Smith, 90 Ala. 25; Highland Ave. & B. R. Co. v. Walters, 91 Ala. 435; Holland v. T. C. I. & R. Co., 91 Ala. 444; L. & N. R. Co. v. Davis, 91 Ala. 487; L. & N. R. Co. v. Orr, 91 Ala. 548; G. P. Ry. Co. v. Davis, 92 Ala. 300; L. & N. R. Co. v. Hawkins, 92 Ala. 241; T. C. I. & R. Co. v. Kyle, 93 Ala. 1; R. & D. R. Co. v. Hammond, 93 Ala. 181; Seabord Mfg. Co. v. Woodson, 94 Ala. 143; M. & O. R. Co. v. George, 94 Ala. 199; Bromley v. Bir. Min. R. Co., 95 Ala. 397; Bivins v. G. P. Ry. Co., 96 Ala. 325; U. S. Rolling Stock Co. v. Weir, 96 Ala. 399; L. & N. R. Co. v. Boland, 96 Ala. 626; R. & D. R. Co. v. Farmer, 97 Ala. 141; L. & N. R. Co. v. Campbell, 97 Ala. 147; K. C. M. & B. R. Co. v. Webb, 97 Ala. 157; Mary Lee C. & R. Co. v. Chambliss, 97 Ala. 171; s. c., 104 Ala. 655; L. & N. R. Co. v. Pearson, 97 Ala. 211; Birmingham F. & M. Co. v. Gross, 97 Ala. 220; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; L. & N. R. Co. v. Mothershed, 97 Ala. 261; Tuck v. L. & N. R. Co., 98 Ala. 150; Ala., etc., Co. v. Pitts, 98 Ala. 285; L. & N. R. Co. v. Binion, 98 Ala. 570; s. c., 107 Ala. 645; Birmingham R. & E. R. Co. v. Allen, 99 Ala. 359; McNamara v. Logan, 100 Ala. 187; T. C. I. & R. Co. v. Herndon, 100 Ala. 451; L. & N. R. Co. v. Baker, 106 Ala. 624; Conrad v. Gray, 109 Ala. 130; A. G. S. R. Co. v. Anderson, 109 Ala. 299; L. & N. R. Co. v. Bouldin, 110 Ala. 185; A. G. S. R. Co. v. Bailey, 112 Ala. 167; Laughran v. Brewer, Ala. (21 So. 415). **Defect in ways must be of an inherent part**; a movable object temporarily on track is not. L. & N. R. Co. v. Bouldin, 110 Ala. 185; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240. **A lever or hand car** is within the statute.—K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412. **Subdivision 2.**—"Superintendence" defined.—K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; Dantzler v. DeBardelaben C. & I. Co., 101 Ala. 309; Sheffield v. Harris, 101 Ala. 564; Culver v. Ala. Mid. Ry. Co., 108 Ala. 330; Seabord Mfg. Co. v. Woodson, 94 Ala. 143. **Subdivision 3.**—Not intended to cover same ground as subdivision 1; if grounds provided in two or more subdivisions concur, it may be so averred in one count and must be so proved.—Bridges v. T. C. I. & R. Co., 109 Ala. 287. **Subdivision 4.**—It must appear that the injury was the proximate result of the order of a superior, and that he was negligent in giving the order.—Dantzler v. DeBardelaben C. & I. Co., 101 Ala. 309. **Employer not liable** to an employe injured by failure

of a fellow-servant to obey instructions.—Laughran v. Brewer, Ala. (21 So. 415). **Subdivision 5.**—Negligence of person in charge of signal, points, locomotive, engine, car, train or track.—L. & N. R. Co. v. Richardson, 100 Ala. 232; Birmingham Ry. & E. Co. v. Baylor, 101 Ala. 488; L. & N. R. Co. v. Woods, 105 Ala. 561; L. & N. R. Co. v. Baker, 106 Ala. 624; Jones v. Ala. Mid. Ry. Co. 108 Ala. 330; A. G. S. R. Co. v. Anderson, 109 Ala. 299; Campbell v. L. & N. R. Co., 109 Ala. 520; L. & N. R. Co. v. Bouldin, 110 Ala. 185; Brown v. L. & N. R. Co. 111 Ala. 275; A. G. S. R. Co. v. Richie, 111 Ala. 297; Tibbs v. A. G. S. R. Co., 111 Ala. 449; Ala. Mid. Ry. Co. v. McDonald, 112 Ala. 216; Southern Ry. Co. v. Cunningham, 112 Ala. 496. **A fireman** charged with the duty of transmitting signals from switchman to engineer **is "a person in charge,"** etc.—R. & D. R. Co. v. Jones, 92 Ala. 218; Brown v. L. & N. R. Co., 111 Ala. 275. **Pleadings: The complaint must aver facts** which bring the case within one of the particular phases of negligence for which liability is imposed.—Seabord Mfg. Co. v. Woodson, 94 Ala. 143; U. S. Rolling Stock Co. v. Weir, 96 Ala. 396; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; Conrad v. Gray, 109 Ala. 130. **General averments of negligence** "meet all the requirements."—Mary Lee C. & R. Co. v. Chambliss, 97 Ala. 171; G. P. R. Co. v. Davis, 92 Ala. 300, 307; Laughran v. Brewer, Ala. (21 So. 415). **Complaint need not negative contributory negligence.**—C. & W. Ry. Co. v. Bradford, 86 Ala. 574; L. & N. R. Co. v. Hawkins, 92 Ala. 241; M. & O. R. Co. v. George, 94 Ala. 199; K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412. **Nor knowledge of defects** in condition of ways, etc.—Broslin v. K. C. M. & B. R. Co., Ala. (21 So. 475). **The defense of contributory negligence must be specially pleaded;** sufficiency of plea.—K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412; T. C. I. & R. Co. v. Hayes, 97 Ala. 201; Birmingham F. & M. Co. v. Gross, 97 Ala. 220; T. C. I. & R. Co. v. Herndon, 100 Ala. 451; L. & N. R. Co. v. Markee, 103 Ala. 160; L. & N. R. Co. v. Mothershed, 110 Ala. 143; A. G. S. R. Co. v. Roach, 110 Ala. 266. **When special plea held waived on appeal.**—R. & D. R. Co. v. Farmer, 97 Ala. 141; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; L. & N. R. Co. v. Mothershed, 97 Ala. 261. **When complaint charges simple negligence, and the plea of contributory negligence is interposed, a replication setting up wanton or intentional negligence is a departure and demurrable.**—George v. M. & O. R. Co., 109 Ala. 245; Davis v. Miller, 109 Ala. 589. **But such replication is good in the absence of demurrer** for departure. Highland Ave. & B. R. Co. v. South, 112 Ala. 642. **Distinct causes of action arising under different subdivisions cannot be joined in a single count, but may be joined in different counts.**—Highland Ave. & B. R. Co. v. Dusenberry, 94 Ala. 413; L. & N. R. Co. v. Mothershed, 97 Ala. 261; R. & D. R. Co. v. Weems, 97 Ala. 270; Birmingham Ry. & E. Co. v. Baylor, 101 Ala. 488; Laughran v. Brewer, Ala. (21 So. 415). **When a single count contains distinct causes of action under one subdivision,** proof of any one cause is sufficient, but if all the averments constitute only one cause of action, all must be proved.—Birmingham Ry. & E. Co. v. Baylor, 101 Ala. 488. **Counts under each subdivision** examined and held sufficient.—Chambliss v. Mary Lee C. & R. Co., 104 Ala. 655. **Under subdivision 1 it is not necessary to aver name of person intrusted** by the employer with the duty of seeing that the ways, works, etc., are in proper condition.—McNamara v. Logan, 100 Ala. 187; Woodward I. Co. v. Herndon, Ala. (21 So. 430) (overruling L. & N. R. Co. v. Bouldin, 110 Ala. 185). **Under subdivisions 2 and 5, name of person charged with superintendence or control must be stated,** or averred to be unknown to plaintiff.—Woodward I. Co. v. Herndon, Ala. (21 So. 430); So. Ry. Co. v. Cunningham, 112 Ala. 496. **Under subdivision 5 it is not necessary to aver that the person in charge or control** of signal, points, etc., **was** at the time, **in the discharge of the duties of his employment.**—Woodward I. Co. v. Herndon, Ala. (21 So. 430). **Averment of negligence of employer as to defects in machinery.**—Seabord Mfg. Co. v. Woodson, 94 Ala. 143. **Complaint may be amended after action barred,** if amendment within the lis pendens.—L. & N. R. Co. v. Woods, 105 Ala. 561. **Pleading contributory negligence only, admits negligence on part of defendant; not so when interposed with a plea of not guilty.**—L. & N. R. Co. v. Hall, 87 Ala. 708; McDonald v. Montgomery St. Ry., 110 Ala. 161. **The words "gross" and "reckless," as applied to negligence, defined.**—K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412; Stringer v. Ala. Mid. Ry. Co., 99 Ala. 397; A. G. S. R. Co. v. Hall, 105 Ala. 599; L. & N. R. Co. v. Anchors, Ala. (22 So. 279). **Simple negligence and willful or wanton negligence distinguished and defined.**—Birmingham Ry. & E. Co. v. Bowers, 110 Ala. 328; Stringer v. Ala. Mid. Ry. Co., 99 Ala. 397. **When the complaint is amended, pleas and demurrers should be refiled.**—L. & N. R. Co. v. Woods, 105 Ala. 561. **In case of minor;** need not negative parent's consent to employment.—Ala. Mid. Ry. Co. v. McDonald, 112 Ala. 216. **Evidence: Burden on plaintiff to prove his case as alleged.**—L. & N. R. Co. v. Allen, 78 Ala. 494; L. & N. R. Co. v. Campbell, 97 Ala. 147, 151; Birmingham Min. R. Co. v. Wilmer, 97 Ala. 165; Rogers v.

DeBardelaben C. & I. Co., 97 Ala. 154; L. & N. R. Co. v. Binion, 98 Ala. 570; Jones v. Mary Lee C. & I. Co. 107 Ala. 400; Conrad v. Gray, 109 Ala. 130; McDonald v. Montgomery St. Ry., 110 Ala. 161. **Allegata and probata must correspond; variance.**—Pryor v. L. & N. R. Co., 90 Ala. 32; L. & N. R. Co. v. Davis, 91 Ala. 487; Hood v. Pioneer M. & M. Co., 95 Ala. 461; A. G. S. R. Co. v. Hall, 105 Ala. 599; Conrad v. Gray, 109 Ala. 130. **When different causes alleged** under a videlicet, or in different counts, **not necessary to prove all.** A. G. S. R. Co. v. Bailey, 112 Ala. 167; A. G. S. R. Co. v. McDonald, 112 Ala. 216. **Injury does not raise presumption of negligence.**—Mary Lee C. & R. Co. v. Chambliss, 97 Ala. 171; McDonald v. Montgomery St. Ry., 110 Ala. 161. **Causal connection must be shown between negligence and injury.**—Thompson v. L. & N. R. Co., 91 Ala. 496; Bromley v. Birmingham Min. R. Co., 95 Ala. 397; Western Ry. v. Mutch, 97 Ala. 194; L. & N. R. Co. v. Stutts, 105 Ala. 368. **When jury may infer such connection.**—Bromley v. Birmingham Min. R. Co., 95 Ala. 397. **Sufficient that the injury was a contributing cause** of death. Thompson v. L. & N. R. Co., 91 Ala. 496. **Burden of proof as to contributory negligence.**—"The onus in this regard is in all cases on the defendant, though plaintiff's evidence sometimes relieves from the necessity of discharging it." G. P. R. Co. v. Davis, 92 Ala. 300, 312; K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412, 428; McDonald v. Montgomery St. Ry. Co., 110 Ala. 161; Western Ry. v. Williamson, Ala. (21 So. 827). **Under complaint charging only simple negligence, evidence of willful or wanton negligence not admissible.**—L. & N. R. Co. v. Markee, 103 Ala. 160 (overruling, on this point, all former decisions to the contrary); Jones v. Ala. Min. R. Co., 107 Ala. 400, 410. **What necessary to show willful or wanton negligence.**—A. G. S. R. Co. v. Hall, 105 Ala. 599; Birmingham Ry. & Elec. Co. v. Bowers, 110 Ala. 328. **What amounts to contributory negligence.**—G. P. R. Co. v. Propst, 83 Ala. 518; M. & B. R. Co. v. Holborn, 84 Ala. 133; Pryor v. L. & N. R. Co., 90 Ala. 32; L. & N. R. Co. v. Orr, 91 Ala. 548; M. & C. R. Co. v. Graham, 94 Ala. 545; R. & D. R. Co. v. Thomason, 99 Ala. 471; T. C. I. & R. Co. v. Herndon, 100 Ala. 451; R. & D. R. Co. v. Bivins, 103 Ala. 142; Jones v. Ala. Min. R. Co., 107 Ala. 400. **Mortuary tables admissible to show probable duration of life,** but not conclusive. Birmingham Min. Ry. Co. v. Wilmer, 97 Ala. 165; Mary Lee C. & R. Co. v. Chambliss, 97 Ala. 171; R. & D. R. Co. v. Hissong, 97 Ala. 187. **The courts take judicial notice** of such tables.—L. & N. R. Co. v. Mothershed, 97 Ala. 261. **Expert testimony as to railroad appliances.**—R. & D. R. Co. v. Jones, 92 Ala. 218; M. & O. R. Co. v. George, 94 Ala. 199; L. & N. R. Co. v. Davis, 99 Ala. 593. **Non-expert as to rate of speed.**—K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412; A. G. S. R. Co. v. Hall, 105 Ala. 599. **Photographs, diagrams and maps.**—K. C. M. & B. R. Co. v. Smith, 90 Ala. 25. **Declarations of deceased** inadmissible.—R. & D. R. Co. v. Hammond, 93 Ala. 181. **Railroad rules.**—G. P. R. Co. v. Propst, 90 Ala. 1; M. & C. R. Co. v. Askew, 90 Ala. 5; L. & N. R. Co. v. Orr, 91 Ala. 548; R. & D. R. Co. v. Jones, 92 Ala. 218; L. & N. R. Co. v. Hawkins, 92 Ala. 241; M. & C. R. Co. v. Graham, 94 Ala. 545; R. & D. R. Co. v. Hissong, 97 Ala. 187; R. & D. R. Co. v. Thomason, 99 Ala. 471; L. & N. R. Co. v. Davis, 99 Ala. 593; L. & N. R. Co. v. Richardson, 100 Ala. 232; L. & N. R. Co. v. Mothershed, 110 Ala. 143; A. G. S. R. Co. v. Roach, 110 Ala. 266; Brown v. L. & N. R. Co., 111 Ala. 275; Ala. Mid. R. Co. v. McDonald, 112 Ala. 216. **Damages; when injury is permanent, damages past and prospective may be recovered.**—M. & O. R. Co. v. George, 94 Ala. 199; A. G. S. R. Co. v. Bailey, 112 Ala. 167. **Damages recoverable are compensatory and not punitive; elements and measure** generally.—L. & N. R. Co. v. Orr, 91 Ala. 548; Williams v. S. & N. Ala. R. Co., 91 Ala. 635; L. & N. R. Co. v. Trammell, 93 Ala. 350; M. & O. R. Co. v. George, 94 Ala. 199; McAdory v. L. & N. R. Co., 94 Ala. 272; Bromley v. Bir. Min. R. Co., 95 Ala. 397; R. & D. R. Co. v. Farmer, 97 Ala. 141; Ala., etc., Co. v. Pitts, 98 Ala. 285; L. & N. R. Co. v. Davis, 99 Ala. 593; T. C. I. & R. Co. v. Herndon, 100 Ala. 451; L. & N. R. Co. v. Markee, 103 Ala. 160; A. G. S. R. Co. v. Hall, 105 Ala. 599; L. & N. R. Co. v. Binion, 107 Ala. 645; A. G. S. R. Co. v. Bailey, 112 Ala. 167. **When deceased left dependent relatives.**—A. G. S. R. Co. v. Hall, 105 Ala. 599; L. & N. R. Co. v. Markee, 103 Ala. 160; Bromley v. Bir. Min. R. Co., 95 Ala. 397; McAdory v. L. & N. R. Co., 94 Ala. 272; L. & N. R. Co. v. Trammell, 93 Ala. 350. **When deceased left no next of kin.**—James v. R. & D. R. Co. 92 Ala. 231. **In case of a deceased minor.**—Williams v. L. & N. R. Co., 91 Ala. 635; Ala., etc., Co. v. Pitts, 98 Ala. 285; T. C. I. & R. Co. v. Herndon, 100 Ala. 451. **When injury not fatal.**—M. & O. R. Co. v. George, 94 Ala. 199; L. & N. R. Co. v. Davis, 99 Ala. 593; L. & N. R. Co. v. Binion, 107 Ala. 645. **Physical suffering of plaintiff considered** in estimating his damages.—M. & O. R. Co. v. George, 94 Ala. 199; L. & N. R. Co. v. Binion, 107 Ala. 645; A. G. S. R. Co. v. Bailey, 112 Ala. 167. **Physical suffering of deceased not considered.**—L. & N. R. Co. v. Orr, 91 Ala. 548.

1750 (2592). **Damages exempt.**—Damages recovered by the serv-

ant or employe, of and from the master or employer, are not subject to the payment of debts, or any legal liabilities incurred by him.

Griswold v. Griswold, 111 Ala. 572.

1751 (2591). **Personal representative may sue, if injury results in death.**—If such injury results in the death of the servant or employe, his personal representative is entitled to maintain an action therefor, and the damages recovered are not subject to the payment of debts or liabilities, but shall be distributed according to the statute of distributions.

When the injury results in death, **no one but the personal representative can sue.**—Stewart v. L. & N. R. Co., 83 Ala. 493; C. & W. Ry. Co. v. Bradford, 86 Ala. 574; Williams v. S. & N. A. R. Co., 91 Ala. 635; L. & N. R. Co. v. Trammell, 93 Ala. 350; T. C. I. & R. Co. v. Herndon, 100 Ala. 451. **Complaint need not aver that deceased left heirs at law.**—C. & W. Ry. Co. v. Bradford, 86 Ala. 574. But if it is shown that he left **no next of kin, only nominal damages** will be awarded. James v. R. & D. R. Co., 92 Ala. 231. **Distribution. Griswold v. Griswold, 111 Ala. 572. That the deceased was a minor makes no difference** under this statute.—Lovell v. DeBardelaben C. & I. Co., 90 Ala. 13; Williams v. S. &. N. A. R. Co., 91 Ala. 635; T. C. I. & R. Co. v. Herndon, 100 Ala. 451; Ala. Mid. Ry. Co. v. Bailey, 112 Ala. 216. **When non-consenting parent may sue** (under another statute) for injury to minor employe.—Lovell v. DeBardelaben C. & I. Co., 90 Ala. 13; Williams v. S. & N. A. R. Co., 91 Ala. 635.

CHAPTER 44.

ESCHEATS. 1752–1760.

1752 (1936) (2851) (2456) (2064). **When property escheats.** The property of all persons who die without devising or bequeathing the same, and leaving no lawful heirs, or husband or wife, capable of taking, or where the devisees or legatees are incapable of taking the same, and there are no lawful heirs, or husband or wife, escheats to the state.

When intestate incapable of transmitting, property vests in the state. Ethridge v. Doe, 18 Ala. 565; Donovan v. Doe, 53 Ala. 411. **Administration proper** if not indispensable.—Nicrosi v. Giuly, 85 Ala. 365. **Information by the attorney-general.**—Harley v. State, 40 Ala. 689.

1753 (1937) (2852) (2457) (2065). **Notice by representative.** The personal representative of any person leaving property not devised or bequeathed, or where the devisees or legatees are incapable of taking, and such representative is unable to ascertain any lawful heirs or distributees, or persons capable of taking, within six months after the grant of letters testamentary or of administration, must give notice thereof in some newspaper published in the state, once a week for three successive weeks.

1754 (1938) (2853) (2458) (2066). **Contents of notice.**—Such notice must contain the name of the deceased, as near as may be, a description of his person, the place where he was, or is supposed to have been born, the place where he died, or was known to reside, and a description of the property of which he died seized or possessed.

1755 (1939) (2854) (2459) (2067). **Disposition of personalty when no heir appears.**—If no heir or person entitled to receive such estate appears or is ascertained within twelve months after such publication, the money and proceeds of the personal assets must be paid to the judge of probate, after deducting the expenses of administration.

1756 (1940) (2855) (2460) (2068). **Disposition of real estate when no heir appears.**—If, after two years from the publication of such notice, no heir or person entitled to receive such estate appears, the real estate must be sold by such personal representative, under the direction of the judge of probate of the county in which letters testamentary or of administration were granted, and upon such notice as real estate is sold by executors and administrators; and the proceeds thereof must, after deducting all expenses and allowances, be paid to such judge.

1757 (1941) (2856) (2461) (2069). **Decrees against representative for failure to pay over proceeds.**—The judge of probate may render decrees against such personal representative, in the name of the state, for the money or proceeds of the property, under the provisions of this chapter and enforce the same as other decrees by the judge of probate against executors or administrators are enforced.

1758 (1942) (2857) (2462) (2070). **Receipts paid to state treasurer; penalty for, and evidence of default.**—The judge of probate must, within three months after the receipt thereof, pay to the state treasurer all moneys he may receive under the provisions of this chapter, and, failing so to do, he is liable as a defaulter, and also forfeits three hundred dollars, one half to the state, and the other half to any one suing for the same; and, on the trial, the certificate of the treasurer is presumptive evidence of his failure to make such payment.

1759 (1943) (2858) (2464) (2072). **State's remedy on distribution of property without authority.**—The state may enforce its right to any personal property to which it is entitled under the provisions of this chapter, by action against any person into whose possession the same may come; and, if any personal representative pays any money, or delivers any property to which the state is, under the provisions of this chapter, entitled, to any person not authorized to receive the same, such personal representative and his sureties are liable to the state for the amount of such money, or value of such property, and interest thereon from the time of such payment or delivery.

1760 (1944) (2859) (2465) (2073). **Duty of judge of probate.** It is the official duty of the judge of probate of each county to attend to the interest of the state, intended to be secured by the provisions of this chapter.

CHAPTER 45.

ESTRAYS AND ANIMALS RUNNING AT LARGE.

ARTICLE 1.—ESTRAYS. 1761–1789.
2.—STALLIONS AND JACKASSES RUNNING AT LARGE. 1790, 1791.

ARTICLE 1.

ESTRAYS.

1761 (1330) (1552) (1245) (1062). **Estrays may be taken up.** Every person in this state, finding any horse, mare, mule, jack, or jenny, any neat cattle, hog, or sheep running at large about his residence or plantation, or the residence or plantation of which he has charge, the owner of which is unknown, may take up such animal as an estray.

Estray laws treat uninclosed lands as common of pasture and **permit an owner to suffer his cattle to run at large.**—M. & C. R. Co. v. Peacock, 25 Ala. 229; M. & O. R. Co. v. Williams, 53 Ala. 595; Wilhite v. Speakman, 79 Ala. 400. **Party claiming estray title must show** by proper evidence that the statute has been complied with.—McCrossin v. Davis, 100 Ala. 631.

1762 (1331) (1553) (1246) (1063). **Neat cattle not to be taken up at certain seasons; exceptions.**—No neat cattle, except cows with young calves, sheep, or hogs, must be taken up as estrays between the first days of April and November.

1763 (1332) (1554) (1247) (1064). **Oath of taker.**—Every person taking up an estray must, within three days thereafter, make oath before some justice of the county in which such estray was found, that the same was taken up about his plantation or residence, or about the plantation or residence in his charge, and that the marks or brands have not been defaced or altered since taking up.

1764 (1333) (1555) (1248) (1065). **Appraisement and certificate.** Such justice must thereupon issue his summons to two disinterested householders, directing them, after being sworn, to appraise the estray at a fair valuation, to certify such valuation in writing with a particular description of the estray, by the kind, size, mark, color, stature and age; which certificate, signed by them and attested by the justice, must be returned to the judge of probate within ten days thereafter.

1765 (1334) (1556) (1249) (1066). **Certificate entered by judge of probate.**—The judge of probate must enter such certificate, and the name of the person taking up the estray, in a book to be kept for that purpose.

1766 (1335) (1557) (1250) (1067). **If two estrays taken up at same time.**—If two or more estrays of the same kind are taken up at the same time, by the same person, they must be included in the same summons, certificate of appraisement and entry.

1767 (1336) (1558) (1251) (1068). **Bond to be given.**—Every

person taking up an estray, must, on the return of the certificate of appraisement to the justice, give bond with surety, to be approved by him, in a sum equal to the appraised value of the estray, payable to the county, and conditioned that if the owner thereof, in one year thereafter, prove his property in such estray, and pay all legal costs and expenses, he will deliver up the same; and if the owner fails to prove his property within a year, he will pay to the county one-half of such appraised value.

1768 (1337) (1559) (1252) (1069). **Justice returns bond to judge of probate.**—The justice must return such bond to the judge of probate, with the appraisement and valuation of the estray.

1769 (1338) (1560) (1253) (1070). **Horses, etc., appraised at more than twenty dollars; advertising fee.**—If the estray be a horse, mare, mule, jack, or jenny, and is appraised at more than twenty dollars, the person taking up such an estray must pay to the justice two dollars, which must be paid to the judge of probate on the return to him of the certificate of appraisement, for the expenses of advertising, as hereinafter provided.

1770 (1339) (1561) (1254) (1071). **Neglect of duty by justice.** Any justice, failing to return the certificate of appraisement within the prescribed time, or to pay the printing fees, according to the provisions of the preceding section, forfeits one hundred dollars, one half to the person suing for the same, the other to the use of the county.

1771 (1340) (1562) (1255) (1072). **When advertised in newspaper.**—Where the estray is a horse, mare, mule, jack, or jenny, and appraised at more than twenty dollars, the judge of probate must, on the return of the appraisement and the payment of the sum hereinbefore provided for, advertise such estray in some newspaper of his county for three successive weeks; and if no newspaper is published therein, then in the paper nearest thereto.

Proof of advertisement.—McCrossin v. Davis, 100 Ala. 631.

1772 (1341) (1563) (1256) (1073). **Sum not sufficient for advertisement, judge posts notice.**—If the sum specified is not sufficient to procure the publication as required by the preceding section, such judge must cause the same to be advertised by posting notice at three public places in the county, and pay the amount received by him for the purpose of publication into the county treasury.

1773 (1342) (1564) (1257) (1074). **Contents of advertisement.** The advertisement must contain the name of the person by whom the estray was taken up, and the time when, the appraised value, description of the animal, and the name of the justice before whom the proceedings were had.

1774 (1343) (1565) (1258) (1075). **Lists of estrays to be posted.** Such judge must also make out a list of all estrays, and post up the same at the court-house door on the first day of each term of the circuit court, which list must show all estrays taken up within twelve months preceding such day, and not restored to their owners.

1775 (1344) (1566) (1259) (1076). **Estrays required to be ad-**

vertised, brought to court-house first day of court.—All estrays, required by this chapter to be advertised in a newspaper, must be brought to the court-house of the county in which they were taken up, on the first day of the circuit court next after such taking up.

1776 (1345) (1567) (1260) (1077). **Death or escape of estray.** When the estray dies, or escapes without fault on the part of the taker, and after the same is appraised, he must report the same to the judge of probate within ten days thereafter, making oath that such death or escape was without his fault; and such judge must make an entry thereof in the margin where the certificate of appraisement is entered, and must not advertise or include such estray in the list posted up at the court-house door.

Clerk v. Anderson, 11 Ala. 410; Hudgins v. Glass, 34 Ala. 110.

1777 (1346) (1568) (1261) (1078). **Proceeding as required, taker discharged from liability.**—Upon proceeding as required by the preceding section, the taker is, on the escape or death of the estray, discharged from all liability.

1778 (1347) (1569) (1262) (1079). **Ownership; how established.** If the owner of any estray, within one year from the execution of the bond given under section 1767 (1336), claim the same, he must notify the taker and satisfactorily establish his claim before a justice of the county, either by his own, or the oath of another person.

Must notify taker not only of his claim, but also of the time, place, and before what justice he will establish it.—Stephenson v. Brunson, 83 Ala. 455.

1779 (1348) (1570) (1263) (1080). **Order of delivery.**—Such justice, if satisfied of the ownership of the estray, must make an order in writing, requiring such estray to be delivered to such owner, on his paying the legal costs which have accrued, and compensation for keeping.

Order made without notice to taker void.—Stephenson v. Brunson, 83 Ala. 455.

1780 (1349) (1571) (1264) (1081). **Estray not to be used until bond is given.**—No person must work any estray, except by riding the same to the justice for the purpose of taking the oath required by section 1763 (1332), until he has given the bond required by this article.

1781 (1350) (1572) (1265) (1082). **Penalty.**—Any person, using an estray contrary to the provisions of the preceding section, forfeits one hundred dollars, one half to the use of the person suing for the same, the other to the use of the county.

Smith v. Ewers, 21 Ala. 38; Butler v. Cook, 14 Ala. 576.

1782 (1351) (1573) (1266) (1083). **No charge for keeping, if worked.**—No person must make any charge for keeping an estray which has been used or worked while in the possession of the taker, except by riding the same to the court-house for exhibition, and to the justice for the purpose of taking such oath; and any person violating this section forfeits the appraised value of such estray to the person suing for the same.

1783 (1352) (1574) (1267) (1084). **Pay for keeping; how deter-**

mined.—For the keeping of estrays, if not worked or used, the taker is entitled to a reasonable compensation, if the parties cannot agree, to be determined by the justice before whom the owner proves the property, and if either party is dissatisfied with his decision, by any two disinterested householders, who may be appointed by such justice, with liberty to call in an umpire, whose decision is final.

Failure of owner to pay costs and expenses within the year does not forfeit his right when lawful excuse shown.—Stephenson v. Brunson, 83 Ala. 455.

1784 (1353) (1575) (1268) (1085). **Not to be injured or killed.** No person taking up an estray must intentionally injure, kill, or dispose of the same, until after the expiration of the time that the owner has the right of proving his property therein.

1785 (1354) (1576) (1269) (1086). **Penalty.**—Any person, violating the provisions of the preceding section, forfeits to the owner double the appraised value of the estray.

Simpson v. Talbot, 25 Ala. 469.

1786 (1355) (1577) (1270) (1087). **On failure to claim title one year after execution of bond, forfeited to taker.**—If the owner of the estray does not appear and prove his property therein, in one year after the execution of the bond given under section 1767 (1336) he forfeits his right thereto, and the property is vested in the taker of the same.

The taker is a bailee during the year, is vested with a qualified property in the animal, and upon complying with the statute becomes the absolute owner after one year.—Hudgins v. Glass, 34 Ala. 110; Stephenson v. Brunson, 83 Ala. 455; McCrossin v. Davis, 100 Ala. 631.

1787 (1356) (1578) (1271) (1088). **One-half the value to be paid to the county.**—If the estray is not proved in one year from the execution of such bond, the person taking up the same must pay to the judge of probate of the county in which such estray was taken up, one-half of the appraised value of the same, for the use of the county, in discharge of his bond.

1788 (1357) (1579) (1273) (1089). **If not paid, execution issues on the bond.**—After the expiration of such year, if the order of the justice requiring the taker to return the estray to the owner, with his receipt thereon, is not filed with the judge of probate, or the one-half of the appraised value of the estray paid to him, he must issue an execution on such bond, in the name of the county, against the obligors thereto, for one-half of such appraised value and costs, returnable to any regular term of the court of probate, to be holden within three months.

1789 (1358) (1580) (1274) (1090). **Death of taker.**—If the taker dies before the expiration of the time allowed by this article to the owner of the estray to prove his property, the provisions in relation to giving up such estray to the owner apply to his legal representatives.

ARTICLE 2.

STALLIONS AND JACKASSES RUNNING AT LARGE.

1790 (1359) (1581) (1276) (1092). **Stallions and jacks, when taken up; advertisement and fees.**—If any stallion, or jackass, over two years of age, is found running at large, such animal may be brought before any justice of the county, who must cause the same to be advertised, with a description of his marks, color, size and age, with the name of the taker, in three public places in the county; and the taker is entitled to receive five dollars from the owner, and a reasonable compensation for keeping, to be determined as in the case of estrays, and the justice one dollar.

1791 (1360) (1582) (1277) (1093). **If not claimed.**—If such stallion or jackass is not claimed within three months after being taken up, and the amounts specified in the preceding section paid within that time, the taker, or any other person, may geld such animal at the risk of the owner.

CHAPTER 46.

EVIDENCE.

ARTICLE 1.—GENERAL RULES. 1792–1823.
2.—PROCURING TESTIMONY BY SUBPŒNA. 1824–1832.
3.—PROCURING TESTIMONY BY DEPOSITION. 1833–1849.
4.—EXAMINATION OF PARTIES BY INTERROGATORIES. 1850–1858.
5.—REQUIRING THE PRODUCTION OF BOOKS AND WRITINGS. 1859, 1860.
6.—PROCEEDINGS TO PERPETUATE TESTIMONY. 1861–1875.

ARTICLE 1.

GENERAL RULES.

1792 (2763) (3057) (2703) (2301). **Testimony; how given.**—All testimony, except as otherwise directed, must be given in open court on the oath or affirmation of the witness.

Garrett v. Bruner, 59 Ala. 513; Garner v. Toney, 107 Ala. 352.

1793 (2764) (3034) (2679) (2275). **Interpreters.**—Interpreters may be sworn truly to interpret, when necessary, and must be paid as witnesses in the cause.

Horn v. State, 98 Ala. 23.

As amended Feb. 10, 1891, p. 557.

1794 (2765) (3058) (2704). **Competency of parties as affected by interest.**—In civil suits and proceedings, there must be no exclusion of any witness because he is a party, or interested in the issue tried, except that no person having a pecuniary interest in the result of the suit or proceeding shall be allowed to testify against the

party to whom his interest is opposed, as to any transaction with, or statement by the deceased person whose estate is interested in the result of the suit or proceeding, or when such deceased person, at the time of such transaction or statement, acted in any representative or fiduciary relation whatsoever to the party against whom such testimony is sought to be introduced, unless called to testify thereto by the party to whom such interest is opposed, or unless the testimony of such deceased person in relation to such transaction or statement is introduced in evidence by the party whose interest is opposed to that of the witness, or has been taken and is on file in the cause. No person who is an incompetent witness under this section shall make himself competent by transferring his interest to another.

Statute **not unconstitutional.**—Walthall v. Walthall, 42 Ala. 450. **Furnishes the only rule** by which the competency of parties is determined.—Lemay v. Walker, 62 Ala. 39; Davis v. Tarver, 65 Ala. 98; Key v. Jones, 52 Ala. 238; Kumpe v. Coons, 63 Ala. 448. **Abolishes the common-law rule of incompetency of parties** and renders parties competent to testify in all cases except in the particular instances here specified.—Rupert v. Elston, 35 Ala. 79; O'Neal v. Reynolds, 42 Ala. 197; Bogia v. Darden, 45 Ala. 269; Smith v. Bryant, 60 Ala. 235; Ala. Gold Life Ins. Co. v. Sledge, 62 Ala. 566; Davis v. Tarver, 65 Ala. 98; Daily v. Daily, 66 Ala. 266; Calera Land Co. v. Brinkerhoff, 87 Ala. 422; Mobile Savings Bank v. McDonnell, 87 Ala. 736; Sublett v. Hodges, 88 Ala. 491. **To render witness incompetent,** "he must have a pecuniary interest in the result, opposed to the party against whom he is called to testify, and the estate of the deceased person must be interested in the result of the suit, or the decedent must have acted in a fiduciary relation to the party against whom the testimony is sought to be introduced."—Howle v. Edwards, 97 Ala. 649. **To fall within the prohibited line,** the transaction or statement must be of such a character, and so connected with the deceased as that, if living, the presumption would be that he could deny, qualify or explain it.—Wood v. Brewer, 73 Ala. 259; Miller v. Cannon, 84 Ala. 59, 63. **Must be an immediate conflict** of interest.—Hill v. Helton, 80 Ala. 528; Ala. Gold Life Ins. Co. v. Sledge, 62 Ala. 566; Daily v. Daily, 66 Ala. 266; Dismukes v. Tolson, 67 Ala. 386; Butler v. Jones, 80 Ala. 436; Fitzgerald v. Williamson, 85 Ala. 585; Gamble v. Whitehead, 94 Ala. 335; Cromwell v. Horton, 94 Ala. 647; Howle v. Edwards, 97 Ala. 649; Scarborough v. Blackman, 108 Ala. 656. **The right and privilege must be mutual;** if death has closed the lips of one party, the policy of the law is to close the lips of the other.—Louis v. Easton, 50 Ala. 470; Boykin v. Smith, 65 Ala. 294; Dismukes v. Tolson, 67 Ala. 386; Miller v. Cannon, 84 Ala. 59, 63. **Exclusion extends to corroborative, strengthening or weakening testimony.** Miller v. Cannon, 84 Ala. 59; Tisdale v. Maxwell, 58 Ala. 40; Killen v. Lide, 65 Ala. 505; Dismukes v. Tolson, 67 Ala. 386. **Interested person may testify to collateral facts** and transactions not falling within the expressly prohibited class.—Huckabee v. Nelson, 54 Ala. 12; Strange v. Graham, 56 Ala. 614; Miller v. Clay, 57 Ala. 162; Tisdale v. Maxwell, 58 Ala. 40; Fort v. Davis, 67 Ala. 481; Wood v. Brewer, 73 Ala. 259; Meadows v. Meadows, 78 Ala. 240; Miller v. Cannon, 84 Ala. 59, 63; Parker v. Edwards, 85 Ala. 246; Gamble v. Whitehead, 94 Ala. 335. **And may deny or explain conversations** and admissions introduced against him.—Frank v. Thompson, 105 Ala. 211. **Exception, does not extend to suits and controversies between heirs or devisees** when the result would not diminish the estate of the decedent.—Henry v. Hall, 106 Ala. 84; Snider v. Burks, 84 Ala. 53; Bibb v. Hunter, 79 Ala. 351; Fort v. Davis, 67 Ala. 481; Kumpe v. Coons, 63 Ala. 448; Conoly v. Gayle, 61 Ala. 116; O'Neal v. Reynolds, 42 Ala. 197. Hence **a legatee or devisee is competent to attest and prove a will.** Kumpe v. Coons, 63 Ala. 448; Snider v. Burks, 84 Ala. 53; Henry v. Hall, 106 Ala. 84. **Persons excluded:** Transferor of claim in suit against estate of decedent.—Lewis v. Easton, 50 Ala. 470; Drew v. Simmons, 58 Ala. 463; Sublett v. Hodges, 88 Ala. 491; Glover v. Gentry, 104 Ala. 222; s. c., 112 Ala. 500. **A surety** bound for debt of deceased principal.—Keel v. Larkin, 72 Ala. 493. **Vendee** seeking specific performance, or sued for purchase-money, after death of vendor.—Goodlett v. Kelly, 74 Ala. 213; Binford v. Dement, 72 Ala. 491; Hodges v. Denny, 36 Ala. 286; Brown v. Weaver, Ala. (20 So. 964). **Mortgagee** seeking foreclosure.—Junkins v. Lovelace, 72 Ala. 303. **Creditor** of insolvent estate.—Dunlap v. Mobley, 71 Ala. 102. **Heirs or devisees** when interested.—Kirksey v. Kirksey, 41 Ala. 626; Key v. Jones, 52 Ala. 238; McCrary v. Rash, 60 Ala. 374; McDonald v. Jacobs, 77 Ala. 524; Skinner v. Chapman, 78 Ala. 376. **Administrator** incompetent to prove his own debt against

the estate.—Davis v. Tarver, 65 Ala. 98; Hall v. Pegram, 85 Ala. 522. **Or other debt paid by him.**—Dunlap v. Mobley, 71 Ala. 102; Hullett v. Hood, 109 Ala. 345. **Defendant sued for debt to decedent cannot testify** as to whether any papers passed between them.—Davidson v. Rothschilds, 49 Ala. 104. **Nor that he deposited certain railroad-stock** to be applied to debt.—Frazier v. Parks, 56 Ala. 363. **Grantee cannot testify as to contents of lost deed** executed by decedent.—Hillens v. Brinsfield, 108 Ala. 605. **Party cannot testify to the fact and result of a former suit** between him and the decedent.—Beadle v. Graham, 66 Ala. 99, 102. **Nor to transaction with a personal representative** since deceased.—Waldman v. Crommelin, 46 Ala. 580. **Statute cannot be evaded by suing administrator individually.**—Stuckey v. Bellah, 41 Ala. 700. **County officer may testify to official transaction** with deceased treasurer. Coleman v. Pike Co., 83 Ala. 326. **"Representative or fiduciary relation."** The incompetency does not rest on the agent or clerk; he may testify for his principal against a decedent.—Garrett v. Trabue, 82 Ala. 227; Huckaba v. Abbott, 87 Ala. 409; Mobile Savings Bk. v. McDonnell, 87 Ala. 736; Davis v. Davis, 93 Ala. 173; Espalla v. Richards, 94 Ala. 159. **Interested party cannot testify** to transactions with deceased agent of another party.—Warten v. Strane, 82 Ala. 311; Mobile Savings Bk. v. McDonnell, 87 Ala. 736. **The exclusion applies to partnership and corporate transactions,** when had with partner or officer since deceased.—Stanley v. Sheffield, etc., Co., 83 Ala. 260; Parker v. Edwards, 85 Ala. 246; Tabler v. Sheffield, etc., Co., 87 Ala. 305; Edwards v. Parker, 88 Ala. 356; Downing v. Woodstock I. Co., 93 Ala. 262. But **not when had with person still living.**—Ala. Gold Life Ins. Co. v. Sledge, 62 Ala. 566. **"Unless called to testify thereto by the party to whom such interest is opposed."**—Thomas v. Thomas, 42 Ala. 120; Dudley v. Steele, 71 Ala. 423; Mobile Savings Bank v. McDonnell, 87 Ala. 736; Sublett v. Hodges, 88 Ala. 491; Austin v. Bean, 101 Ala. 133. **Opposite party defined.**—Dolan v. Dolan, 89 Ala. 256. **No person can make himself competent** by transferring his interest. Glover v. Gentry, 104 Ala. 222. **Burden of showing incompetency** rests on party objecting.—Ala. Gold Life Ins. Co. v. Sledge, 62 Ala. 566. **Objection not waived** by merely filing cross-interrogatories after objecting to competency of witness.—Goodlett v. Kelly, 74 Ala. 213. **Nor by oral cross-examination** after proper objection.—Scarborough v. Blackman, 108 Ala. 656. **When waived.** Binford v. Dement, 72 Ala. 491. **Statute being for protection of estate of decedent,** adversary parties cannot object.—Austin v. Bean, 101 Ala. 133. **Representative cannot testify to statements made by his intestate.**—Adler v. Pinn, 80 Ala. 351. **Mental incapacity goes to credibility,** not competency. Worthington v. Mencer, 96 Ala. 310; Walker v. State, 97 Ala. 85. **Competency of children** of tender years.—Wade v. State, 52 Ala. 164; Carter v. State, 63 Ala. 52; Beason v. State, 72 Ala. 191; McGuff v. State, 88 Ala. 147; McKelton v. State, 88 Ala. 181; Grimes v. State, 105 Ala. 86; Williams v. State, 109 Ala. 164.

1795 (2766). Competency of witness as affected by conviction for crime.—No objection must be allowed to the competency of a witness because of his conviction for any crime, except perjury or subornation of perjury; but if he has been convicted of other infamous crime, the objection goes to his credibility.

Prior to statute, **a conviction of** petit larceny, or other **infamous crime, rendered witness incompetent to testify.**—Sylvester v. State, 71 Ala. 17; Burns v. Campbell, 71 Ala. 275; P. & M. Ins. Co. v. Tunstall, 72 Ala. 142. **Did not include** conviction for purely statutory offense.—Harrison v. State, 55 Ala. 239; P. & M. Ins. Co. v. Tunstall, 72 Ala. 142; Clifton v. State, 73 Ala. 473. **Under this section,** conviction for any crime, except perjury or subornation of perjury, goes to credibility.—Prior v. State, 99 Ala. 196; Thompson v. State, 100 Ala. 70; McQueen v. State, 108 Ala. 54. **Conviction proved** by the record or properly certified copy.—Burns v. Campbell, 71 Ala. 275; Thompson v. State, 100 Ala. 70; Murphy v. State, 108 Ala. 10. **Offense against city ordinance,** not within.—Burns v. Campbell, 71 Ala. 275. **Character witness for defendant may be cross-examined** as to whether he has heard of defendant being accused of certain specified offenses before beginning of the then pending prosecution.—Smith v. State, 103 Ala. 57; Baker v. Trotter, 73 Ala. 277.

1796. Witness may be examined touching his conviction for crime.—A witness may be examined touching his conviction for crime, and his answers may be contradicted by other evidence.

1797. Execution of instrument may be proved by maker, without accounting for attesting witnesses.—The execution of any in-

strument of writing attested by witnesses may be proved by the testimony of the maker thereof, without producing or accounting for the absence of the attesting witnesses.

1798 (2767) (3059) (2715) (2317). **Proof of usury by representative.**—When the borrower is dead, and usury is relied on as a defense, the representative of the borrower, having given ten days' notice to the plaintiff, or his attorney, of his intention to do so, is a competent witness to prove the usury, by swearing that he believes the contract to be usurious, if the plaintiff was the lender, unless the plaintiff denies on oath, in open court, the truth of the facts proposed to be sworn to by the defendant.

1799 (2768) (550) (645). **Oaths without state in commencement or progress of suit.**—Affidavits required in the commencement or progress of any suit or judicial proceedings may be taken without this state before any commissioner appointed by the governor of this state, any judge or clerk of a federal court, or judge of any court of record, or notary public, who shall certify under their hands, and seals of office, if any.

When taken before a judge of a state court, certificate must show that the court of which he is judge is a **court of record.**—Holly v. Bass, 68 Ala. 206. **When taken before a notary public of another state, his seal must be attached.**—Alabama Nat. Bk. v. Chattanooga Door & Sash Co., 106 Ala. 663; Bayonne Knife Co. v. Umbenhauer, 107 Ala. 496.

1800 (2769) (3035) (2681) (2278). **Written contract sued on; effect of as evidence; consideration, how impeached.**—Every written contract, the foundation of the suit, purporting to be executed by the party sought to be charged, his partner, agent or attorney in fact, is evidence of the existence of the debt, or that the party undertook to perform the duty for which it was given, and that it was made on sufficient consideration; but may be impeached by plea, and, when so impeached, the burden of proof is on the defendant.

Plaintiff need not allege or prove consideration; **rests on defendant to plead and prove illegal or no consideration.**—Chamberlain v. Darrington, 4 P. 515; Click v. M'Afee, 7 P. 62; Miller v. McIntyre, 9 Ala. 638; Thompson v. Hall, 16 Ala. 204; Cowan v. Cooper, 41 Ala. 187; Hill v. Nichols, 50 Ala. 336; Bolling v. Munchus, 65 Ala. 558; Bray v. Comer, 82 Ala. 183; Martin v. Foster, 83 Ala. 213. **Covenant to quitclaim within a specified time** imports consideration.—Holman v. Bank, 12 Ala. 369. **Official bond,** if illegal, must be impeached by plea, not by objection to its introduction.—Bryan v. Kelly, 85 Ala. 369. **Plea that the instrument sued on "is without consideration,"** sufficient. Giles v. Williams, 3 Ala. 316; Kolsky v. Enslen, 103 Ala. 97. **Plea of "failure of consideration" or "fraudulent misrepresentation,"** without stating the facts and not "in short by consent," bad.—Cormelich v. Mims, 88 Ala. 335; or "want of consideration," Darby v. Berney Nat. Bk., 107 Ala. 643; McAfee v. Glen Mary C. & C. Co., 97 Ala. 709; Sims v. Herzfeld, 95 Ala. 145. **Statute equally applicable at law and in equity;** when demurrer lies for want of consideration.—Bolling v. Munchus, 65 Ala. 558; Grimball v. Mastin, 77 Ala. 553.

1801 (2770) (3036) (2682) (2279). **Execution of instruments purporting to be signed by defendant impeached by sworn plea.** Every written instrument, the foundation of the suit, purporting to be signed by the defendant, his partner, agent or attorney in fact, must be received in evidence without proof of the execution, unless the execution thereof is denied by plea verified by affidavit; and every assignment of such instrument, on which suit is brought in the name of the assignee, must be deemed genuine, unless impeached in like

manner, when, in either case, the burden of proof is cast on the plaintiff.

Applies to **all contracts, the foundation of suits, which either purport to be, or are alleged in the complaint to have been executed by the defendant.**—Ledbetter v. Vinton, 108 Ala. 644; K. C. M. & B. R. Co. v. Cobb, 100 Ala. 228; Levy v. Block, 88 Ala. 290; Garrett v. Garrett, 64 Ala. 263; Ala. Coal Mining Co. v. Brainard, 35 Ala. 476. **And in equity as well as at law.**—Bonner v. Young, 68 Ala. 35; Hooper v. Strahan, 71 Ala. 75; Smith v. Hiles-Carver Co., 107 Ala. 272. **In the absence of such verified plea,** instruments admissible in evidence without preliminary proof of execution.—Rice v. Thornton, 69 Ala. 473; Tuscaloosa Cotton Seed Oil Co. v. Perry, 85 Ala. 158; M. & M. Ry. Co. v. Gilmer, 85 Ala. 422; K. C. M. & B. R. Co. v. Cobb, 100 Ala. 228. **When complaint alleges execution** of instrument by defendant, he can only deny by sworn plea, whether instrument signed by mark, initial or other designation.—Wimberly v. Dallas, 52 Ala. 196; Levy v. Block, 88 Ala. 290; Walker v. Bentley, 64 Ala. 92. **Statute being liberally construed,** applies to written instrument which, though not signed by defendant, is averred to be binding on him as assignee or successor of the signer.—M. & M. Ry. Co. v. Gilmer, 85 Ala. 422. **But as against strangers** to the instrument, execution must be proved.—Meyer v. Mitchell, 75 Ala. 475. **Relates solely to denial of execution** of instrument; not to other defenses.—First Nat. Bank v. Nelson, 106 Ala. 535; Sands v. Hammell, 108 Ala. 624. **When impeached, burden on plaintiff.** Kirksey v. Kirksey, 41 Ala. 626; Jarrell v. Lillie, 40 Ala. 271. **Plea setting up material alteration** in instrument must be verified.—Smith v. Hiles-Carver Co., 107 Ala. 272; Lesser v. Scholze, 93 Ala. 338. **Or adding condition to absolute promise** or agreement.—Wood v. Coman, 56 Ala. 283; Campbell v. Larmore, 84 Ala. 499; Dexter v. Ohlander, 89 Ala. 262. **If alteration suspicious, plaintiff must remove** the suspicion before instrument admissible. Glover v. Gentry, 104 Ala. 222; s. c., 112 Ala. 500; Hill v. Nelms, 86 Ala. 442; Barclift v. Treece, 77 Ala. 528. **But if instrument on its face bears no mark of suspicion,** burden on defendant to show alterations.—Montgomery v. Crossthwait, 90 Ala. 553; Barclift v. Treece, 77 Ala. 528. **Alterations apparent on face** presumed to have been made before delivery.—Lesser v. Scholze, 93 Ala. 338. **Certificate of indebtedness** issued by authority of a corporation, within statute.—Ala. & Miss. Rivers R. Co. v. Sanford, 36 Ala. 703. **Note in issue between executor and creditor** on settlement of insolvent estate.—Shackelford v. King, 24 Ala. 158. **Bond of executor.**—Bonner v. Young, 68 Ala. 35. **Official bonds.**—Bryan v. Kelly, 85 Ala. 569; Coleman v. Pike Co., 83 Ala. 326. **Coupons.**—K. C. M. &. B. R. Co. v. Cobb, 100 Ala. 228. **Lost certificate of deposit** pleaded as set-off.—Edwards v. Parker, 85 Ala. 246; s. c., 88 Ala. 356. **Note executed in name of partnership.**—Goetter v. Head, 70 Ala. 532; Ladiga v. Smith, 78 Ala. 108. **Bill of exchange** accepted in partnership name.—Palmer v. Scott, 68 Ala. 380. **But if impeached,** plaintiff must prove partnership and execution of instrument.—Guice v. Thornton, 76 Ala. 466. **Instruments executed by corporations,** within.—Oxford Co. v. Spradley, 46 Ala. 98. **In action by assignee** of such instrument plaintiff's ownership can be **questioned only by sworn plea.**—Paige v. Broadfoot, 100 Ala. 610; Wood v. Brewer, 66 Ala. 570. **Or indorsee** against drawer of bill of exchange.—Manning v. Maroney, 87 Ala. 563. **In the absence of such plea, the written assignment is admissible without further proof.**—Phœnix Ins. Co. v. Copeland, 90 Ala. 386; Smith v. Harrison, 33 Ala. 706. **Unless so impeached, consideration of transfer cannot be inquired into.**—Wood v. Brewer, 66 Ala. 570. **Until sworn plea filed, no issue can arise as to plaintiff's ownership.**—Boit v. Maybin, 52 Ala. 252; Hirschfelder v. Mitchell, 54 Ala. 419. **Unsworn plea may be met by demurrer or motion to strike.**—Broadhead v. Jones, 39 Ala. 96; Preston v. Dunham, 52 Ala. 217. **Plea and verification; what sufficient.**—Berry v. Ferguson, 58 Ala. 314; McCoy v. Harrell, 40 Ala. 232. **Agreement** "that every matter and thing which could be legally pleaded in bar should be deemed as duly pleaded," **is not the equivalent of a verified plea.**—Ala. & Fla. R. Co. v. Watson, 42 Ala. 74. **Assignment of policy of fire-insurance,** within—Phœnix Ins. Co. v. Copeland, 90 Ala. 386. **But want of insurable interest may be shown** under general issue.—Ala. Gold Life Ins. Co. v. Mobile Mut. Ins. Co., 81 Ala. 329; Sands v. Hammell, 108 Ala. 624. **When instrument not the foundation of a suit,** but is used collaterally, it is **not self-proving.**—Garrett v. Garrett, 64 Ala. 263; Shrimpton v. Brice, 102 Ala. 655.

1802 (2771) (3037) (2683) (2280). **Same, when offered under a plea in bar.**—It is not necessary to prove the execution or assignment of any instrument offered in evidence under the plea of set-off,

or other plea in bar, unless the plaintiff put the execution or assignment thereof in issue by a replication verified by affidavit.

Applies though instrument offered under plea of set-off is **signed by mark only.**—Walker v. Bentley, 64 Ala. 92. **If instrument lost** and affidavit be not made as provided by section 31 (2597); or, if made and execution is denied by sworn replication, **defendant must prove loss and contents.**—Parker v. Edwards, 85 Ala. 246; s. c., 88 Ala. 356.

As amended Feb. 26, 1889, p. 57.

1803 (2772) (3038) (2684) (2281).—**When proof of corporation or partnership not required.**—When suit is brought by a corporation, or by partners, the plaintiff must not be required to prove the existence of the corporation, or the firm, or the individuals composing it, unless the same is denied by plea verified by affidavit filed within the time allowed for filing pleas in abatement.

Names of individuals composing plaintiff firm must be shown by record; statute only dispenses with proof of them unless denied by sworn plea.—Lanford v. Patton, 44 Ala. 584; Moore v. Burns, 60 Ala. 269; Foreman v. Weil, 98 Ala. 495; Simmons v. Titche, 102 Ala. 317. **Failure to set out names; waiver; amendment.**—Moore v. Watts, 81 Ala. 261; Ortez v. Jewett, 23 Ala. 662; Snow v. Ray, 2 Ala. 344. **Plea of nul tiel corporation must be verified.**—Smith v. Hiles-Carver Co., 107 Ala. 272.

1804 (2773). **When sworn account admissible in evidence.**—In all suits upon accounts, an itemized statement of the account, verified by the affidavit of a competent witness, taken before, and certified by an officer having authority under the laws of this state to take and certify affidavits, is competent evidence of the correctness of the account, if the plaintiff, at the time of bringing his suit, indorses on the summons and complaint, or other original process, the fact that the account is verified by affidavit, unless the defendant, within the time allowed him for pleading, files in the cause an affidavit denying, on information and belief, the correctness of the account.

Sufficiency of affidavit raised by **objection to it as evidence,** not by demurrer.—Elyton Land Co. v. Morgan, 88 Ala. 434. **The fact of verification must be indorsed** as here provided, else account inadmissible.—Gainer v. Pollock, 96 Ala. 554. Account and verification **must show a sum certain to be due.** Enis v. Harris, 103 Ala. 330; Alexander v. Moore, 111 Ala. 410. **Allegation in complaint,** that the account sued on "is verified by affidavit," is **sufficient.** Lunsford v. Butler, 102 Ala. 403; Sullivan T. Co. v. Brushagel, 111 Ala. 114; Alexander v. Moore, 111 Ala. 410. **Suing on verified account does not preclude proof** as in simple action on account.—Sullivan T. Co. v. Brushagel, 111 Ala. 114.

1805 (2774) (3039) (2685) (2282). **Effect of written releases and receipts.**—All receipts, releases and discharges in writing, whether of a debt of record, or a contract under seal, or otherwise, must have effect according to the intention of the parties thereto.

Carroll v. Corbett, 57 Ala. 579; Smith v. Gayle, 58 Ala. 600; Cowan v. Sapp, 74 Ala. 44; s. c., 81 Ala. 525; Cleere v. Cleere, 82 Ala. 581; Cobb v. Malone, 86 Ala. 571; Eufaula Nat. Bk. v. Passmore, 102 Ala. 370.

1806 (2775) (3040) (2686) (2283). **Written composition or settlement of debts.**—All settlements in writing, made in good faith for the composition of debts, must be taken as evidence, and held to operate according to the intention of the parties, though no release under seal is given, and no new consideration has passed.

Hart v. Freeman, 42 Ala. 567; Motley v. Motley, 45 Ala. 555; McArthur v. Dane, 61 Ala. 539; Singleton v. Thomas, 73 Ala. 205; Cowan v. Sapp, 81 Ala. 525; Cleere v. Cleere, 82 Ala. 581.

1807 (2776) (3041) (2687) (2284). **Justification under process regular on its face.**—Whenever it appears that the process is regular on its face, and is issued by competent authority, a sheriff or other ministerial officer is justified in the execution of the same, whatever may be the defect in the proceeding on which it was issued.

Wilson v. Sawyer, 37 Ala. 631; Murphy v. State, 55 Ala. 252; Martin v. Hall, 70 Ala. 421; Meyer v. Hearst, 75 Ala. 390; Clark v. Lamb, 76 Ala. 406; Albright v. Mills, 86 Ala. 324; Burgin v. Raplee, 100 Ala. 433.

1808 (2777) (3053) (2700) (2298). **Entry on physician's book; effect of as evidence.**—The original entries in the books of a physician are evidence for him in all actions brought for the recovery of his medical services, that the services were rendered, unless the defendant in open court deny on oath the truth of such entries; but the physician is required to prove the value of such services. When the denial is by a legal representative of the party, it is sufficient for him to swear that he believes the entries to be untrue.

Richardson v. Dorman, 28 Ala. 679· Halliday v. Butt, 40 Ala. 178; Weaver v. Morgan, 49 Ala. 142.

1809 (2778) (3054). **Entries or memoranda made by deceased representative, guardian, or trustee.**—Books of account kept by a deceased executor, administrator, guardian, or trustee, or entries or memoranda made by him in the course of business or duty, are admissible evidence; and if such book or memoranda be lost, a copy thereof, supported by the oath of the person making it, is admissible evidence.

1810 (2779) (3055) (2701) (2299). **Prices current evidence of value of articles.**—Prices current and commercial lists, printed at any commercial mart, are presumptive evidence of the value of any article of merchandise specified therein, at that place, at the date thereof, and of the rate of exchange between that and other places; also of the rates of insurance, freights, and the times of arrival and departure of ships and other vessels.

1811 (2780) (3056) (2702) (2300). **Registers of marriages, births and deaths as evidence.**—Registers of marriages, births and deaths, kept in pursuance of law, or any rule of a church or religious society, may be certified by the custodian thereof; and, when so certified, are presumptive evidence of the facts therein stated, as well as of the law or rule in pursuance of which such registry was made, and of the authority to certify the same.

Applies to registers kept in or out of the state; when certified by the custodian, such registers are admissible, although not certified according to the act of congress.—Hawes v. State, 88 Ala. 37.

1812 (2781) (3052) (2699) (2297). **Patents.**—Patents issued by the United States, or any state of the United States, must be received in evidence without further proof.

Patent admissible.—Hines v. Greenlee, 3 Ala. 73; Bales v. Herron, 35 Ala. 117; Robinson v. Cahalan, 91 Ala. 479. **Or certified copy,** without accounting for original.—Woodstock I. Co. v. Roberts, 87 Ala. 436; Beasley v. Clarke, 102 Ala. 254.

1813 (2782) (3043) (2691) (2292). **Certificates of registers of land-office vest title and received in evidence.**—All certificates is-

sued pursuant to any act of congress by any board of commissioners, register of a land-office, or by any one authorized by law to issue such certificate, upon any warrant or order of survey, or for any donation or pre-emption claim, vest the legal title in the holder, or his assignee, and must be received as evidence of such title; and all transcripts of any official book, official entry, or other document pertaining to any land-office in this state, certified by the register of such land-office, must be received as prima facie evidence of the facts contained in such transcripts so certified, in all the courts of this state.

Stewart v. Trenier, 49 Ala. 492; s. c., 55 Ala. 448; Bonner v. Phillips, 77 Ala. 427; Case v. Edgeworth, 87 Ala. 203; Knabe v. Burden, 88 Ala. 436; Tillison v. Ewing, 91 Ala. 467; Stephenson v. Reeves, 92 Ala. 582.

1814 (2783) (3044) (2692). **Deeds made and signed in land-office; how proved.**—Any deed or written instrument for the conveyance or sale of land purchased or entered at any land-office of the United States in this state, made or signed in or upon any book or record of such office, may be proved by a copy thereof, certified by the register of such land-office under his hand to be a correct copy, and such copy shall be received in all courts and proceedings under the laws of this state, and may be recorded in the office of the judge of probate of the county in which the land may be; and a transcript of such record in the office of the judge of probate may be certified and used in the same manner, and in the same cases as transcripts of such records of original deeds may be.

See citations to two preceding sections.

1815 (2784) (3048) (2696). **Books, etc., of surveyor-general public archives; certified copies evidence.**—The books, maps and field-notes of the surveyor-general of the United States for the State of Alabama, deposited in the office of the secretary of state, are public archives of the state; and the secretary of state must, upon the application of any person, furnish certified copies, which must be received in evidence in any court.

1816 (2785) (3049) (2697). **Transcripts of books kept in office of any public officer, evidence.**—All transcripts of books or papers required by law to be kept in the office of any public officer, when certified by the proper custodian thereof, must be received in evidence in all courts; and it is no objection to such transcript that the book from which it is taken is a copy of office books belonging to the United States.

Transcripts.—Stanley v. State, 88 Ala. 154; Willingham v. State, 104 Ala. 59. **Original record admissible.**—Lawson v. O'Rear, 4 Ala. 156; Carwile v. House, 6 Ala. 710; Huckabee v. Shepherd, 75 Ala. 342; Miller v. Boykin, 70 Ala. 469; Stevenson v. Moody, 85 Ala. 33.

1817 (2786) (3050). **Copy of field-notes certified by judge of probate, evidence.**—Copies of the field-notes of the original government surveys of lands, furnished by the secretary of state to the judge of probate, when certified by such judge, are admissible in evidence in any court of this state.

1818 (2787) (3046) (2694) (2294). **Certificate of head of depart-**

ment sufficient.—The certificate of the head of any bureau or department of the general government is sufficient authentication of any paper or document appertaining to his office.

Stephens v. Westwood, 25 Ala. 716; Blackman v. Dowling, 57 Ala. 78; Woodstock I. Co. v. Roberts, 87 Ala. 436; Ross v. Goodwin, 88 Ala. 390; Beasley v. Clarke, 102 Ala. 254; Holmes v. State, 108 Ala. 24.

1819 (2788) (3047) (2695) (2295). **Copies of official bonds, etc., required by law to be kept by any officer, are evidence.**—Copies of official bonds, or other instruments or papers, required to be kept by any officer of this state, and transcripts from the books and proceedings required to be kept by any sworn officer of the state, are presumptive evidence in any civil cause, and have the same effect as if the original were produced and proved, upon the certificate of the custodian thereof that it is a true copy of the original; but the court may, on motion, require production of the original, if practicable, when necessary to promote the ends of justice.

Phillips v. Poindexter, 18 Ala. 579; Monts v. Stephens, 43 Ala. 217; Dudley v. Chilton County, 66 Ala. 593; Martin v. Hall, 72 Ala. 587; Stevenson v. Moody, 85 Ala. 33; Stanley v. State, 88 Ala. 154; Jones v. Hagler, 95 Ala. 529; Cofer v. Scroggins, 98 Ala. 342; Schwartz v. Baird, 100 Ala. 154; Willingham v. State, 104 Ala. 59.

1820 (2789) (3051) (2698) (2296). **Private acts.**—All private acts of the general assembly of this or any other state of the United States may be given in evidence without being specially pleaded.

Perry v. N. O., M. & C. R. Co., 55 Ala. 413; McDonald v. Mobile Life Ins. Co., 56 Ala. 468.

1821 (2790) (3045) (2693) (2293). **Statutes of other states.** Transcripts of acts of congress, or of the statutes of any other state or territory of the United States, certified by the secretary of state of this state as being deposited in his office, or as being deposited in the supreme court library; and public or private statutes, or the proceedings of any legislative body, purporting on the face of the book to be printed by authority of the government, or state, or territory, are evidence without further proof.

Clanton v. Barnes, 50 Ala. 260; Bradley v. Northern Bank, 60 Ala. 252; Bush v. Garner, 73 Ala. 162; Johnson v. State, 73 Ala. 483; Edmunds v. State, 79 Ala. 48; Hawes v. State, 88 Ala. 37; Falls v. U. S. Savings L. & B. Co., 97 Ala. 417.

Feb. 18, 1895, p. 985.

1822. Municipal ordinances and by-laws.—Any printed book, code or revision of the by-laws or ordinances of any municipal corporation of this state, purporting on the face of the book to be printed by authority or to be a code of ordinances or by-laws of such municipal corporation, or certified on such book under the hand of the clerk or recording officer of such corporation as being an official publication of ordinances or by-laws of such municipal corporation, and any ordinance or by-law certified by such official as correct, shall be prima facie evidence of the due adoption and continued existence of the by-laws or ordinances therein printed, or so certified as correct, without further proof.

1823 (2791) (3042) (2688) (2285). **Interest in other states.**—The secretary of state must cause to be printed, in the pamphlet acts of

each session of the general assembly, the rate of interest of each state and territory; and such publication must be received as presumptive evidence of such interest.

Does not authorize court to take judicial notice of rate of other states; **tabulated statement only presumptive evidence when introduced,** and may be rebutted.—M. & C. P. R. Co. v. Tallman, 15 Ala. 472, 493; Clarke v. Pratt, 20 Ala. 470; Harrison v. Harrison, 20 Ala. 629; Camp v. Randle, 81 Ala. 240. **In the absence of proof of foreign rate, no interest is recoverable** on a judgment rendered or debt payable in another state.—Authorities supra.

ARTICLE 2.

PROCURING TESTIMONY BY SUBPŒNA.

1824 (2792) (3060) (2705) (2303). **Issue of subpœna.**—At the request of either party to a pending suit, his agent or attorney, the clerk of the court must issue subpœnas for witnesses, specifying therein the time and place for their appearance, the title of the suit, and the party at whose instance they are summoned, and commanding them to appear in conformity therewith and give testimony.

1825 (2793) (3061) (2706) (2304). **When affidavit required for subpœna.**—No subpœna can issue for a witness residing more than one hundred miles from the place of trial, computing by the route usually traveled, unless the party summoning him, his agent, or attorney, make affidavit that the personal attendance of the witness is necessary to a proper decision of the cause, and that his deposition would be insufficient for that purpose; and the fact that such affidavit has been made must be indorsed by the clerk upon the subpœna.

Ex parte Branch, 105 Ala. 231; Ala. Mid. Ry. v. Rushing, 103 Ala. 542.

1826 (2794) (3062) (2707) (2305). **How and by whom executed.** The subpœna must be directed "to any sheriff of the State of Alabama," and may be executed upon the witness either personally or by leaving a copy at his place of residence, unless the subpœna is issued during term time, when it must be executed by personal service.

1827 (2795) (3063) (2708) (2306). **Issued to each term.**—In civil cases, where the cause is not decided at the first term, witnesses must be summoned by the clerk by the issue of subpœnas to each term until the case is disposed of, unless otherwise directed by the party summoning them.

1828 (2796) (3064) (2709) (2307). **Penalty for default.**—Any witness who, after being subpœnaed, fails to attend pursuant to the mandate of the subpœna, and remain until his testimony is given, or he is discharged, forfeits one hundred dollars to the use of the party summoning him; and the attendance of such witness may be compelled by attachment.

1829 (2797) (3065) (2710) (2308). **Proceedings to recover penalty.**—A conditional judgment must, on motion of such party, be rendered against such witness, and a notice issued to him that such judgment will be made absolute unless he appear at the next court

and render a good excuse for his default; and on being personally served with a copy of such notice ten days before the next or any succeeding term, if he fail to appear and render a satisfactory excuse for his default, such judgment may be made absolute, or reduced, as the court may direct.

Maclin v. Wilson, 21 Ala. 670; Emanuel v. Ketchum, Ib. 258; Spence v. Simmons, Ib. 563; Ex parte Rucker, 108 Ala. 245.

1830 (2798) (3068) (2714) (2312). **Excuse; how made.**—Witnesses failing to attend court may make their excuse by affidavit, or viva voce, in open court, which the court must hear at any time, unless engaged in the trial of a cause, and, if the excuse is sufficient, release the party from any fine imposed, without payment of costs.

1831 (2799) (3066) (2711) (2309). **Witness imprisoned for refusal to testify.**—Any witness refusing to testify, unless privileged by law from testifying in the cause, must be committed to the jail of the county, there to remain without bail until he consents to testify.

Ex parte Rucker, 108 Ala. 245.

1832 (2800) (3067) (2712) (2310). **Discharged on bond.**—No witness so imprisoned must be discharged at the adjournment of the court, or afterwards, until he give bond and surety in an amount to be prescribed by the judge of such court, to be approved by the judge of probate, payable to the state, and conditioned to appear at the next term and give evidence in the cause.

ARTICLE 3.

PROCURING TESTIMONY BY DEPOSITION.

1833 (2801) (3069) (2716) (2318). **When deposition may be taken.**—The evidence of witnesses in civil cases may be taken by deposition by either party—

1. When the witness is a woman.

2. When the witness, from age, infirmity, or sickness, is unable to attend court.

3. When the witness resides more than one hundred miles from the place of trial, computing by the route usually traveled, or resides out of, or is absent from the state.

4. When the witness is about to leave the state, and will probably not return until after the trial.

5. When the claim or defense, or a material part thereof, depends exclusively on the evidence of the witness.

6. When the witness is the governor, secretary of state, state treasurer, state auditor, attorney-general, superintendent of education, commissioner of agriculture, examiner of public accounts, or the head of any other department or bureau of the state government, chancellor, judge, or clerk of any court of record, register in chancery, or sheriff; or president, director, or other officer of a bank in-

corporated in this state; postmaster or other officer of the United States; or practicing physician or lawyer; or a person constantly employed on any steamboat or other water-craft, or on any turnpike, or manufactory, or about the engine or other machinery of a railroad, or is a superintendent, secretary, treasurer, master of road repairs, or conductor of any railroad; or is a telegraph-operator; or a teacher of a public or private school actually engaged in teaching, or a minister of the gospel, or pastor of a religious society in charge of any diocese, parish, church, district, or circuit.

Subdivision 1.—Ex parte Jenks, 101 Ala. 429; Ex parte Branch, 105 Ala. 231. **Subdivision 2.**—Herndon v. Givins, 16 Ala. 261. **Subdivision 3.**—Ala. Mid. Ry. Co. v. Rushing, 103 Ala. 542; Nat. Fertilizer Co. v. Holland, 107 Ala. 412. **Subdivision 5.**—May v. May, 28 Ala. 141; Henry v. Northern Bank, 63 Ala. 527; M. & C. R. Co. v. Maples, 63 Ala. 601; Potts v. Coleman, 86 Ala. 94.

1834 (2802) (3070) (2717) (2319). **Steps to be taken before issue of commission.**—The party desiring to take such deposition, his agent, or attorney, must make affidavit before the clerk of the court, or any officer authorized to administer oaths, setting forth some one or more of the above causes for taking such deposition, and that the witness is material, which must be filed in the cause; and thereupon the clerk must issue a commission to one or more persons to take such deposition, and prescribe the notice to be given the opposite party, or his attorney, of the time and place of taking it. If the party on whom the notice is to be served resides out of the county, and has no attorney of record, it is sufficient to file the notice with the papers in the cause for the length of time prescribed. When the testimony is desired under the third subdivision of the preceding section, the testimony must be taken by interrogatories, as prescribed by the succeeding section.

Affidavit.—Bogia v. Darden, 45 Ala. 269; Reese v. Beck, 24 Ala. 651; Wolfe v. Parham, 18 Ala. 441; Parsons v. Boyd, 20 Ala. 112; McDonald v. Jacobs, 77 Ala. 524; Bozeman v. Bozeman, 83 Ala. 416; Birmingham Union Ry. Co. v. Alexander, 93 Ala. 133. **Notice.**—Reese v. Beck, 24 Ala. 651; Jordan v. Hazard, 10 Ala. 221; Cameron v. Clark, 11 Ala. 259; Garnett v. Yoe, 17 Ala. 74; Oxford Iron Co. v. Quinchett, 44 Ala. 487; Nat. Fertilizer Co. v. Holland, 107 Ala. 412; Wisdom v. Reeves, 110 Ala. 418.

1835 (2803) (3071) (2718) (2320). **Interrogatories may be filed; commission; notice.**—The party, after making affidavit, may file with the clerk interrogatories to be propounded to the witness, of which, and of the residence of the witness, and of the commissioner to be appointed, he must give the opposite party, or his attorney, notice in writing, who has ten days thereafter to file cross-interrogatories, to which the party filing the interrogatories may file rebutting interrogatories. After the expiration of the ten days, a commission, accompanied by a copy of the interrogatories and of the cross and rebutting interrogatories, if filed, must be issued by the clerk to take the deposition, which may be taken at such time and place as the commissioner shall appoint. On failure to give the notice herein required of the residence of the witness and the commissioner, unless the same is waived by the adverse party, the deposition of such witness must be suppressed at the cost of the party taking it.

Notice.—Reese v. Beck, 24 Ala. 651; Aicardi v. Strang, 38 Ala. 326; Cornelius v. Partain, 39 Ala. 473. Cross-interrogatories **may be filed at any time before commission issues.**—E. T. V. & G. R. Co. v. Watson, 90 Ala. 41. **Party propounding cross-interrogatories without interposing objection** to direct, **waives right to object to responsive answers.**—A. G. S. R. Co. v. Bailey, 112 Ala. 167; R. & D. R. Co. v. Greenwood, 99 Ala. 501; Potts v. Coleman, 86 Ala. 94. **Scope of cross-examination.**—L. & N. R. Co. v. Hall, 91 Ala. 112. Except under subdivision 3, **party has option,** after making affidavit, **to take deposition upon open commission** without interrogatories, **or upon interrogatories** filed; under subdivision 3, must be upon interrogatories filed.—Nat. Fertilizer Co. v. Holland, 107 Ala. 412. **When taken upon open commission, notice of time and place must be given** as prescribed by clerk; **when upon interrogatories filed, no notice required** except service of interrogatories.—Wisdom v. Reeves, 110 Ala. 418; Nat. Fertilizer Co. v. Holland, 107 Ala. 412.

1836 (2804) (3072) (2719) (2321). **Notice when party resides out of county.**—If the party, to whom notice is to be given under the provisions of the preceding section, resides out of, or is absent from, and has no attorney of record within the county, notice may be given by filing the interrogatories in the office of the clerk for ten days, and by the clerk mailing a copy of such notice, postage prepaid, to the opposite party or his attorney at his place of residence, if the same can be ascertained, ten days before the issuance of the commission; and the clerk must indorse upon the interrogatories the fact and date of mailing such notice.

1837 (2805) (3076) (2723) (2325). **Commissioner subpœnas witnesses; default proved by his certificate.**—The commissioner has power to issue subpœnas for witnesses, which may be served by the sheriff or any constable; and the certificate of the commissioner that a witness failed to appear, together with the return of the service by the officer, is evidence of the facts.

1838 (2806) (3075) (2722) (2324). **Penalty for failure of witness to appear; how recovered.**—Any witness whose testimony is required, and who fails, on due notice, to appear before the commissioner and give evidence, forfeits to the party aggrieved the sum of one hundred dollars, for which, on motion, judgment may be rendered by the court where the cause is pending, on five days' notice in writing; and is also liable, at the suit of the party aggrieved, to an action for damages; but the witness may make his excuse as in other cases.

1839. Defaulting witness may be committed without bail until he consents to testify.—If a witness fails, after due notice, to appear before the commissioner, or, being present, refuses to testify, the commissioner must, when requested by either party, his agent or attorney, certify the facts to the judge of the court in which the cause is pending, or to the nearest circuit judge or chancellor, if the cause is pending in a court of this state; or, if the deposition is required in a cause pending in another state or country, to the nearest circuit judge or chancellor; and thereupon, such judge or chancellor must cause the witness to be arrested and brought before him, when the witness may be examined on oath touching the default, and unless good excuse therefor is shown, he must be committed to jail, without bail, until he consents to testify, whereupon it is the duty of the sheriff to carry the witness before the commissioner; and

when the witness shall have testified, the sheriff must release him from custody.

1840. If examination postponed, witness may give bail, etc. If, after the witness consents to testify, it shall be deemed expedient by the commissioner to postpone the examination to a future time, the witness may give bail, in such sum as may be prescribed by the commissioner, or by the judge or chancellor making the order of commitment, with sureties to be approved by the sheriff, and conditioned to appear before the commissioner at such future time and give his testimony in the cause. Such bail-bond binds the witness to appear and testify at the time therein designated, and at any other time to which the examination may be further postponed; and if the witness fail to appear and testify, the commissioner must certify upon the bail-bond the fact of such failure; and all the papers in the proceeding, except the commission and interrogatories, must be returned to the court from which the commission issued, if it be a court of this state; if not, then to the circuit court of the county in which the default upon the bail-bond occurred; and thereupon a conditional judgment must be rendered against the parties to the undertaking, scire facias issued and the judgment made absolute or set aside as in cases of forfeiture of undertakings of bail in criminal prosecutions. The certificate of the commissioner as herein provided is evidence of the facts therein stated. A witness who has forfeited his bail-bond must not be admitted to bail in any subsequent proceeding to compel him to testify as such witness.

1841 (2807) (3073) (2720) (2322). **Duty of commissioner in executing commission.**—It is the duty of the commissioner to reduce the answers of the witness to writing, or cause it to be done by the witness himself, or some impartial person, as near as may be, in the language of the witness, having first sworn him to speak the truth, the whole truth, and nothing but the truth; and the deposition, when complete, must be by the commissioner enveloped, together with the commission and any document which may have been deposed to, sealed and directed to the clerk of the court where the cause is pending, with the title of the cause indorsed thereon.

When commission may be executed.—Herndon v. Givens, 16 Ala. 262; Jordan v. Jordan, 17 Ala. 466; Dill v. Camp, 22 Ala. 249. **Commissioner need not be sworn.**—Wolfe v. Parham, 18 Ala. 441. **Answers cannot be reduced to writing by brother of party.**—Bryant v. Ingraham, 16 Ala. 116. **Brother-in-law of party incompetent to act.**—Ib. **When party cannot object that one commissioner acted.**—Douge v. Pearce, 13 Ala. 128. **Failure to write name across seal of envelope, no ground to suppress deposition.**—Park v. Bancroft, 12 Ala. 468. **Identifying exhibits.**—Mobley v. Leophart, 51 Ala. 587; Humphrey v. Dawson, 38 Ala. 199. **Commissioner has no right to correct name of witness.**—East v. Pace, 57 Ala. 521.

1842 (2808) (3074) (2721) (2323). **Certificate of commissioner evidence; how returned.**—The certificate of the commissioner of the manner, time and place of taking the deposition, and that he has personal knowledge of, or has had proof made before him of the identity of the witness, and that he, the commissioner, is not of counsel or of kin to any of the parties to the cause, or in any manner interested in the result thereof, shall be presumptive evidence

of the facts stated by him; and the package may be sent by mail or by private conveyance to the clerk.

Certificate.—Broadnax v. Sullivan, 29 Ala. 320; Dill v. Camp, 22 Ala. 249; Thrasher v. Ingram, 32 Ala. 645; Bell v. Chambers, 38 Ala. 660; Boykin v. Smith, 65 Ala. 294; Roberts v. Fleming, 31 Ala. 683; Reese v. Beck, 24 Ala. 651, Dill v. Camp, 22 Ala. 249; Farrelly v. Maria, 34 Ala. 284; Gulf City Ins. Co. v. Stephens, 51 Ala. 121; Buford v. Gould, 35 Ala. 265; Stetson v. Lyons, 34 Ala. 140. **Commissioner may amend at trial.**—Dunlap v. Horton, 49 Ala. 412; Wolfe v. Underwood, 97 Ala. 375. **Sufficiency as to date of taking.**—Birmingham Union Ry. Co. v. Alexander, 93 Ala. 133.

1843 (2809) (3077) (2724) (2326). **Depositions thus taken read in evidence.**—Any deposition thus taken may be read in evidence, so far as the same is pertinent to the issue, and legal evidence; and if the package bears no marks of violence, or evidence of mutilation, must be presumed to be as it came from the hands of the commissioner until the contrary is shown.

When deposition taken in another suit may be read.—Holman v. Bank of Norfolk, 12 Ala. 370.

1844 (2810) (3081) (2728) (2328). **Objections to the whole deposition taken before trial.**—All objections to the admissibility of the entire deposition in evidence must be made before entering on the trial, and not afterwards, unless the matter is not disclosed in the deposition, and appears after the commencement of the trial.

When motion too late, if made on trial.—May v. May, 28 Ala. 141; M. & C. R. Co. v. Maples, 63 Ala. 601; Cornelius v. Partain, 39 Ala. 473; Thompson v. Rawles, 33 Ala. 29; Brice v. Lide, 30 Ala. 647; Hair v. Little, Ib. 236; Hudson v. Crow, 26 Ala. 515; DeVendal v. Malone, 25 Ala. 272; Gray v. Brown, 22 Ala. 262; Kyle v. Bostick, 10 Ala. 589; Colgin v. Redman, 20 Ala. 650; Hudson v. Howlett, 32 Ala. 478; Wilkinson v. Moseley, 30 Ala. 562; Boykin v. Collins, 20 Ala. 230; Irby v. Kitchell, 42 Ala. 438; Clement v. Cureton, 36 Ala. 120; McGill v. Monette, 37 Ala. 49; Park v. Wooten, 35 Ala. 242; McCreary v. Turk, 29 Ala. 244; Whilden v. M. & P. Bank, 64 Ala. 2; Morgan v. Wing, 58 Ala. 301; McArthur v. Carrie, 32 Ala. 75; Nelson v. Iverson, 24 Ala. 10; P. & M. Ins. Co. v. Tunstall, 72 Ala. 142; Binford v. Dement, Ib. 491; L. & N. R. Co. v. Brown, 56 Ala. 411; Grey v. Mobile Trade Co., 55 Ala. 387; Tuscaloosa, etc., Co. v. Perry, 85 Ala. 158; Moody v. A. G. S. R. Co., 99 Ala. 553. **When made on trial.**—McCreary v. Turk, 29 Ala. 244; Whilden v. M. & P. Bank, 64 Ala. 2. **If party propounds cross-interrogatories without interposing objection** to direct, he cannot object to answer if responsive.—Fountain v. Ware, 56 Ala. 558; Potts v. Coleman, 86 Ala. 94; R. & D. R. Co. v. Greenwood, 99 Ala. 501; A. G. S. R. Co. v. Bailey, 112 Ala. 167. **Adoption of answers to direct, on cross-examination.**—Gulf City Ins. Co. v. Stephens, 51 Ala. 121. **Adoption of answers of another witness.**—David v. David, 66 Ala. 140. **What matters witness can answer to general interrogatory.**—Blunt v. Strong, 60 Ala. 572; Yarborough v. Hood, 13 Ala. 176. **Objection on special ground, waiver of other grounds.**—Agee v. Williams, 30 Ala. 636; Bartee v. James, 33 Ala. 34. **Deposition not to be suppressed because taken before filing of amended complaint.**—Goldsmith v. Picard, 27 Ala. 142; Agee v. Williams, 30 Ala. 636. **Merely announcing ready for trial** is not such entering on the trial as to preclude motion to suppress.—Nat. Fert. Co. v. Holland, 107 Ala. 412.

1845 (2811) (3080) (2727). **When witnesses may be re-examined on cross-interrogatories.**—The party against whom the deposition of a witness has been taken may cross-examine such witness on interrogatories, under the rules for taking depositions, on making affidavit, when such witness has not been cross-examined, that a cross-examination is necessary, and that the failure to cross-examine the witness was without fault or neglect on his part, or, when the witness has been cross-examined, but such examination is imperfect or insufficient, that the cross-examination of such witness is imperfect or insufficient, and that the imperfection or insufficiency was

not caused by fault or neglect on his part. Notice of the filing of interrogatories for such cross-examination, and of the name and residence of the commissioner to be appointed to take the deposition of the witness thereon, must be given, as in the case of filing direct interrogatories, to the opposite party, who has ten days thereafter to file rebutting interrogatories.

1846 (2812) (3078) (2725) (2327). **Deposition; when cannot be used.**—The deposition of a witness cannot be used, if it appear at the trial that the cause for which it was taken, or some other cause, does not then exist, unless such witness is dead, or of unsound mind.*

Mobile Life Ins. Co. v. Walker, 58 Ala. 290; Henry v. Northern Bank, 63 Ala. 527; M. & C. R. Co. v. Maples, 63 Ala. 601; Humes v. O'Bryan, 74 Ala. 64.

1847 (2813) (3079) (2726). **When personal attendance of witnesses compelled.**—When the deposition of any witness, residing in the county in which the cause is pending, shall have been taken under the provisions of this article, the court, or, in vacation, the clerk, on the application of either party, supported by the affidavit of the party, his agent, or attorney, that he believes the personal attendance of the witness on the trial is necessary, may make an order requiring such witness to attend the trial of such cause in person. A copy of the order, with a subpœna, must be served on the witness, and, on proof of such service, the deposition must be suppressed on the trial, unless the witness, from age, infirmity or sickness, is unable to attend court.

When witness physically unable to attend, etc.—Henry v. Northern Bank, 63 Ala. 527. **When personal attendance of a woman,** whose deposition has been taken, **will be compelled.**—Ex parte Jenks, 101 Ala. 429. **When not.** Ex parte Branch, 105 Ala. 231. **Construed with section 1825.**—Ex parte Branch, 105 Ala. 231.

1848 (2814) (3082) (2729). **Witnesses compelled to testify in foreign suits.**—The provisions of this article to compel the attendance of witnesses before commissioners and to testify, and for failure to do so, are applicable to parties litigant and causes pending in the courts of any other state or country; and a commissioner appointed under a commission issued in a cause pending in a court of another state or country has all the power and authority of a commissioner appointed under the provisions of this article; but no witness shall be required to give testimony under such commission, unless the party desiring such testimony, his agent, or attorney, first deposit with the commissioner for the witness the amount allowed by law for mileage and per diem to witnesses attending to give evidence under commission from courts in this state, which deposit may be evidenced by the certificate of the commissioner.

Ex parte Rucker, 108 Ala. 245.

1849 (2815) (3083) (2730) (2329). **Fees of witnesses and of commissioner.**—Witnesses who attend and testify, with or without subpœna, are, on the certificate of the commissioner of the distance traveled and the number of days' attendance, entitled to the same

*As amended by joint committee.

compensation as other witnesses; and for taking and certifying the testimony of witnesses the commissioner is entitled to twenty cents for every hundred words, not including the caption, certificate or exhibits, one dollar and fifty cents for each day he is necessarily engaged, and five cents for each mile necessarily traveled by him in the taking of such testimony; all of which must, upon the certificate of the commissioner, be taxed as costs in the cause.

ARTICLE 4.

EXAMINATION OF PARTIES BY INTERROGATORIES.

1850 (2816) (3084) (2731) (2330). **Interrogatories to adverse party.**—Either party to a civil suit, his agent, or attorney, desiring the testimony of the other party, may file with the clerk interrogatories to be propounded to him, with an affidavit that the answers thereto will be material testimony for him in the cause.

Governed by same rules as bills of discovery in chancery, so far as respects nature of discovery and effect of answers.—Saltmarsh v. Bower, 22 Ala. 221; Crymes v. White, 37 Ala. 549; Cain Lumber Co. v. Standard Co., 108 Ala. 346. **Does not affect jurisdiction of court of equity** in matters of discovery.—Cannon v. McNab, 48 Ala. 99; Shackelford v. Bankhead, 72 Ala. 476. **Nor exclude right to examine opposite party** in open court.—Olive v. Adams, 50 Ala. 373. **No objection that discovery sought does not rest within exclusive knowledge** of party required to answer, or that matter can be proved by witnesses. Alston v. Graves, 6 Ala. 174. **Exclusive right of party to whom interrogatories are addressed to sue out commission.**—Cain Lumber Co. v. Standard Co., 108 Ala. 346. **Motion to suppress;** when and how made.—McCargo v. Crutcher, 27 Ala. 171. **Presumption as to regularity on appeal.**—Bivens v. Brown, 37 Ala. 422.

1851 (2817) (3085) (2732) (2331). **Service of copy of interrogatories.**—Upon the filing of such interrogatories, the clerk must issue a copy thereof, which must be served by the sheriff upon the party to whom the interrogatories are addressed, or his attorney of record, if either resides within the state. If such party and his attorney are non-residents, the clerk must send such copy by mail, postage prepaid, to one of them at his place of residence. The sheriff, or clerk, as the case may be, must indorse upon the original interrogatories the fact, manner and date of such service.

Jackson v. Hughes, 6 Ala. 257; Cain Lumber Co. v. Standard Co., 108 Ala. 330.

1852 (2818) (3086) (2733) (2332). **Verification of answers.**—The answers to such interrogatories may be sworn to before any officer authorized to take and certify affidavits; or, if the party testifying be a non-resident, before one of the officers mentioned in section 1799 (2768) of this Code, or a commissioner appointed by the clerk on the application of such party.

See citations to section 1799 (2768).

Feb. 27, 1889, p. 121.

1853. Corporation must answer through officer cognizant of the facts.—When the party to whom the interrogatories are addressed is a corporation, the answers thereto must be made by such officer, agent or servant of the corporation as may be cognizant of the facts.

Mobile & Ohio Railroad Co. v. Seales, 100 Ala. 368.

1854 (2818) (3086) (2733) (2332). **Answers as evidence.**—The answers to such interrogatories are evidence in the cause when offered by the party taking them.

Party taking has option to offer in evidence; but if offered, the whole answer, if pertinent, must be taken together.—Crocker v. Clements, 23 Ala. 296; Marx v. Leinkauff, 93 Ala. 453. **Answers pertinent which tend to prove cause of action or defense** set up, though not responsive.—Saltmarsh v. Bower, 22 Ala. 221; Crymes v. White, 37 Ala. 549.

1855 (2819) (3087) (2734) (2333). **Impertinent questions need not be answered.**—If the interrogatories are not pertinent to the issue or matter in dispute between the parties, there shall be no obligation to answer them, and, if answered, the answers may be suppressed by the court at the trial.

Culver v. Ala. Mid. Ry., 108 Ala. 330; L. & N. R. Co. v. Hall, 91 Ala. 112; Gray v. Perry, 111 Ala. 532.

1856 (2820) (3088) (2735) (2334). **Proceedings on failure to answer.**—If answers to the interrogatories are not filed within sixty days after service of a copy of the interrogatories, or when the answers are not full, or are evasive, the court may either attach the party and cause him to answer fully in open court, or continue the cause until full answers are made, or direct a nonsuit or judgment by default to be entered.

Legal evidence only can be elicited.—Culver v. Ala. Mid. Ry., 108 Ala. 330; Gray v. Perry, 111 Ala. 532. Court **has discretion as to which mode to adopt.** Pool v. Harrison, 18 Ala. 514; Goodwyn v. Harrison, 6 Ala. 438; Ex parte McLendon, 33 Ala. 276; Ex parte Grantland, 29 Ala. 69; Culver v. Ala. Mid. Ry., 108 Ala. 330. **Judgment by default proper on failure to answer,** though pleas are filed and jury demanded.—Alston v. Graves, 6 Ala. 174; Allen v. Lathrop L. Co., 90 Ala. 490. **Error to refuse to allow servant of corporation in default to be examined.**—M. & O. R. Co. v. Seales, 100 Ala. 368.

1857 (2821) (3089) (2736) (2335). **Answer may be contradicted.** A resort to this mode of obtaining evidence does not preclude the party calling for it from adducing other proof of the same facts, or from contradicting it.

Answer not conclusive, but witness may be impeached.—Wilson v. Maria, 21 Ala. 359.

1858 (2822) (3090) (2737) (2336). **What questions must be answered.**—Under the provisions of this article, the party is bound to answer all pertinent interrogatories, unless by the answer he subjects himself to a criminal prosecution.

Party **must answer unless answer within statutory exception.**—L. & N. R. Co. v. Hall, 91 Ala. 112. **Need not answer questions calling for mere hearsay.**—Culver v. Ala. Mid. Ry., 108 Ala. 330. **Or matter not pertinent** to any issue in the case.—Gray v. Perry, 111 Ala. 532.

ARTICLE 5.

REQUIRING THE PRODUCTION OF BOOKS AND WRITINGS.

1859. Court may, on motion and notice, require parties to produce books or writings.—In the trial of actions at law the court may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evi- Dec. 13, 1894, p. 60.

dence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceedings in chancery.

Ib. **1860. Consequence of failure to comply with order.**—If a plaintiff fails to comply with such order the court may, on motion, give the like judgment for the defendant as in cases of nonsuit; and if the defendant fails to comply with such order the court may, on motion, give judgment against him by default.

Secondary evidence of writing on failure of party, after notice, to produce original.—Gay v. Rogers, 109 Ala. 624.

ARTICLE 6.

PROCEEDINGS TO PERPETUATE TESTIMONY.

1861 (2823) (3091) (2738) (2337). **Testimony may be perpetuated.**—The testimony of a witness may be taken conditionally, and perpetuated, as provided in this article.

Winter v. Elmore, 88 Ala. 555.

1862 (2824) (3092) (2739) (2338). **Affidavit specifying grounds.** The applicant must make affidavit before a circuit or probate judge, or register in chancery, stating—

1. That he is a party, or expects to be a party, to a suit, either at law or in equity, in a court of this state.

2. That the testimony of a witness, whose name and place of residence is stated, is necessary to the prosecution or defense of such suit, and the facts generally expected to be proved by the witness.

3. If such suit be not actually commenced, the name of the party who is expected to be adverse therein, his residence, and that he is of full age.

1863 (2825) (3093) (2740) (2339). **Order for examination; notice to adverse party.**—Such judge or register must thereupon make an order allowing the examination of the witness, and, if the adverse party, or the party expected to be adverse to the application, resides in this state, a copy of such application, and notice of the time and place of such examination, must be given him, at least ten days before such examination.

1864 (2826) (3094, 3096) (2741, 2743) (2340, 2342). **Notice when adverse party non-resident.**—If such adverse party, or expected adverse party, is a non-resident, notice of such application, of the time and place of the examination, of the names and residences of the witnesses to be examined, and of the matter touching which the examination is to be had, must be given by publication, once a week for three successive weeks, in such newspaper as the judge or register may direct; and a copy of such paper, containing such publication, must be sent by mail, directed to such adverse party at his post-office, if known; and if such adverse party is a non-resident, the examination must not be taken within less than

forty days from the time of the first publication. The costs of the publication must be paid by the applicant.

1865 (2827) (3097) (2744) (2343). **Examination.**—Upon the application being returned executed by the sheriff, or proof of publication, as the case may be, such judge or register must take the deposition of the witness at the time and place appointed; and the examination, if necessary, may continue from day to day until completed.

1866 (2828) (3098, 3099) (2745, 2746) (2344, 2345). **Examination reduced to writing, certified and filed with circuit clerk.** The witness, having been first duly sworn, every question and answer must be taken down, and the deposition, when completed, carefully read to, and subscribed by the witness, certified by the judge or register, and, with all the papers, must be immediately filed in the office of the clerk of the circuit court for the county in which it was taken. The return of the sheriff of service of the notice and application, or affidavit by the publisher of the publication of the notice and mailing of copies to the adverse party, is presumptive evidence of the facts therein stated. The clerk must record all the papers so returned to him.

1867 (2829) (3100) (2747) (2346). **Deposition; when evidence.** If a trial be had between the persons described in the affidavit as parties, actual or expectant, or their successors in interest, upon proof of the death or insanity of the witness at the time of such trial, the deposition, or a certified copy thereof, may be given in evidence by either party.

1868. Testimony of non-resident witnesses perpetuated.—The testimony of a witness who is a non-resident of this state, may be taken conditionally and perpetuated as is hereinafter in this article provided. Dec. 7, 1888, p. 8, §1.

1869. Affidavit specifying grounds.—The applicant must make affidavit before a judge of probate, clerk of the circuit court or register in chancery, stating— Ib. §2.

1. That he is a party or expects to be a party to a suit, either at law or in equity in a court of this state.

2. That the testimony of a witness, whose name and place of residence are stated, is necessary to the prosecution of defense of such suit.

3. If such suit be not actually commenced, the name of the party who is expected to be adverse therein, and his residence and post-office address.

1870. Interrogatories; notice; commission; return; record. The applicant may file with such affidavit interrogatories to be propounded to the witness, of which, and of the residence of the witness, and of the commissioner to be appointed, such judge, clerk or register must give the opposite party, when known, or his attorney, notice in writing, who has ten days thereafter to file cross-interrogatories, to which the party filing the interrogatories may file rebutting interrogatories. After the expiration of ten days, a commission, Ib. §3.

accompanied by a copy of the interrogatories, and the cross and rebutting interrogatories, if filed, must be issued by such judge, clerk or register, to take the deposition, which may be taken at such time and place as the commissioner shall appoint; and the commissioner shall take and certify such deposition and return the same to such judge, clerk or register, in all respects as in causes pending in the chancery court. Upon the receipt of the package containing the deposition the judge, clerk or register must indorse thereon the date thereof, and how received; and must without delay, open the package and carefully and accurately copy, upon the book of final records, such deposition and all the papers, together with the indorsements thereon, relating to the proceeding, and must preserve and keep the same, subject to the order of a court in a cause then or thereafter pending between such parties.

Ib. §4. **1871. Deposition evidence on trial between parties.**—If a trial be had between the persons described in the affidavit as parties, actual or expectant, or their privies or successors in interest, the deposition, or a certified copy thereof, of such non-resident witness may be given in evidence by either party.

Feb. 28, 1889, p. 102, §1. **1872. Heirs and distributees may perpetuate testimony to prove kinship.**—When letters testamentary or of administration have been duly granted in this state, upon the estate of a decedent who was, at the time of his death, an inhabitant of this state, any person claiming to be an heir or distributee of such decedent, may perpetuate the testimony of witnesses de bene esse, in the following cases: When the witness is over sixty years of age, or is infirm, or resides out of the state, or is about to go beyond the United States, or when the claim of such person depends exclusively on the testimony of such witness or witnesses; but such testimony can be used only for the purpose of proving that the person so claiming to be an heir or distributee of such decedent, is in fact, such heir or distributee.

Ib. §2. **1873. Affidavit showing relation; interrogatories; notice; commission; return; record.**—Such person claiming to be an heir or distributee of such decedent may file an affidavit in the probate court of the county in which letters testamentary or of administration were granted, stating his relationship to or connection with such decedent, the names of the witnesses proposed to be examined, the residence of each witness and one or more of the grounds enumerated in the preceding section for taking such deposition; and with such affidavit he shall file, in such probate court, interrogatories to the witnesses so named; and thereupon a copy of such affidavit and interrogatories shall be served on the personal representative of the estate of such decedent, who shall, after such service, be allowed ten days to file cross-interrogatories, whereupon, the judge of probate must issue a commission and the same must be executed and returned, the deposition opened and, with the other papers, recorded in the book of final records in such probate court, and kept and preserved in all respects as is hereinbefore in this article provided in relation to the testimony of non-resident witnesses.

1874. Deposition evidence as to kinship in subsequent controversy.—Such deposition, taken under the provisions of the two preceding sections, or a certified copy thereof, may be given in evidence in any case wherein such claimant is a party, and his claim to be an heir or distributee of such decedent is involved. Ib. §2.

1875 (2830) (3101) (2748) (2347). Effect of such depositions as evidence.—A deposition taken under any of the provisions of this article, and read in evidence as herein provided, has the same effect as the oral testimony or the deposition of such witness, and no other; and every objection to the witness, or to the relevancy of any question put to him, or of any answer made by him, may be made in the same manner as if he was orally examined on the trial, or as if his deposition had been taken in the case.

CHAPTER 47.

EXAMINERS OF PUBLIC ACCOUNTS. 1876-1879.

1876 (80). Examiner of public accounts, and assistant examiners of public accounts.—The governor is authorized to appoint an expert accountant of known integrity and skill who shall act as examiner of public accounts and whose duty it shall be under the direction of the governor, whenever required to do so, to audit and examine the books, accounts and vouchers of the secretary of state, the auditor, the treasurer, the superintendent of education, commissioner of agriculture, and the wardens of the penitentiary, or such officer as may have charge of the books, accounts and vouchers pertaining to the state convicts, their hires, and expenses and management, and also the books, accounts and vouchers pertaining to the revenue, receipts and expenses of the University of Alabama, the Alabama Insane Hospital, the Agricultural and Mechanical College of Alabama, the Alabama Institution for the Deaf, Dumb and the Blind, and of the several normal schools of the state, and of the several branch agricultural schools of the state. The governor shall have authority to direct and control the examiner, and when he deems it necessary may require him to examine the accounts of any state or county officer charged with the duty of collecting or disbursing any part of the public revenue. The said examiner of public accounts shall receive compensation at the rate of eighteen hundred dollars per annum, and he shall pay all of his own expenses. The governor may also appoint two assistant examiners of public accounts who shall each be subject to his direction, and each invested with all the power and charged with all the duties as herein provided with respect to the examiner of public account. The compensation of each of the assistant examiners shall be fixed by the governor at not exceeding five dollars per day while actually employed for the state; and the governor may also allow each assistant examiner the addi- As amended Feb. 12, 1897, p. 840.

tional sum of not more than two dollars and fifty cents per day for his expenses while actually employed for the state; and the governor shall prescribe the time for which said examiner and assistant examiners shall be employed. When required by the governor to do so, the examiner or one of the assistant examiners shall have the money in the treasury counted, in which the governor shall require either the auditor, the secretary of state or the attorney-general, or all of them, to be present to supervise the count and to join in certifying the result to the governor.

Ib. **1877** (81). **Commission; authority.**—Commissions shall issue to the examiner and to each of the assistant examiners, vesting in them authority to do and perform the acts mentioned in the last preceding section; and they shall have authority to issue subpœnas for witnesses whom they may have to examine, administer oaths to them, and to compel their attendance and shall have full authority to require officers whose books and accounts are examined, and their clerks, to render them assistance and to give them information needed in the prosecution of their investigations. Whenever any officer or clerk refuses to render the examiner or either of the assistant examiners assistance, or give them information as required by this section, or any witness fails to attend when summoned or refuses to testify, the examiner or the assistant examiner, as the case may be, must report the fact forthwith to the supreme court, circuit or city court judge or chancellor, who shall immediately issue a rule to said officer, clerk or witness to show cause why he should not be committed to jail as for contempt. On the day fixed in said rule, if it has been served, the judge or chancellor must examine said officer, clerk or witness, if he appears, and unless some lawful reason is shown for such default or refusal, must commit such offending person to jail until he renders the assistance, gives the information, or testifies as required by law. The examiner or the assistant examiner, as the case may be, shall not have power to prescribe how books and accounts shall be kept, or to regulate the mode for conducting business in any public office; and whenever the legality of any payment is involved, he shall submit the principles of law involved to the attorney-general for his advice and opinion, and be governed thereby. Said examiner or either of them may investigate and examine the books and accounts of any county official whenever directed so to do by the governor at the request of ten reputable bona fide citizens of any county, and in making such examination they shall have the same powers as are conferred upon them by law in and for the examination of state officers, and the examiner thus employed shall make a report of his findings within ten days after the conclusion thereof, to the judge of the circuit court of the circuit, who may call the attention of the grand jury thereto.

Ib. **1878** (82). **Appointment revocable.**—The appointment of the examiner and the appointments of the assistant examiners are revocable at the discretion of the governor. In the event of revocation, the governor may at pleasure appoint a successor.

1879 (83). **Examiner's report.**—The examiner and the assistant Ib.
examiners shall, from time to time, report to the governor, under oath, the results of their examination, and the true condition and state of the books and accounts examined at the time of their examinations; such reports shall be public records. Before each session of the general assembly, the governor may cause seven hundred and fifty copies of such reports with such explanations and comments as the governor may think proper, to be printed for the use of the general assembly, which said printing shall be done by the public printer, and paid for as other public printing is paid for.

CHAPTER 48.

EXECUTIONS.

ARTICLE 1.—FORM OF EXECUTIONS; BY WHOM AND WHEN ISSUED. 1880-1889.
2.—PROPERTY SUBJECT TO EXECUTION. 1890, 1891.
3.—LIEN OF EXECUTIONS. 1892-1895.
4.—LEVY, SALE, AND RETURN; VENDITIONI EXPONAS; CONVEYANCE. 1896-1915.
5.—FORTHCOMING BONDS AND EXECUTION THEREON. 1916-1919.
6.—REGISTRATION OF JUDGMENTS AND DECREES, AND EXECUTIONS THEREON. 1920-1923.
7.—REVIVOR OF JUDGMENTS AND EXECUTION THEREON. 1924-1931.
8.—EXECUTIONS ISSUED BY JUSTICES OF THE PEACE. 1932-1952.

ARTICLE 1.

FORM OF EXECUTIONS; BY WHOM AND WHEN ISSUED.

1880 (2882) (3179) (2837) (2422). **Executions on moneyed judgments, and for recovery of personal and real property; forms of.**—The party in whose favor a judgment is rendered, whether for debt, damages, or costs, for the satisfaction thereof, may, within a year thereafter, have a writ of fieri facias against the lands and goods of the party against whom such judgment is rendered; and when the judgment is for specific property or the alternate value, or for the possession of lands, appropriate writs of execution may issue for the satisfaction thereof; and such writs of fieri facias and of execution must substantially conform to the following forms:

[FORM OF FIERI FACIAS.]

"The State of Alabama, ——— county. } To any sheriff of the State of Alabama:

You are hereby commanded that of the goods and chattels, lands and tenements of ——— ———, you cause to be made the sum of ——— dollars, which ——— ——— recovered of him on the ——— day of ———, 18—, by the judgment of our circuit court, held for the county of ———, besides ——— dollars costs of suit; and have the same to render

to the said —— ——; and make return of this writ and the execution thereof according to law.

Witness my hand, this —— day of ——, 18—.

—— ——, Clerk."

[FORM OF WRIT OF POSSESSION AND FIERI FACIAS.]

"The State of Alabama, ——— county. } To any sheriff of the State of Alabama:

You are hereby commanded to deliver to —— ——, possession of the lands and tenements which the said —— —— recovered of —— —— by the judgment of our circuit court, held for the county of ——, on the —— day of ——, 18—, viz.: (Describe the land recovered.) You are further commanded of the goods and chattels, lands and tenements of the said —— ——, you cause to be made the sum of —— dollars damages adjudged to the said —— ——, and also the further sum of —— dollars, costs of suit; and make return of this writ and the execution thereof according to law.

Witness my hand, this —— day of ——, 18—.

—— ——, Clerk."

[FORM OF WRIT FOR SEIZURE AND DELIVERY OF SPECIFIC PROPERTY.]

"The State of Alabama, ——— county. } To any sheriff of the State of Alabama:

You are hereby commanded to seize and deliver to —— —— the following personal property, viz.: (Describe the property recovered.) which the said —— ——, on the —— day of ——, 18—, by the judgment of our circuit court, held for the county of ——, recovered of —— ——, if the same can be had; if not, you are hereby commanded that of the goods and chattels, lands and tenements of the said —— ——, you cause to be made the sum of —— dollars, the alternate value of the personal property, viz.: (Set out the assessed value of each item of personal property.) Also the further sum of ——dollars for the detention of said property by the said —— ——, besides —— dollars, costs of suit; and make return of this writ and the execution thereof according to law.

Witness my hand, this —— day of ——, 18—.

—— ——, Clerk."

Execution, when returned, becomes a record.—Ayers v. Roper, 111 Ala. 651; Hanna v. Price, 23 Ala. 826; Smelser v. Drane, 19 Ala. 245; McDade v. Mead, 18 Ala. 214; Woodward v. Harbin, 1 Ala. 104; Harrell v. Martin, 6 Ala. 587. **Not void because of irregularities** in judgment, or writ.—McDaniel v. Johnston, 110 Ala. 526; Kling v. Connell, 105 Ala. 590; Gardner v. M. & N. R. Co., 102 Ala. 635; Deloach v. Robbins, Ib. 288; Sandlin v. Anderson, 76 Ala. 403; Steele v. Tutwiler, 68 Ala. 107; McCollum v. Hubbert, 13 Ala. 282; Samples v. Walker, 9 Ala. 726; Barron v. Tart, 18 Ala. 668; Olmstead v. Thompson, 91 Ala. 130; Olmstead v. Brewer, Ib. 124; Couch v. Atkinson, 32 Ala. 633; McMahan v. Colclough, 2 Ala. 68; Joseph v. Joseph, 5 Ala. 280. **Whether on judgment founded on contract or tort,** may look to complaint.—McDaniel v. Johnston, 110 Ala. 526; McLoren v. Anderson, 81 Ala. 107; Iron Co. v. Mangum, 67 Ala. 246; Williams v. Perkins, 1 Port. 471. **When parol evidence admissible to connect** execution with judgment.—Deloach v. Robbins, 102 Ala. 288; Guilmartin v. Wood, 76 Ala. 204. **Execution suspended by application for rehearing.**—Ex parte Farquhar, 99 Ala. 375. Fi. fa. may issue on judgment in attachment in lieu of venditioni exponas.—Berney Nat. Bk. v. Pinckard, 87 Ala. 577; Garey v. Hines, 8 Ala. 837. **Execution on affirmed judgment** should follow the judgment of affirmance.—Thomason v. Gray, 84 Ala. 559. **Issued in name of deceased plaintiff, void.**—Smith v. Alexander, 80 Ala. 251; Stew-

art v. Nuckols, 15 Ala. 225. **Against several defendants; levied on property of survivors only.**—Thompson v. Bondurant, 15 Ala. 346; Martin v. Branch Bk., Ib. 587. **Supersedeas; irregularities behind the judgment will not authorize.**—Gatchell v. Foster, 94 Ala. 622; Chancy v. Thweatt, 91 Ala. 329; Thompson v. Lassiter, 86 Ala. 536; Gravett v. Malone, 54 Ala. 19; Branch Bank v. Coleman, 20 Ala. 140; Mervine v. Parker, 18 Ala. 241. **Execution may be amended.**—Goodman v. Walker, 38 Ala. 142; Thompson v. Bondurant, 15 Ala. 346. **Motion to quash**; laches.—Berry v. Perry, 81 Ala. 103; Henderson v. Henderson, 66 Ala. 556; Smith v. Knight, 11 Ala. 618; Haden v. Walker, 5 Ala. 86; Vancleave v. Haworth, Ib. 188.

1881 (2883) (3180) (2838) (2423). **Issue of executions; must be signed and tested.**—The clerk must issue executions on all judgments in favor of the successful parties, as soon after the adjournment of court as practicable, within the time prescribed by this Code, unless otherwise directed. The writ must be signed by the clerk, and tested on the day it is issued.

McMahan v. Colclough, 2. Ala. 68; Kyle v. Evans, 3 Ala. 481; Haden v. Walker, 5 Ala. 86; Averett v. Thompson, 15 Ala. 678; Harrell v. Martin, 6 Ala. 587; Berry v. Perry, 81 Ala. 103.

1882 (2884) (3181) (2839) (2424). **Time in which executions must issue.**—When the court continues in session but one week, the clerk must issue executions within ten days thereafter; when it continues two weeks, within fifteen days thereafter; and when it continues three or more weeks, within twenty days after the adjournment of the court.

Davidson v. Wiley, 31 Ala. 452.

1883 (2885) (3182, 5015) (2840, 3532) (2425, 3061). **Bill of costs to accompany the execution.**—At the foot, or on some part of the execution, the clerk must state, in intelligible words and figures, the several items composing the bill of costs; and without such copy of the bill of costs, the execution is illegal, and shall not be levied.

1884 (2886) (3183) (2841) (2426). **When may be issued before adjournment.**—Upon the rendition of judgment, execution may be issued by leave of the court, before the adjournment thereof, the plaintiff, his agent, or attorney, showing sufficient cause therefor by affidavit; but the defendant is not prevented thereby from moving for a new trial, or in arrest of judgment, nor deprived of any right he would otherwise have had.

Savage v. Forward, 7 Ala. 463.

1885 (2887) (3184) (2842) (2427). **When must be issued immediately after adjournment.**—After the adjournment of the court, and before the expiration of the time limited by section 1882 (2884) on affidavit being made and filed in his office, that the defendant is about fraudulently to dispose of, or remove his property, and that thereby the plaintiff will probably lose his debt, the clerk must issue execution against the property of the defendant.

1886 (2888) (3185) (2843) (2428). **More than one writ may be issued.**—More than one writ of execution may be issued at the plaintiff's cost, though the first be not returned; and when a fieri facias is returned not satisfied, or satisfied only in part an alias fieri facias may be issued.

Webb v. Bumpass, 9 Port. 201; Scull v. Godbolt, 4 Ala. 326; Leach v. Williams, 8 Ala. 759; Sellers v. Hayes, 17 Ala. 749; Pollard v. Cocke, 19 Ala. 188.

1887 (2889) (3186) (2844) (2429). **When directed to coroner.** When the office of sheriff is vacant, and until his successor qualifies, or when the sheriff is imprisoned, or in cases to which he is a party, or in cases in which he is interested or for any legal cause is incompetent to act, if such interest or cause appears on the face of the proceedings, the execution must be directed to, and executed by the coroner, or special coroner, as the case may be.

Pope v. Stout, 1 Stew. 375; Gresham v. Leverett, 10 Ala. 384; Governor v. Lindsay, 14 Ala. 658; Governor v. Gibson, Ib. 326.

1888 (2890) (3187) (2845) (2430). **Credits to be indorsed.** When a judgment has been satisfied in part, and an alias execution is issued, the clerk must indorse thereon the amount which had been previously made, with the date of its collection or payment.

1889 (2891) (3188) (2846) (2431). **When against plaintiff for his costs.**—When execution against the defendant is returned "no property found," execution may issue against the plaintiff, in the name of the clerk of the court, for all the costs created by him in obtaining his judgment.

Patterson v. Officers, 11 Ala. 740; McElhaney v. Flynn, 23 Ala. 819; Hullett v. Hood, 109 Ala. 345.

ARTICLE 2.

PROPERTY SUBJECT TO EXECUTION.

1890 (2892) (3209) (2871) (2455). **Property subject to levy and sale under execution.**—Executions may be levied—

1. On real property to which the defendant has a legal title, or a perfect equity, having paid the purchase-money, or in which he has a vested legal interest, in possession, reversion, or remainder, whether he has the entire estate, or is entitled to it in common with others.

2. On personal property of the defendant (except things in action), whether he has the absolute title thereto, or the right only to the possession thereof for his own life, the life of another, or any shorter period; but this does not apply to a possession acquired by a bona fide hiring of chattels.

3. On an equity of redemption in either land or personal property. When any interest less than the absolute title is sold, the purchaser is subrogated to all the rights of the defendant, and subject to all his disabilities.

Subdivision 1.—Lands in which defendant has vested legal interest. Bernstein v. Humes, 71 Ala. 260; Caldwell v. Lawler, 70 Ala. 293; Thweatt v. Stamps, 67 Ala. 96; Badge v. Lyon, 7 Ala. 564; Brock v. Yongue, 4 Ala. 584; McCaskle v. Amarine, 12 Ala. 17; Land v. Hopkins, 7 Ala. 115; Rhea v. Hughes, 1 Ala. 219; Goodlet v. Smithson, 5 Port. 245. **Interest of mortgagee not subject to levy.**—Martin v. Carter, 90 Ala. 96; Morris v. Barker, 82 Ala. 272. **Perfect equity.**—Smith v. Cockrell, 66 Ala. 64; Shaw v. Lindsey, 60 Ala. 344; Caldwell v. Parmer, 56 Ala. 405; You v. Flinn, 34 Ala. 409. **Subdivision 2. Generally.**—Goode v. Longmire, 35 Ala. 668; Thompson v. Thornton, 21 Ala. 808; Johnson v. Culbreath, 19 Ala. 348; McIntosh v. Walker, 17 Ala. 20; Thomp-

son v. Mawhinney, Ib. 362; Wier v. Davis, 4 Ala. 442; Foster v. Mabe, Ib. 402. **Interest of vendee under a conditional sale, after maturity, not subject to levy.**—Jordon v. Wells, 104 Ala. 383; Fields v. Williams, 91 Ala. 502; Summer v. Woods, 67 Ala. 139. **Nor holder of a mere lien.**—Kennedy v. Smith, 99 Ala. 83. **Mortgagor after the law-day.**—Jordon v. Wells, 104 Ala. 383; Dunlap v. Steele, 80 Ala. 424; Thompson v. Thornton, 21 Ala. 808; Fontaine v. Beers, 19 Ala. 723; Magee v. Carpenter, 4 Ala. 469. **Subdivision 3.—Equity of redemption in lands.**—Gassenheimer v. Molton, 80 Ala. 521; Kelly v. Longshore, 78 Ala. 203; Junkins v. Lovelace, 72 Ala. 303; Shaw v. Lindsey, 60 Ala. 344. **Purchaser of, may maintain ejectment.**—Cotton v. Carlisle, 85 Ala. 175; Marks v. Robinson, 82 Ala. 69. **Is entitled to surplus on foreclosure of mortgage.** Troy v. May, 101 Ala. 401. **Is not a bona fide purchaser.**—Overall v. Taylor, 99 Ala. 12. **Equity of redemption in personal property;** how levy made; rights of purchaser.—Bingham v. Vandegrift, 93 Ala. 283; Draper v. Nixon, Ib. 436; McConeghy v. McCaw, 31 Ala. 447; Nelson v. Warren, 93 Ala. 408; Harbinson v. Harrell, 19 Ala. 753. **Interest of partner in partnership.**—Farley v. Moog, 79 Ala. 148; Daniel v. Owens, 70 Ala. 297; Wilson v. Strobach, 59 Ala. 488; Andrews v. Keith, 34 Ala. 722; Winston v. Ewing, 1 Ala. 129. **Levy when judgment against firm only.**—Baldridge v. Eason, 99 Ala. 516. **When money may be levied on.**—Barnett v. Bass, 10 Ala. 951.

1891 (2893). **Growing or ungathered crop exempt.**—No execution or other legal process must be levied upon a growing or ungathered crop of any description, except for the purpose of enforcing liens upon such crop for rent, advances, or labor, as prescribed by law.

ARTICLE 3.

LIEN OF EXECUTION.

1892 (2894) (3210) (2872) (2456). **Extent of lien declared; how continued.**—A writ of fieri facias is a lien, only within the county in which it is received by the officer authorized to execute it, on the lands and personal property of the defendant subject to levy and sale, from the time only that the writ is received by such officer; which lien continues as long as the writ is regularly issued and delivered to such officer, without the lapse of an entire term.

Bell v. King, 8 Port. 147; Campbell v. Spence, 4 Ala. 543; Hester v. Keith, 1 Ala. 316; Newcombe v. Leavitt, 22 Ala. 631; King v. Kenan, 38 Ala. 63; Childs v. Jones, 60 Ala. 352; Thames v. Rembert, 63 Ala. 562; Barclay v. Smith, 66 Ala. 230; Mathews v. Mobile Ins. Co., 75 Ala. 85; Chadwick v. Carson, 78 Ala. 116; Watson v. Steele, 78 Ala. 361; Collier v. Wood, 85 Ala. 91; Caldwell v. Pollak, 91 Ala. 353; Hullett v. Hood, 109 Ala. 345.

1893 (2895) (3211) (2873) (2457). **Order of liens of different executions.**—The liens of executions, as between different judgment creditors, and between judgment creditors and purchasers from the defendant for valuable consideration, are declared to be: That if an entire term elapse between the return of an execution and the suing out an alias, the lien created by the delivery of the first execution to the sheriff is lost; but if an alias be sued out before the lapse of an entire term, and delivered to the sheriff before the sale of property under a junior execution, the lien created by the delivery of the first execution must be preferred.

Generally.—Watson v. Steele, 78 Ala. 361; Perkins v. Brierfield, 77 Ala. 403; Clark v. Spencer, 75 Ala. 49; Mathews v. Mobile Ins. Co., Ib. 85; Gamble v. Fowler, 58 Ala. 576; Toney v. Wilson, 51 Ala. 499; Leach v. Williams, 8 Ala. 759; Quinn v. Wiswall, 7 Ala. 645; Cary v. Gregg, 3 Stew. 433; McBroom v. Rives, 1 Stew. 73. **"Purchasers for a valuable consideration."**—Carlisle v. Godwin, 68 Ala. 137; Sawyer v. Ware, 36 Ala. 675. **"Delivered to the sheriff before sale under junior execution."**—Lancaster v. Jordan, 78 Ala. 197. **Stay**

of execution by order of plaintiff, waives lien as against junior creditors and purchasers.—Decatur Chem. Wks. v. Moses, 89 Ala. 538; Carlisle v. Godwin, 68 Ala. 137; Clark v. Spencer, 75 Ala. 49; Ins. Co. v. McCreary, 65 Ala. 127; Albertson v. Goldsby, 28 Ala. 711; Patton v. Hayter, 15 Ala. 18; Bates v. Bailey, 57 Ala. 73; Branch Bank v. Robinson, 5 Ala. 623; Branch Bank v. Broughton, 15 Ala. 127; Campbell v. Spence, 4 Ala. 543. **But not as against the defendant.**—Keel v. Larkin, 72 Ala. 493; Dryer v. Graham, 58 Ala. 623. **Priority lost by discharge of levy on refusal to give indemnity bond.**—Cotten v. Thompson, 25 Ala. 671; Otey v. Moore, 17 Ala. 280. **But not the defendant's forfeiture of forthcoming bond.**—Caperton v. Martin, 5 Ala. 217. **Nor by the filing of a creditor's bill.**—Mathews v. Mobile Ins. Co., 75 Ala. 85; Dargan v. Waring, 11 Ala. 988. **Sale of lands under junior execution; prior liens unaffected.**—Caldwell v. Houser, 108 Ala. 125; Lancaster v. Jordan, 78 Ala. 197. **Otherwise as to personal property.**—Caldwell v. Houser, 108 Ala. 125; Jones v. Davis, 2 Ala. 731. **Paramount execution may be levied, pending a claim suit** under levy of junior execution.—Langdon v. Brumby, 7 Ala. 53; Ex parte Tillman, 93 Ala. 101. **Proceeds of sale under several executions; how priorities determined.**—Caldwell v. Houser, 108 Ala. 125; Chandler v. Francis, 94 Ala. 233; Gusdorf v. Ikelheimer, 75 Ala. 148; Wood v. Gary, 5 Ala. 43; Henderson v. Richardson, 5 Ala. 349; Turner v. Lawrence, 11 Ala. 427.

1894 (2896) (3212) (2874) (2458). **Lien destroyed by supersedeas or injunction.**—The execution of a bond for an appeal, by which the judgment is suspended, or the execution of a bond by the defendant, upon the proper officer granting an injunction, supersedeas, or restraining order, destroys the lien created by the delivery of a fieri facias to the sheriff.

Campbell v. Spence, 4 Ala. 543.

1895 (2897) (3213) (2875) (2459). **Execution levied after defendant's death.**—A writ of fieri facias, issued and received by the sheriff during the life of the defendant, may be levied after his death, or an alias issued and levied, if there has not been the lapse of an entire term, so as to destroy the lien originally created.

Fryer v. Dennis, 3 Ala. 254; Boyd v. Dennis, 6 Ala. 55; Holloway v. Johnston, 7 Ala. 660; Henderson v. Gandy, 11 Ala. 431; Jones v. Swift, 12 Ala. 144; Collier v. Windham, 27 Ala. 291; Thompson v. Bondurant, 15 Ala. 346; Martin v. Branch Bank, Ib. 587; Swink v. Snodgrass, 17 Ala. 653; Hurt v. Nave, 49 Ala. 459; Hendon v. White, 52 Ala. 597; Dyer v. Graham, 58 Ala. 623; Childs v. Jones, 60 Ala. 352; Brown v. Newman, 66 Ala. 275; Keel v. Larkin, 72 Ala. 493; Sims v. Eslava, 74 Ala. 594; Meyer v. Hearst, 75 Ala. 390; Carlisle v. May, Ib. 502; Caldwell v. Pollak, 91 Ala. 353; Enslen v. Wheeler, 98 Ala. 200; Hullett v. Hood, 109 Ala. 345.

ARTICLE 4.

LEVY, SALE AND RETURN; VENDITIONI EXPONAS; CONVEYANCE.

1896 (2898) (3189) (2851) (2436). **Time of receipt, and, if more than one, order of receipt indorsed.**—The sheriff or other officer receiving an execution must indorse thereon the day, month and year of its receipt; and when more than one execution against the same defendant comes to his hands on the same day, if not received at the same time, he must indorse thereon the order in which they are received.

Childs v. Jones, 60 Ala. 352; Hester v. Keith, 1 Ala. 316.

1897 (2899) (3190) (2852) (2437). **To be executed with diligence and returned.**—He must execute the writ with diligence, and, if practicable, perform the mandate thereof, and make return of his

acts to the clerk, three days before the first day of the return-term of the writ.

"**Execute the writ with diligence.**"—Wilson v. Brown, 58 Ala. 62; Wilson v. Strobach, 59 Ala. 488; Patton v. Hamner, 28 Ala. 618; Smith v. Leavitts, 10 Ala. 92; Smith v. Castellow, 88 Ala. 355; Abbott v. Gillespy, 75 Ala. 180; Governor v. Campbell, 17 Ala. 566; Leavitt v. Smith, 7 Ala. 175. **Duty to execute, when writ irregular.**—Olmstead v. Brewer, 91 Ala. 124; Olmstead v. Thompson, Ib. 130; Steele v. Tutwiler, 68 Ala. 107. **Levy.**—Nabring v. Bank of Mobile, 58 Ala. 204; Abrams v. Johnson, 65 Ala. 465; Ulrick v. Longmire, 35 Ala. 668; Barnett v. Bass, 10 Ala. 951; Cawthorn v. McCraw, 9 Ala. 519; Cobb v. Cage, 7 Ala. 619; Campbell v. Spence, 4 Ala. 543; Crawford v. Bank of Mobile, 5 Ala. 55. **Excessive.**—Thompson v. Jones, 84 Ala. 279; Jones v. Davis, 2 Ala. 731. **Insufficient.**—Powell v. Governor, 9 Ala. 36; Leach v. Williams, 8 Ala. 759. **Levy and discharge, prima facie evidence against sheriff.**—Campbell v. Spence, 4 Ala. 543; Cobb v. Cage, 7 Ala. 619; Smith v. Castellow, 88 Ala. 355; Wilson v. Brown, 58 Ala. 62; Union Bank v. Benham, 23 Ala. 143; Governor v. Gibson, 14 Ala. 326; Smith v. Leavitt, 10 Ala. 92. **Bailee of property pending levy;** defendant, or his wife, may be.—McCullough v. McClintock, 88 Ala. 567; Campbell v. Spence, 4 Ala. 543. **Levy on property in custody of a receiver.** Ex parte Tillman, 93 Ala. 101; Dugger v. Collins, 69 Ala. 324. **Sale of lands heretofore within statute of frauds.**—White v. Farley, 81 Ala. 563; Jenkins v. Harrison, 66 Ala. 345; Robinson v. Garth, 6 Ala. 204. **When valid on collateral attack.**—O'Bryan Brothers v. Davis, 103 Ala. 429; Foster v. Mabe, 4 Ala. 402; Fournier v. Curry, Ib. 321; Ware v. Bradford, 2 Ala. 677. **Sale of lands after return-day, void.**—Hawes v. Rucker, 94 Ala. 106; Smith v. Mundy, 18 Ala. 182; Morgan v. Ramsey, 15 Ala. 190. **Otherwise as to personal property.** Ryan v. Couch, 66 Ala. 244; Morgan v. Ramsey, 15 Ala. 190; Leavitt v. Smith, 7 Ala. 175. **When lands should be sold in parcels.**—Anniston Pipe Wks. v. Williams, 106 Ala. 324; Jones v. Davis, 2 Ala. 730; Wheeler v. Kennedy, 1 Ala. 292; Mobile Cotton Press v. Moore, 9 Por. 679. **What evidence necessary to sustain title of purchaser.**—Ayers v. Roper, 111 Ala. 651; Carrington v. Richardson, 79 Ala. 101; Slater v. Alston, 103 Ala. 605. **Motion to vacate sale of lands; by defendant; by stranger; laches.**—Block v. George, 83 Ala. 178; Sheffey v. Davis, 60 Ala. 548; Allen v. Allen, 80 Ala. 154; Anniston Pipe Wks. v. Williams, 106 Ala. 324; Ponder v. Cheeves, 90 Ala. 117; Cowan v. Sapp, 74 Ala. 44; McCaskell v. Lee, 39 Ala. 131; McCollum v. Hubbert, 13 Ala. 289; McLaughlin v. Bradford, 82 Ala. 431; Nuckols v. Mahone, 15 Ala. 212; Lee v. Davis, 16 Ala. 516; Shaw v. Lindsay, 46 Ala. 290; Holly v. Bass, 68 Ala. 206. **When remedy in equity.**—Anniston Pipe Wks. v. Williams, 106 Ala. 324; Clark v. Allen, 87 Ala. 198; Cowan v. Sapp, 74 Ala. 44; s. c., 81 Ala. 525. **Mere inadequacy of price, not ground to vacate sale.**—O'Bryan Bros. v. Davis, 103 Ala. 429; Ray v. Womble, 56 Ala. 32; Ponder v. Cheeves, 90 Ala. 117; White v. Farley, 81 Ala. 563; Gordon v. Tweedy, 71 Ala. 202. **Fraud.**—Ponder v. Cheeves, 90 Ala. 117; O'Bryan Bros. v. Davis, 103 Ala. 429. **Appeal and supersedeas not ground to vacate sale already made.**—Anderson v. Whitaker, 103 Ala. 658. **But, pending appeal, the sale may be set aside on other grounds.** Allen v. Allen, 80 Ala. 154. **When sale vacated, purchaser in possession is a trespasser.**—Green v. Jordan, 83 Ala. 220. **Delivery of personal property to purchaser.**—Loeb v. Waller, 110 Ala. 487; Seals v. Edmondson, 73 Ala. 295; Cooper v. Watson, 73 Ala. 252. **Return.**—McDaniel v. Johnson, 110 Ala. 526; Bolling v. Vandiver, 91 Ala. 375; Hardy v. Gasciognes, 6 P. 447; Houston v. Crutchfield, 22 Ala. 76; Creagh v. Savage, 14 Ala. 454; Governor v. Gibson, Ib. 326; Casky v. Haviland, 13 Ala. 314; McKeagg v. Collehan, Ib. 828; Gilchrist v. Branch Bk., 11 Ala. 408; Caskey v. Nitcher, 8 Ala. 622; Haden v. Walker, 5 Ala. 86; Brown v. Baker, 2 P. 503. **Amendment of.**—Wilson v. Strobach, 59 Ala. 488; Jefferson Co. Sav. Bk. v. McDermott, 99 Ala. 79; Niolin v. Hamner, 22 Ala. 578; Cawthorne v. Knight, 11 Ala. 268. **Conclusive against sheriff and the parties; prima facie evidence against strangers.**—Wyatt v. Stewart, 34 Ala. 716; Governor v. Bancroft, 16 Ala. 605; Loeb v. Waller, 110 Ala. 487. **Want of does not affect title of purchaser.**—Lewis v. Watson, 98 Ala. 479; Love v. Powell, 5 Ala. 58; Driver v. Spence, 1 Ala. 540; Forrest v. Camp, 16 Ala. 642. **The execution is under the control of the plaintiff.**—Oswitchee v. Hope, 5 Ala. 629.

1898 (2900) (3191) (2853) (2438). **Return-term.**—The return-term of the writ is the term next after its date, unless issued less than fifteen days before court, in which case it is the term next thereafter.

Harrell v. Martin, 4. Ala. 650; Caskey v. Nitcher, 8 Ala. 622; Brown v.

Hurt, 31 Ala. 146; Hawes v. Rucker, 94 Ala. 167; McDaniel v. Johnston, 110 Ala. 526. See also citation to preceding section.

1899 (2901) (3192) (2854) (2439). **Reason for not executing stated.**—If the writ is not executed, or only executed in part, the reason why it is not executed, or only executed in part, must be stated in the return.

Baylor v. Scott, 2 Port. 315; Tarleton v. Gibson, 2 Ala. 638; Haden v. Walker, 5 Ala. 86; Abercrombie v. Chandler, 9 Ala. 625; Gilchrist v. Br. Bank, 11 Ala. 408; Robertson v. Coker, 11 Ala. 466; McKeagg v. Collehan, 13 Ala. 828; Wilson v. Brown, 58 Ala. 62.

1900 (2902) (3193) (2855) (2440). **Return from another county; money sent therefrom.**—The return of an execution, or other process, by a sheriff of a county other than that from which the process issued, may be made through the public mail; and the certificate of the postmaster that it was placed in his office in time, by the usual course of mail, to reach the court-house of the county where the return has to be made, by the return-day of the writ, shall be presumptive evidence for the sheriff of the fact; but the sheriff is not authorized to send money by the mail without the consent of the plaintiff in execution.

1901 (2903) (3194) (2856) (2442). **Sheriff's duty when levy is on live stock.**—When live stock is levied on and remains in the hands of the officer for sale, he must provide sustenance therefor; and it is his duty to hire out or employ the horses or other stock, if practicable, for their support; and if unable to do so, he must be allowed by the court a reasonable compensation for their support, which he may retain from the proceeds of the sale.

1902 (2904) (3195) (2857) (2443). **Description of property indorsed; notice of levy on land.**—When a levy is made on real or personal property, a full description thereof, with the date of the levy, must be indorsed upon, or appended to the execution; and when the levy is on real estate, personal notice thereof must be given to the defendant, or a notice thereof in writing left at his residence, if resident in the county; if not resident in the county, then by putting up a written notice at the court-house door; and the manner of giving notice must be stated in the return.

Failure to give notice of levy, mere irregularity.—Lewis v. Watson, 98 Ala. 479; White v. Farley, 81 Ala. 563; Barron v. Tart, 18 Ala. 668; Randolph v. Carlton, 8 Ala. 606; Taulmin v. Lesesne, 2 Ala. 359; Webb v. Bumpass, 9 Port. 201; Forrest v. Camp, 16 Ala. 642; Love v. Powell, 5 Ala. 58; Driver v. Spence, 1 Ala. 540. See note to section 1897 (2899).

1903 (2905) (3196) (2858) (2444). **Bond of indemnity, when required.**—When a reasonable doubt exists whether the personal property levied on belongs to the defendant, or whether personal property alleged to be his is subject to levy and sale, the sheriff may require of the plaintiff, his agent, or attorney, a bond of indemnity; and if it is not given within ten days thereafter, he may restore the property to the defendant, if levied on, or decline to levy, if one has not been made; but he may be required to levy and sell at any time thereafter, on being indemnified.

"A reasonable doubt."—Lavretta v. Holcombe, 98 Ala. 503; McGehee v.

Chandler, 15 Ala. 659; Ogden v. Powell, 7 Ala. 243; Minter v. Bigelow, 9 Port. 481. **Refusal to make levy or sale after indemnity, not conclusive, but prima evidence against sheriff.**—Kennedy v. Smith, 99 Ala. 83; Mathis v. Carpenter, 95 Ala. 156. **Measure of damages, when indemnified.**—Alley v. Daniel, 75 Ala. 403. **Obligors in bond, liable in trespass.**—Screws v. Watson, 48 Ala. 628. **Co-defendant cannot give bond.**—Hall v. McHenry, 5 Port. 123. **Bond of indemnity to execute void process, is itself void.**—Collier v. Windham, 27 Ala. 291; Renfro v. Heard, 14 Ala. 23; Fambro v. Gantt, 12 Ala. 298; Prewitt v. Garrett, 6 Ala. 128. **Discharge of levy for want of indemnity, suspends lien in favor of junior creditors and purchasers.**—Cotten v. Thompson, 25 Ala. 671; Otey v. Moore, 17 Ala. 280; Pickard v. Peters, 3 Ala. 493.

1904 (2906) (3197) (2859) (2445). **Right to give such bond in case of several executions.**—If a party having the prior lien refuses to give such indemnity on demand of the sheriff, the party having the next lien in order may give it, and have the property sold for his benefit.

See citations to preceding section.

1905 (2907) (3198) (2860) (2446). **Time and place of sale.** Lands, when levied on under execution from any court of record, must be sold on any Monday in the month at the court-house of the county; other property may be sold on any day, except Sunday, either at the court-house, the residence of the defendant, the place where levied on, or the neighborhood thereof, as may be most expedient. The sale may be continued from day to day, if rendered necessary by the inclemency of the weather, or from inability to conclude the sale in one day.

O'Conner v. Youngblood, 16 Ala. 718; Deloach v. State Bank, 27 Ala. 437; Atcheson v. Broadhead, 56 Ala. 414; Anniston Pipe Works v. Williams, 106 Ala. 324.

1906 (2908) (3199) (2861) (2447). **Notice of sale.**—In sales of personal property, notice must be given by advertisement at the court-house door, and also by publication in a newspaper, if one is published in the county, for ten days previous to such sale, but only one insertion in such newspaper shall be necessary; and in sales of real property, the publication in such newspaper must be once a week for three successive weeks, and by posting up notice for thirty days at the court-house door previous to the sale. As amended Feb. 18, 1891, p. 1193.

Holly v. Bass, 68 Ala. 206; Ray v. Womble, 56 Ala. 32; Brandon v. Snows, 2 Stew. 255; see citations to section 1897 (2899).

1907 (2909) (3200) (2862) (2448). **When property of principal first levied on.**—When execution issues against two or more persons, any of whom were sureties on the contract before the judgment, the sheriff must levy on the property of the principal first, if any can be found in the county, on the application of such surety; and he may require of the surety affidavit of the fact of suretyship, which he must file with the execution.

1908 (2910) (3201) (2863) (2449). **Indorsement of, and receipt for, collection.**—When money is collected on an execution, the officer collecting it must indorse thereon, or append thereto the amount collected, specifying the judgment, interest thereon, and costs, with his own commissions, and sign his name thereto; and he must also, if required, receipt in like manner to the defendant.

1909 (2911) (3202) (2864) (2450). **Substitution of other prop-**

erty.—The debtor has the right, on the day of sale, to substitute other property of equal value, not covered by any lien, in lieu of that levied on; which fact, and a description of the property substituted, must be indorsed on, or appended to the execution, and the substituted property be sold in lieu of that levied on.

1910 (2912) (3203) (2865) (2451). **Notice of collection to be given.**—When the money, or any part thereof, has been made on an execution, the officer must give the plaintiff, his agent, or attorney, personal notice thereof within ten days thereafter, if resident in the county; if not resident in the county, and he knows the residence of them, or either of them, such notice may be sent by mail through the post-office.

1911 (2913) (3204) (2866) (2452). **When excess of sale, or money collected paid to defendant.**—When, at an execution sale, the amount of the sale exceeds the judgment, interest and costs, the excess must be paid to the debtor, or his legal representative; and when money is paid or collected on an execution, the whole or any part of which is enjoined in chancery, the same must on demand be refunded to the debtor, or his legal representative, if it has not been paid over to the plaintiff, his agent, or attorney, without notice of the injunction.

1912 (2914) (3205) (2867) (2453). **Description of land sold and price indorsed on writ.**—When land is sold under execution, a description of the land and the price obtained for it must be indorsed upon, or appended to the writ by the officer making such sale.

Webb v. Bumpass, 9 Port. 201; Randolph v. Carlton, 8 Ala. 606; Deloach v. State Bank, 27 Ala. 437.

1913 (2915) (3206) (2868) (2454). **Return as to goods not sold; writ issues for sale thereof; form.**—When goods levied on remain in the hands of the officer unsold, it is his duty to make return of the fact, and thereupon the clerk must issue a writ for the sale thereof in substance as follows:

"The State of Alabama, } To the sheriff of said county:
—— county. }

You are hereby commanded to sell those goods and chattels of —— ——, which you have taken pursuant to our command, and which, according to your return, remain in your hands unsold, to satisfy —— —— the sum of —— dollars, recovered by him of the said —— —— by the judgment of our circuit court, held for the county of —— on the —— day of ——, 18—, and —— dollars, costs of suit; and make return of this writ and the execution thereof according to law.

Witness my hand, this —— day of ——, 18—.

—— ——, Clerk."

Allen v. Best, 6 Ala. 234; Quinn v. Wiswall, 7 Ala. 645; Garey v. Hines, 8 Ala. 837; Weir v. Clayton, 19 Ala. 132; Millard v. Hall, 24 Ala. 210; Autrey v. Walters, 46 Ala. 476.

1914 (2917) (3208) (2870). **Sheriff required to make deeds.** When real estate, or any interest therein, has been sold by any sheriff, he shall, upon compliance by the purchaser with the terms of

sale, and the payment or tender of the fees for executing the deed therefor, execute a deed for such real estate, or interest therein sold, and deliver the same to the purchaser within five days after such sale.

Sheriff's deed must be attested or acknowledged as other deeds.—Eureka Lumber Co. v. Brown, 103 Ala. 140; Lord v. Folmar, 57 Ala. 615.

1915 (2916) (3207) (2869). **Conveyance by sheriff of lands sold by predecessor.**—When any sheriff, authorized by law to sell real estate, makes such sale, and dies or vacates his office before making a conveyance to the purchaser thereof, the court from which the writ issued, upon proof of the sale and of the payment of the purchase-money, may order the successor in office of the sheriff making such sale to make a conveyance of such lands to the purchaser; and such conveyance shall relate back to the date of the sale. If the purchaser is the plaintiff in the judgment, proof that he has credited, or the fact that he does credit on the record the defendant with the amount of the purchase-money, less the necessary expenses and costs, is equivalent to proof of payment of the purchase-money.

Stewart v. Stokes, 33 Ala. 494; McCall v. White, 73 Ala. 562; White v. Farley, 81 Ala. 563.

ARTICLE 5.

FORTHCOMING BONDS AND EXECUTION THEREON.

1916 (2918) (3214) (2887) (2467). **Personalty restored if forthcoming bond executed.**—When personal property is levied on by the sheriff, if the defendant executes bond with sufficient surety, in double the amount of the execution, payable to the plaintiff, and conditioned to deliver the property levied on to the proper officer by twelve o'clock, noon, of the day, and at the place appointed for the sale thereof, the sheriff must restore the property to the defendant.

Obligors cannot question the levy.—Bolling v. Vandiver, 91 Ala. 375; Roswell v. Hobbie, 85 Ala. 73; Cooper v. Peck, 22 Ala. 406; Meredith v. Richardson, 10 Ala. 828; Cawthorne v. McCraw, 9 Ala. 519; Mead v. Figh, 4 Ala. 279; Easley v. Walker, 10 Ala. 671; Anderson v. Rhea, 7 Ala. 104; Jemison v. Cozens, 3 Ala. 637. **But irregularities before the levy, are not waived.**—Van Cleave v. Haworth, 5 Ala. 188; Page v. Coleman, 9 Port. 275; McDaniel v. Johnston, 110 Ala. 526. **Bond cannot be amended without consent of the obligors.**—Flournoy v. Mims, 17 Ala. 36. **When good as a common-law obligation.**—Meredith v. Richardson, 10 Ala. 828. **One of several defendants may give bond.**—Sheppard v. Melloy, 12 Ala. 561. **Seizure of property under paramount lien, or judicial proceeding, discharges sureties.**—Watson v. Simmons, 91 Ala. 567; Bolling v. Vandiver, 91 Ala. 375; Cordoman v. Malone, 63 Ala. 556; Glover v. Taylor, 41 Ala. 124; Cole v. Conolly, 16 Ala. 271.

1917 (2919) (3215) (2888) (2468). **Issue of execution on forfeiture of bond.**—If the property is not delivered according to the condition of the bond, the sheriff must return it forfeited within five days thereafter to the clerk's office out of which the execution issued, indorsing thereon a forfeiture of the bond; and it is then the duty of the clerk, without delay, to issue execution on the forfeited bond against all the obligors therein for the judgment and costs, upon which no security of any kind can be taken, which he must indorse on the writ.

Issued only on bonds in statutory form.—Flournoy v. Mims, 17 Ala. 36; Branch Bank v. Darrington, 14 Ala. 192; Gayle v. Hudson, 10 Ala. 116; Meredith v. Richardson, Ib. 828; Moffitt v. Branch Bank, 7 Ala. 593; Lunsford v. Richardson, 5 Ala. 618. **When execution may be amended.**—Sheppard v. Melloy, 12 Ala. 561; Anderson v. Rhea, 7 Ala. 104; Deloach v. State Bank, 27 Ala. 437. **Supersedeas, when proper remedy.**—Anderson v. Rhea, 7 Ala. 104; Lunsford v. Richardson, 5 Ala. 618; Taylor v. Powers, 3 Ala. 285. **Forfeiture of bond does not impair plaintiff's lien.**—Branch Bank v. Curry, 13 Ala. 304; Campbell v. Spence, 4 Ala. 543; Crawford v. Bank, 5 Ala. 55; Caperton v. Martin, Ib. 217.

1918 (2920) (3216) (2889) (2469). **Certain persons denied right to give forthcoming bonds.**—The two preceding sections do not apply to executions issued on judgments against sheriffs, coroners, or other officers of court, against whom judgment is obtained for failing to pay over money collected by or paid to them in their official capacity; and the clerk must indorse on all such executions, "no security of any kind to be taken."

1919 (2921) (3217) (2890) (2470). **When value may be tendered for property destroyed.**—When property is restored to the defendant on the execution of a forthcoming bond, and the same dies, or is destroyed before the day for the delivery thereof, without fault on his part, the obligors in the bond may tender the value thereof to the plaintiff, his agent, or attorney; and if such tender is refused, the obligors in such bond may, on petition to the judge of the circuit court, supersede the same.

ARTICLE 6.

REGISTRATION OF JUDGMENTS AND DECREES, AND EXECUTIONS THEREON.

Feb. 26, 1889, p. 60, §1.

1920. Judgments and decrees may be registered.—The owner of any judgment or decree for the payment of money rendered by any court of record, may file in the office of the judge of probate of any county a certificate of the clerk or register of the court by which the judgment or decree was rendered, which certificate shall show the style of the court which rendered the judgment or decree, the amount and date thereof, the amount of costs, the names of the parties, and the names of the plaintiff's attorney, and shall be registered by the judge of probate in a book to be kept by him for that purpose. The register shall show also the date of filing and the name of the owner of the judgment or decree.

Ib.

1921. Registered judgment or decree a lien on property of defendant.—Every judgment or decree when filed and registered as provided in the preceding section shall be a lien upon all the property of the defendant in the county where registered which is subject to levy and sale under execution; and such lien shall continue for ten years from the date of registration. The registration of the judgment or decree shall be notice to all persons of the existence of the lien.

Mere filing does not create lien; registration necessary.—Sorrell v. Vance, 102 Ala. 207. **Lien not destroyed by death of debtor;** enforceable in equity. Enslen v. Wheeler, 98 Ala. 200. **Judgment registered fastens lien, which stay of execution by plaintiff's order does not impair.**—Decatur C. & C.

Works v. Moses, 89 Ala. 538. **Certificate need not recite waiver of exemptions contained in judgment.**—Reynolds v. Collier, 103 Ala. 245. **In determining priority of judgments registered on the same day fractions of a day will be computed.**—German Security Bank v. Campbell, 99 Ala. 249; Lang v. Phillips, 27 Ala. 311. **See also** Rochester v. Armour, 92 Ala. 432; Motley v. Jones, 98 Ala. 443; Halsey v. Murray, 112 Ala. 185.

1922. Execution on registered judgments.—Upon any judgment or decree which has been registered as provided in this article within one year from the date of its rendition, execution may be issued at any time within ten years from the date of such registration, whether execution has been previously issued or not. Feb. 5, 1891, p. 375.

Execution must issue within lifetime of debtor, unless within the exception provided by section 1895 (2897).—Enslen v. Wheeler, 98 Ala. 200.

1923. Entry of payments and satisfaction of registered judgments; penalty.—Sections 1065 (1868) and 1066 (1869) of this Code are appliable to registered judgments and decrees. Feb. 26, 1889, p. 60, §3.

See citations to those sections.

ARTICLE 7.

REVIVOR OF JUDGMENTS AND EXECUTIONS THEREON.

1924 (2922) (3173) (2829) (2418). **If execution is issued in a year, others may issue for ten.**—When execution has been issued on a judgment within a year after its rendition, and has not been returned satisfied, another execution may be issued at any time within ten years after the test of the last, without a revival of the judgment.

Judgment presumed to have been kept alive, on motion to quash execution issued within ten years.—McDaniel v. Johnston, 110 Ala. 526; McClarin v. Anderson, 104 Ala. 201; Sellers v. Hayes, 17 Ala. 749. **Execution on dormant judgment, voidable only; remedy.**—Deloach v. Robbins, 102 Ala. 288; Gardener v. M. & N. R. Co., Ib. 635; McCall v. Rickarby, 85 Ala. 152; Perkins v. Brierfield, 77 Ala. 403; Leonard v. Brewer, 86 Ala. 390. **Remedy by execution does not bar action on judgment.**—Field v. Sims, 96 Ala. 540; Elliott v. Holbrook, 33 Ala. 659; Kingsland v. Forrest, 18 Ala. 519.

1925 (2923) (3174) (2830) (2419). **Scire facias when execution did not issue within a year.**—No execution shall issue on a judgment or decree of the circuit, chancery, or probate court, on which an execution has not been sued out within one year after its rendition, until the same has been revived by scire facias. If the defendant is a resident of the state, personal service must be had upon him of the scire facias requiring him to show cause at the next ensuing term why the plaintiff should not have execution. When the defendant is a non-resident, service may be had in the manner following: The plaintiff, his agent, or attorney, must make affidavit of such non-residence, and that the judgment or decree is unsatisfied; whereupon the clerk, register, or judge of probate, shall cause publication to be made, once a week for three successive weeks in some newspaper published in the county, requiring the defendant to show cause why the plaintiff should not have execution on his judgment or decree; and a copy of the paper containing such

publication must be forwarded by mail to the defendant, if his post-office is known.

Draper v. Nixon, 93 Ala. 436; Leonard v. Brewer, 86 Ala. 390; Betancourt v. Eberlin, 71 Ala. 461; Lowry v. Newsom, 51 Ala. 570; Brevard v. Jones, 50 Ala. 221; Sharp v. Herrin, 32 Ala. 502; Glass v. Glass, 24 Ala. 468; Hanson v. Jacks, 22 Ala. 549; Barron v. Tart, 19 Ala. 78; Miller v. Shackleford, 16 Ala. 95; Turner v. Dupree, 19 Ala. 198.

1926 (2925) (3176) (2834). **Execution issues in favor of representative.**—When a plaintiff dies after the rendition of a judgment or decree in his favor, and such judgment or decree is unsatisfied, execution may issue thereon in favor of the personal representative of such deceased plaintiff as provided in section 1924 (2922); and in like manner when a judgment or decree is rendered in favor of an executor, administrator, guardian, or trustee, who dies, resigns, or is removed, or whose authority ceases from any cause, execution may issue in favor of the successor without a revival.

Smith v. Alexander, 80 Ala. 251; Stewart v. Nuckols, 15 Ala. 225.

1927 (2926) (3177) (2835). **Revivor in favor of personal representative.**—When the plaintiff in any judgment or decree dies, the same may be revived in favor of the personal representative of the plaintiff in the manner provided in section 1925 (2923).

Baker v. Ingersoll, 37 Ala. 503.

1928 (2927) (3178) (2836). **Assignee may have execution.**—If an assignment of a judgment or decree is made or indorsed on the execution-docket, or on the margin of the record of the judgment or decree, and is attested by the clerk, register, or judge of probate, the assignee may have execution thereon in the name of the plaintiff for the use of the assignee, whether the plaintiff be living or dead.

Gardener v. M. & N. R. Co., 102 Ala. 635; Moorer v. Moorer, 87 Ala. 545.

1929 (2928) (3178) (2836). **Also scire facias.**—The assignee of a judgment or decree, if the assignment be in writing, may by scire facias have the same revived in his name in the manner provided in section 1925 (2923).

Moorer v. Moorer, 87 Ala. 545.

1930 (2923) (3174) (2830) (2419). **Presumption of satisfaction after ten years.**—If ten years have elapsed from the rendition of the judgment or decree without issue of execution, or, if ten years have elapsed since the date of the last execution issued, the judgment or decree must be presumed satisfied, and the burden of proving it not satisfied is upon the plaintiff.

1931 (2924) (3175) (2833) (2421). **Scire facias barred after twenty years.**—No scire facias shall issue to revive a judgment or decree after the lapse of twenty years from its rendition.

ARTICLE 8.

EXECUTIONS ISSUED BY JUSTICES OF THE PEACE.

1932 (3345) (3627) (3230) (2783). **Issue and return of execu-**

tions.—After the lapse of five days from rendition of judgment by a justice of the peace, if an appeal is not taken, the justice must, unless otherwise directed, issue a writ of fieri facias for the satisfaction of the judgment, which must be signed by him, dated on the day it was issued, and made returnable before him, not less than twenty nor more than sixty days from the date of its issue; and alias writs shall be made returnable in like manner.

Issuance of writ a ministerial act.—Kyle v. Evans, 3 Ala. 481; Sandlin v. Anderson, 82 Ala. 330. **Execution before the lapse of five days irregular,** and may be quashed, but is not void.—Waldrop v. Friedman, 90 Ala. 157; Sandlin v. Anderson, 76 Ala. 403. **When no return-day named, writ returnable at the end of sixty days.**—Waldrop v. Friedman, 90 Ala. 157; Samples v. Walker, 9 Ala. 726; Wofford v. Robinson, 7 Ala. 489. **If return-day more than sixty days,** it must be levied within the sixty days.—Mitchell v. Corbin, 91 Ala. 599. **No levy can be made after the return-day,** but sale may be made.—Waldrop v. Friedman, 90 Ala. 157; Morgan v. Ramsey, 15 Ala. 190; Smith v. Mundy, 18 Ala. 182. **When writ merely irregular, and when void.**—Cooper v. Jacobs, 82 Ala. 411; Sandlin v. Anderson, Ib. 330; McElhaney v. Flynn, 23 Ala. 819. **Levy.**—Chandler v. Francis, 94 Ala. 233; Jones v. Davis, 2 Ala. 731.

1933 (3346) (3628) (3231) (2784). **Form of execution.**—The writ must be, in substance, as follows:

"State of Alabama, ——— county. } To any lawful officer of the county of———:

You are hereby commanded, of the goods and chattels of —— ——, you make the sum of ——— dollars, which —— —— recovered before me of him, on the —— day of ———, 18—, besides ——— dollars, his costs; and make return to me on the —— day of ——— next, at ———, in your county, how you have executed this writ.

Witness my hand, this —— day of ———, 18—.

—— ——, Justice of the Peace."

1934 (3347) (3629) (3232) (2785). **When may be issued immediately.**—If the plaintiff, his agent, or attorney, make oath in writing before the justice, that the plaintiff is in danger of losing the fruit of his judgment by delay, the justice must issue execution thereon immediately.

1935 (3348) (3632) (3235) (2788). **When execution may be stayed.**—The defendant may, at any time before the issue of execution, stay the issue thereof for thirty days, if the judgment is for less than twenty dollars, or for sixty days, if for more than twenty dollars, by executing an undertaking in writing, payable to the plaintiff, in double the amount of the judgment, with sureties to be approved by the justice, and conditioned to pay the judgment at the expiration of the stay; and if not paid, execution may issue therefor against the defendant and the sureties on such undertaking.

1936 (3349) (3647) (3250) (2804). **Execution to another county.** When a defendant in judgment removes to another county, or has property in any other county than that in which the judgment was rendered, execution on such judgment may be issued by the justice, and directed to any constable of such county, which must be certified by the judge of probate of the county in which the judgment

was rendered, or by a justice of the county to which it is sent, who has knowledge of the handwriting of the justice issuing it.

Burgess v. Sugg, 2 Stew. & Port. 341; Jordan v. Mead, 12 Ala. 247; Street v. McClerkin, 77 Ala. 580. See note to next section.

1937 (3350) (3648) (3251) (2805). **By whom executed.**—Such execution may be executed by any constable of the county to which it is sent, and must be by him returned to the justice issuing it, as in other cases.

If execution not authenticated as required by the preceding section, a levy under it is void.—Street v. McClerkin, 77 Ala. 580. Must be directed "to any constable" of the county to which it is sent (naming the county), else it is void.—Campbell v. Smith, Ala. (22 So. 545).

1938 (3351) (3649) (3252) (2806). **Lien of execution.**—Executions issued by justices are liens on the property of the defendant on which they are levied from the time of the levy.

1939 (3352) (3650) (3253) (2807). **Order of payment of several executions against same defendant.**—If more than one execution comes to the hands of the constable against the same defendant at different times, the first received by him must be first satisfied; and if they come to his hands at the same time, and all cannot be fully satisfied, each must receive a ratable proportion of the funds; and it is the duty of the constable to indorse on every execution received by him the true date of the receipt thereof.

1940 (3353) (3652) (3255) (2809). **When indemnity may be required.**—When a reasonable doubt exists as to the title of the defendant to personal property, the constable may refuse to levy, or may release a levy already made, unless indemnified by the plaintiff; and if there are two or more executions in his hands, the plaintiff in the execution first received has the prior right to give such indemnity; and upon his refusal, the plaintiff in the execution next received may give the indemnity, and have the property sold for his benefit.

Murray v. Ezell, 3 Ala. 148.

1941 (3354) (3643) (3246) (2800). **Forthcoming bond; effect of.** When a levy is made on personal property, the defendant may retain the possession thereof until the day of sale, upon executing a forthcoming bond, payable to the plaintiff, in double the amount of the judgment, with sufficient sureties, to be approved by the constable, with condition to have the property forthcoming at twelve o'clock of the day, and at the place appointed for the sale.

1942 (3355) (3644) (3247) (2801). **Execution issues on forfeiture of bond; no stay allowed.**—If the property is not delivered at such time and place, the constable must return the bond forfeited to the justice, who must thereupon, without delay, issue execution thereon for the amount of the judgment and costs against the defendant and the sureties on the bond, upon which no further stay of execution must be taken.

1943 (3356) (3645) (3248) (2802). **Proceedings on forfeited bond, when execution issued from another county.**—If property is levied on by a constable under an execution from another county,

and the property is not delivered on the day of sale according to the forthcoming bond, the constable must return the bond forfeited to any justice of his county, together with a copy of the execution, who must proceed thereon in the same manner as if the judgment had been rendered by him; and the constable must then return the execution to the justice who issued it, with an indorsement showing the levy, and the execution and forfeiture of the bond.

1944 (3357) (3646) (3249) (2803). **Defects in form do not affect bond.**—Any undertaking entered into by the parties, with the consent of the justice or constable, as a stay of execution, or forthcoming bond, and which has the effect to stay execution, or continue the property levied on in the possession of the defendant, must be deemed sufficient, though defective in form.

Applies to defects of form and not of substance.—Cobb v. Thompson, 87 Ala. 381; Olmstead v. Thompson, 91 Ala. 127.

1945 (3358) (3637) (3241) (2794). **Time and place of sale of personal property.**—Personal property, levied on under an execution issued by a justice of the peace, must be sold at the residence of the defendant, or at such other place within the precinct in which the property is levied on, as may be most for the benefit of the parties, between the hours of eleven in the morning and four in the afternoon.

Jones v. Davis, 2 Ala. 730; Street v. McClerkin, 77 Ala. 580.

1946. Notice of sale.—Sales under any process issued by a justice must be advertised for ten days by posting written notices of the time and place of sale in three public places in the precinct in which the sale is to be made; and when the sale is to be made in the precinct in which the court-house is located, one of such notices must be posted at the court-house door. Feb. 22, 1889, p. 40.

1947 (3359) (3638) (3242) (2796). **Levy on land; when made, and proceedings thereunder.**—If the defendant has no personal property known to the constable, or if it is insufficient to satisfy the execution, he must indorse the fact upon the execution, and may then levy on land of the defendant subject to execution, describing it in his levy, and make return thereof to the justice, who shall thereupon transmit all the papers in the cause to the next circuit court, or court having like jurisdiction.

McDaniel v. Moody, 3 Stew. 314; Weir v. Clayton, 19 Ala. 132; Brown v. Higginbottom, Ib. 207; Langdon v. Raiford, 20 Ala. 532; Ellis v. White, 25 Ala. 540; Jones v. Calloway, 56 Ala. 46; Sherry v. Brown, 66 Ala. 51; Dickerson v. Carroll, 76 Ala. 377; Toenes v. Moog, 78 Ala. 558; Johnson v. Dismukes, 104 Ala. 520.

1948 (3360) (3639) (3243) (2797). **Notice of levy on land.**—If the defendant on whose land the levy is made, is a resident of, and within the county, personal notice of the levy must be given him; otherwise, he must be served by posting a notice in a conspicuous place on the land levied on.

1949 (3361) (3640) (3244) (2798). **Sale of land ordered on motion.**—If the proceedings before the justice are regular, and establish a judgment against the defendant, issue of execution and levy

on land for want of personal property, and notice thereof, and no sufficient objection is made, the court must, on motion of the plaintiff, direct a sale of the land for the satisfaction of the judgment.

1950 (3362) (3642) (3245) (2799). **Record and writ for sale of land.**—The clerk of the court in which the motion is made must record all the proceedings before the justice, together with the return of the constable, the motion of the plaintiff and the order of the court thereon, and must issue a writ directing the sheriff to sell the land for the satisfaction of the judgment.

1951 (3363) (3658) (3261) (2815). **Issue of alias executions without revival.**—When an execution has been issued within six months after the rendition of judgment, and has not been returned satisfied, another execution may be issued thereon at any time within three years thereafter, without a revival of the judgment.

Henderson v. Gandy, 11 Ala. 431; Brevard v. Jones, 50 Ala. 221; Sandlin v. Anderson, 76 Ala. 403; Field v. Sims, 96 Ala. 540.

1952 (3364) (3659) (3262) (2816). **When scire facias necessary; bar to revival of judgment.**—When execution has not been thus sued out, no execution can issue until the defendant is notified to appear at a time and place designated by the justice, and show cause why the plaintiff should not have execution of his judgment; but no judgment can be revived after the lapse of five years from the rendition thereof, or from the issue of the last execution thereon.

Brevard v. Jones, 50 Ala. 211; Marx v. Sanders, 98 Ala. 500.

CHAPTER 49.

EXECUTIVE DEPARTMENT.

ARTICLE 1.—GOVERNOR. 1953–1973.
2.—SECRETARY OF STATE. 1974–1992.
3.—STATE AUDITOR. 1993–2012.
4.—STATE TREASURER. 2013–2026.
5.—ATTORNEY-GENERAL. 2027–2032.

ARTICLE 1.

GOVERNOR.

1953 (66) (65) (67) (53). **Governor's oath, by whom and when administered.**—The oath required by the fifteenth article of the constitution of this state is administered to the governor by the presiding officer of either house of the general assembly, or any officer authorized to administer an oath, in the presence of both houses of the general assembly.

1954 (67) (66) (68) (54). **His salary.**—The salary of the governor is three thousand dollars per annum.

1955 (644, 645) (538) (632, 633) (557, 558). **Governor controls property of state; exceptions.**—All property belonging to the state, not including money or evidences of debt, is, unless otherwise provided by law, under the control of the governor.

1956 (57) (56) (58) (50). **Duty as to offices and rooms in capitol.**—The governor must assign rooms in the capitol to the secretary of state, auditor, attorney-general, superintendent of education, treasurer, railroad commission, president of inspectors of convicts, and adjutant-general; and in the absence of any legislative provision, designate the purposes to which other rooms are to be applied.

1957. **Governor may negotiate temporary loans to meet deficiencies in treasury.**—Should any deficiency occur in the state treasury at any time, the governor may negotiate temporary loans, not to exceed one hundred thousand dollars, or so much thereof as may be necessary, to supply such deficiency. Feb. 28, 1889, p. 71.

1958 (58) (57) (59) (51). **Private secretary and his salary.**—He may employ a private secretary, whose annual salary shall be fifteen hundred dollars, payable as in case of other officers employed at the seat of government.

1959 (59) (58) (60). **Recording secretary and his salary.**—He may employ a recording secretary at an annual salary of one thousand dollars, payable as the salaries of other officers employed at the seat of government.

1960 (60) (59) (61). **Governor may discontinue services of secretaries.**—The governor may discontinue the services of one or both of such secretaries, whenever the services may be no longer needed.

1961 (61) (60) (62). **Private secretary made keeper of the capitol.**—The private secretary of the governor is made keeper of the capitol, and he is required to perform the duties of that office.

1962 (62) (61) (63). **His duties as keeper of the capitol.**—The duties of such office are to take care of the capitol, the grounds, inclosures, furniture, and all other property of the state on the premises, under the general control and supervision of the governor; and also in the recess of the general assembly, to have all the apartments that are not regularly used and occupied, and the public entries, walls and stairs in each story well cleaned and ventilated.

1963 (63) (62) (64). **His pay for services as such keeper.**—The private secretary, for his services as keeper of the capitol, shall receive the annual sum of one hundred and fifty dollars, to be paid at the same times and in the same manner as his salary.

1964. **May employ messenger to executive office.**—The governor may employ one messenger to the chief executive office, whose compensation is three hundred dollars per annum, payable monthly, out of any money not otherwise appropriated, on the auditor's warrant, drawn upon the governor's certificate.

1965 (68) (70) (73). **Employment of additional clerks in the state departments.**—1. Whenever the employment of any clerical assistance, in addition to that prescribed by law, in any of the state departments, may become necessary in the transaction of the public

business, the head of such department must certify to the governor an application for such additional force, setting forth the contingency and the nature and extent of the work to be done, and that the same cannot be performed within the time that the public interest requires by the regular force employed in such department, and thereupon the governor, being satisfied that the public interest demands such service, must issue an order authorizing the employment of such clerical assistance for such time as he may deem necessary, and cause the application to be filed in his office; and no such clerk or assistant shall be employed until such application is certified and such order passed.

2. All such clerks must perform not less than eight hours' service in every twenty-four hours, or the writing of not less than ten folio pages in every twenty-four hours, for the time for which they are employed.

3. The compensation of such clerks must be paid upon account stated, certified by the head of the proper department that the same is correct, and for services performed under the provisions of this section, and approved by the governor, upon the warrant of the auditor, out of any money in the treasury not otherwise appropriated.

1966 (69) (71) (74). **Servants for executive and judicial offices.** The governor must employ not more than four servants for the executive and judicial offices of the state at the capitol, and prescribe their duties; the compensation of each servant not to exceed twenty-five dollars per month, and to be paid monthly out of any money not otherwise appropriated, on the auditor's warrant, drawn upon the governor's certificate.

1967. Must employ watchmen at capitol.—The governor must employ not more than three watchmen at the capitol, and prescribe their duties. The compensation of each watchman is six hundred dollars per annum, payable monthly, out of any money not otherwise appropriated, on the auditor's warrant, drawn on the governor's certificate.

Feb. 18, 1891, p. 1334, §1.

1968. Powers of watchmen.—Such watchmen are invested with all the powers, rights and privileges of sheriffs as far as may be necessary in the making of arrests and the preservation of order in the capitol and grounds, and preventing injury to the property of the state.*

*An act approved December 9, 1896 (Pamph. Acts, p. 143), entitled "An act for the protection of the state capitol and the grounds around it," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That the watchmen at the capitol be designated as capitol policemen and be required to wear a gray uniform, and that it shall be their duty to arrest any person who sets up a nuisance, or commits any depredation within the capitol building, or upon the capitol grounds; or any person who injures without permission the flowers or shrubbery therein, or who is guilty of any indecent or boisterous conduct, or who throws stones or other missiles at the building, or the windows thereof, or who defaces the walls or floors, or who writes, prints or makes any letters or figures thereon, and that each of said acts hereby declared a misdemeanor, and it shall be the duty of said policemen to take such person before the city recorder or any justice of the peace of the city of Montgomery, who shall have power to punish such offenders by a fine of not exceeding fifty dollars, and if the same be not paid, or secured, he or she shall be imprisoned in the county jail for not more than three days.

1969. City council of Montgomery, with approval of the governor, may pass ordinances to protect state property.—The city council of Montgomery may, with the approval of the governor, pass such ordinances as may be necessary for the protection of the grass, trees, and other public property on the capitol grounds; but no ordinance or by-law of the city council of Montgomery shall be operative within the capitol building or grounds without the consent of of the governor.

1970 (237) (145) (140) (101). **Governor obtains acts of congress for judges of probate.**—The governor must obtain a sufficient number of the copies of the acts of each session of congress, to furnish one copy to the office of each judge of probate, for the use of the citizens of his county.

1971 (65) (64) (66). **Bonds approved by the governor filed with auditor.**—All bonds approved by the governor, except the auditor's bond, must be filed in the auditor's office.

1972 (17) (17) (21) (20). **When governor may employ counsel.** When any suit is instituted against any person deriving title from the state, to recover any lands within the limits of the same, under pretense of any claim inconsistent with its sovereignty and jurisdiction, the governor, at the expense of the state, must employ counsel and provide for the defense of such suit.

1973. Must copyright reports and statutes.—The governor must cause to be copyrighted, for the use and benefit of the state, each volume of the published reports of the decisions of the supreme court, the pamphlet acts of the general assembly at each session thereof, and each volume of this Code.

ARTICLE 2.

SECRETARY OF STATE.

1974 (84) (73) (75) (56). **Duties of secretary of state.**—It is the duty of the secretary of state—

1. To keep the state seal, the original statutes and public records of the state, the records and papers belonging to the general assembly, keeping the papers of each house separate.

2. To attest commissions, pardons and all other public documents from the executive of the state, and, when necessary, affix the seal of the state thereto, and certify the same in his official capacity.

3. To record, in books proper for that purpose, all grants and patents issued by the state.

4. To keep all books, maps and other papers appertaining to the survey of any lands belonging to the state, and the books and papers belonging to the land-office at Courtland.

5. The books, maps and field-notes of the late surveyor-general of the United States, for this state, are public archives of the state,

"SEC. 2. *Be it further enacted*, That said capitol policemen shall be under the direction of the governor's private secretary, subject to the approval of the governor."

and the secretary of state must keep them in his office, and must, upon application, give certified copies from the same, which shall be received in evidence in any of the courts of this state.

6. To certify, on application and the payment of lawful fees, copies of all records, grants, papers and laws of the several states, or of the United States.

7. To make annually, by the thirtieth day of September, a verified and itemized account of all moneys and fees received in his office, and of all payments and disbursements made by him; which must be reported to and filed with the governor, and by him must be transmitted to the next succeeding general assembly.

8. To supply the books and stationery to the general assembly, the executive, judges of the supreme court, and the several departments of state.

9. To give notice to the solicitors of the respective circuits of all officers who fail to file their bonds in his office, or make returns of elections, within the time prescribed.

10. He must procure the acts and resolutions of the general assembly, of which distribution is directed, to be half-bound and lettered.

11. He must receive from the state printer ten additional copies of all bills, joint resolutions and memorials printed by order of either house of the general assembly, and on the adjournment of each session of the general assembly, have one of each of such copies bound together in a cheap form, and file them and the copies not bound in his office.

12. He must, on entering into the contract provided for in section 965 (832), furnish to the courts of county commissioners, from the records now in his office, exact copies of the field-notes of the original surveys of all the lands in their respective counties; which shall be on books of proper size, to be supplied by such courts, at the close of which he shall append his certificate as to the correctness thereof under the great seal of the state.

13. He is authorized to procure from the general land-office, at Washington City, complete lists of the entries of public lands in Alabama, so as to be enabled to complete the Alabama state tract-books in his office to date; the expense attending the procurement of which to be paid upon his certificate to the auditor, who shall draw a warrant on the state treasurer.

14. He must procure lists of entries of public lands in this state annually, so as to comply with the following subdivision of this section, the expense to be paid as provided in the last foregoing subdivision.

15. He must, by the first day of October, in each year, enter on the tract-books a list of all the lands (not already so entered) sold by the United States, and must make out and furnish each probate judge, by the first day of January, in each year, a register or statement showing all the lands so sold in the county of such judge, and not embraced in any register or statement previously furnished; and

he may employ a person at not exceeding thirty cents per page of ordinary foolscap paper, to be paid on the warrant of the auditor, in favor of the person so employed, upon the certificate of the secretary of state, stating that the services have been correctly performed according to the contract, and specifying the amount due therefor.

16. To perform such other duties as he is or may be required to perform by law.

1975 (88) (77) (78). **His bond.**—The secretary of state must give bond in the sum of ten thousand dollars, to be approved by the governor, and deposited in the office of the auditor.

1976 (86) (75) (76) (57). **His salary.**—The annual salary of the secretary of state is eighteen hundred dollars.

1977 (87) (76) (77) (58). **Fees to be charged by him.**—He shall charge the person for whom the service is rendered the following fees: For copying any law, or other matter, where the copy is desired, fifteen cents for every hundred words; for any certificate, and the annexation of the seal of the state, one dollar; for the issue of a patent, and the annexation of the seal of the state, one dollar; and all such fees shall be paid into the state treasury.

1978 (85) (74). **Duties under section 30, article four, of the constitution.**—The secretary of state is charged with the duty of making and executing contracts, with the approval of the governor, the auditor and the treasurer, required by section 30, of article four, of the constitution, as follows:

1. The secretary of state shall, from the best information he can obtain, fix a maximum price at which all stationery, paper and fuel, used by the general assembly, or by other departments of the state government, shall be purchased by the state, and a maximum price for the distribution of laws, journals and department reports, printed, bound, or distributed for the state, and also a maximum price for any repairing or furnishing the halls and rooms used for the general assembly, or its committees, which may at any time seem to him to be necessary; and, having so fixed such maximum price, shall, at the times prescribed in section 3387, advertise for bids for furnishing such supplies or doing such work for the state, in not less than two, nor more than four newspapers published in this state, one of which to be published at the city of Montgomery, at a price not to exceed the maximum fixed.

2. Such advertisement shall be made for at least three successive weeks, by giving at least one insertion of the same in each week in such papers, inviting sealed proposals for furnishing the proposed materials or work, naming in such advertisement a day after which such bids will close; and immediately after the day named, or as soon thereafter as practicable, the secretary shall open such bids as may have been received for the specified materials or work advertised for, and shall accept the lowest responsible bid for the same below the maximum price, subject to the approval of the governor, the auditor and the treasurer of the state, after the contract has been

executed by and between the secretary of state and such accepted bidder.

3. The secretary of state shall, from the best sources of information obtainable, ascertain the probable amount of supplies needed in any fiscal year, or the probable amount of work or repairs needed for any given time during the term of his office, and contract for same in such quantity and amount as, in his judgment, will be for the best interest of the state; and to this end, he may call on the heads of the other departments of the state government for such estimates of work and materials needed by them, which estimates shall be so furnished when called for.

4. Before any such contract shall be submitted to the governor, auditor and treasurer, for their approval, the contractor shall furnish to the secretary of state bond, with good and sufficient surety, in double the amount involved in such contract, conditioned for the faithful performance of the same, to be approved by him, which bond so approved shall accompany such contract when the same is presented for the approval of the governor, auditor and treasurer, and, when so approved by them, shall be a valid contract; and all such bonds shall be filed in the office of the secretary of state, and there recorded.

5. Whenever requested by the secretary of state, the governor, auditor and treasurer shall meet in the office of the governor, or of the secretary of state, for the purpose of examining any contract made under this section, and each of them shall indorse thereon in writing his approval or disapproval thereof, if the same is accompanied by the bond required by subdivision 4 of this section.

6. In case the lowest responsible bidder shall fail to execute his contract or give the required bond under this section, then the secretary of state shall award the contract to the next lowest responsible bidder, and in case of a second failure, then the next lowest responsible bidder, and so on until a contract is executed and approved; and in case all the bids are exhausted and no contract concluded, then he may proceed to readvertise as before, until the object is accomplished.

7. The bid of no member or officer of any department of the state government shall be accepted, nor any bid in which it may be ascertained that any such member or officer is in any way interested; and any such contract, if made, shall be void, and no payment shall be made thereon.

8. The secretary of state must pass upon the compliance of any contract made in pursuance of this section; if he shall find the same to conform, in every respect, to the terms and stipulations of the contract, he shall certify the same, together with the amount due thereon, to the auditor, who shall draw his warrant on the treasurer, in favor of the party entitled thereto, for the amount so certified by the secretary of state.

1979 (89) (78) (79). **Custody of books.**—The secretary of state has the charge of all books owned and kept for sale by the state, and

it is his duty to sell the same; and he is liable upon his official bond for failure of any of the duties imposed in selling the same, and for failure to pay over the money received therefor.

1980 (90) (79) (80). **Files list of books with the governor and makes returns to the auditor.**—He must, at the commencement of his term of office, file in the governor's office a list of such books as come into his possession for sale, and he must, at the end of every quarter of such term, return to the auditor a certified statement showing the number and description of books sold, and the amount of money received therefor at prices fixed upon such books, and pay the same into the treasury for the use of the state.

1981 (92) (81) (82). **Keeps account of sales and money.**—He must keep, in his office, a book, in which shall be entered an account of books sold, and of money paid over.

1982 (91) (80) (81). **Duty and liability on expiration of office.** At the end of his term of office, or his resignation, he must file in the office of the governor a full statement of the books sold and remaining on hand, to be turned over to his successor, and is liable on his bond for failure to comply with the requisitions of this section, and the three preceding sections.

1983. Receipt of doorkeeper sufficient voucher for books, etc. Feb. 2, 1895, p. 322. The receipt of the doorkeeper of the senate or house of representatives is a sufficient voucher for the secretary of state, for each book so receipted for; and the receipt of a member of either house to the doorkeeper thereof is a sufficient voucher for the doorkeeper.

1984 (232) (140) (135) (96). **Secretary of state distributes acts and resolutions.**—The secretary of state must retain for the use of the executive offices, and the two houses of the general assembly, one hundred and fifty copies of the acts and resolutions of each session, and transmit to the department of state of the United States two copies; to the executive of each state and territory two copies, with the request to forward to the executive of this state the same number of copies of the laws of such state or territory; and distribute to the governor, secretary of state, state treasurer, state auditor, attorney-general, superintendent of education, commissioner of agriculture, examiner of public accounts, state health officer, adjutant-general, president of the convict bureau, president of the railroad commission, clerk of the supreme court, secretary of the senate and clerk of the house of representatives, one copy each, and to the president of the University of Alabama for the use of the law department, two copies; also, to each chancellor, judge of the supreme, circuit or city court, solicitor, United States district judge and United States district attorney in this state, one copy each; also, four copies to the supreme court library, and one copy each to the department of justice of the United States and the United States circuit court of appeals for the fifth circuit; also, two copies to the librarian of congress at Washington for the purpose of copyright.

1985 (234) (142) (136) (97). **Copies sent judges of probate, for certain officers, and remaining copies sold.**—He must also transmit

to the judge of probate of each county, for such judge, each member of the general assembly, clerk of any court of record, sheriff, register in chancery, and each justice of the peace within his county, one copy each; and the remaining copies must be sold as other books and documents, the property of the state, at two dollars a copy, and the proceeds thereof paid into the treasury.

1986 (235) (143). **When duplicate copies furnished to judicial officers.**—Whenever any of the supreme court reports, or other books, furnished by the state to the judicial officers thereof, have been destroyed by fire without fault on their part, or on the part of their predecessors in office, the secretary of state shall furnish to the incumbents duplicate copies, if in the possession of the state, and not required for use by the state, or otherwise appropriated; but before he shall do so, the secretary of state shall be satisfied by affidavit, or other evidence, that such books were destroyed by fire without fault on the part of such officers or their predecessors.

1987 (236) (144) (137) (98). **To retain fifty copies of journals, and distribute remainder.**—He must retain fifty copies of the journals of each house, for the use of the executive offices and members of the general assembly, and must distribute to the state officers designated in section 1984 (232) one copy each; the remaining copies must be transmitted to the judges of probate of the several counties, in proportion to their population, to be by them distributed among the civil officers of their counties.

1988 (233) (141). **Distribution to A. and M. College, and Institute for Deaf and Dumb and the Blind.**—It shall be the duty of the secretary of state to furnish the Agricultural and Mechanical College, and the Deaf, Dumb and Blind Institute, at Talladega, with a copy each of such reports of the several departments of the state, and of the trustees of the State University, and committees visiting the university and asylum, as may be made to the different sessions of the legislature, and also a copy each of the journals of the senate and house of representatives, for permanent preservation in their libraries.

1989 (238) (146) (141) (102). **Distribution of books and papers in relation to public lands.**—Books and documents in relation to the public lands, after retaining one copy for the use of the executive and state departments, and one for the supreme court library, are to be distributed by the secretary of state among the judges of probate, for the use of the citizens of their respective counties.

1990 (239) (147) (142) (103). **The acts of congress to be distributed.**—The acts of congress are to be sent to each of the judges of probate, and the expense thereof paid out of the state treasury, on warrant of the auditor, drawn upon the certificate of the secretary of state.

1991 (240) (148) (143) (104). **Distribution of other books and documents.**—The other books and documents are to be distributed with the acts and journals.

1992 (93) (82) (89). **Preservation of fuel.**—The secretary of

state must provide that the fuel of the state, after being delivered, is preserved from waste, and any sum necessary for this purpose must be paid out of any money in the treasury not otherwise appropriated, on the warrant of the auditor, upon account and certificate of the secretary of state that the account is correct and according to contract, and approved by the governor, and that the sum was necessary to protect the state against loss in the waste of fuel.

ARTICLE 3.

STATE AUDITOR.

1993 (94) (83) (90) (59). **Bond of auditor.**—The auditor must, before entering on the duties of his office, give bond in the sum of twenty thousand dollars, which bond must approved by the governor, and filed and recorded in the office of the secretary of state.

1994 (95) (84) (91) (61). **Seal and its device.**—He must keep a seal with the device, "The State of Alabama, Auditor's Office."

1995 (96) (85) (414) (365). **His duties.**—It is the duty of the auditor—

1. To superintend the fiscal affairs of the state, as required by law.

2. To keep and preserve in his office, in suitable books, fair and accurate accounts between this state and the United States, including the two and three per cent. funds, the surplus revenue funds, and the funds arising from the distribution of the sales of the public lands.

3. To keep the accounts in relation to the school fund, and every other special or trust fund in which the state is interested, the keeping of which is not specially intrusted to other officers.

4. To keep an account of all state bonds issued and paid, and of all interest paid.

5. To keep all accounts between the state and the treasurer, charging him with the balance due when he came into office, and with all moneys received by him, and crediting him with all warrants drawn on the state treasury and paid by him.

6. To audit and adjust the accounts of all public officers, keeping a regular account with every person in each county in the state who is by law authorized to collect and receive any part of the state revenue, in suitable books, in which he must charge such persons with all sums of money due from them severally, and credit each with all moneys paid by him to the treasurer, having first certified to that officer the amount or balance due.

7. To examine and adjust the claims of all persons against the state, where provision for the payment thereof has been made by law.

8. To draw warrants on the treasurer for the payment of all moneys directed by law to be paid out of the treasury, in favor of the person authorized to receive the same; stating in such warrant on

what account the same is due, and in case of special appropriation, referring to the law under which it is drawn.

9. To direct the forms to be used by all public officers in collecting, keeping the accounts, and making returns of the state revenue.

10. To have printed by the state printer, immediately after each session of the general assembly, all laws in relation to the revenue passed at such session, and to send a copy certified by the secretary of state to each of the tax-assessors, tax-collectors, and judges of probate.

11. To take and keep copies of his official letters.

12. To take receipts for all warrants he draws, and to preserve, arrange and file in his office all such receipts, and all accounts by him allowed, with the vouchers and papers relating to the same.

13. To proceed against all defaulters, as required by law.

14. To publish in some newspaper at the seat of government, annually, a list of defaulters to the state, whose accounts have remained due and unpaid for one year, with the amount due from each, how the debt accrued, and when it became due.

15. To keep a docket of all suits brought against defaulters, showing the time when commenced, to what sheriff directed, the sheriff's return, and when and how settled.

16. To examine all bonds for the two per cent. fund, and all other securities for money belonging to the state, kept in his office, from time to time, as to the sufficiency of the securities; and on discovering any deficiency therein, forthwith to report the same to the governor, and to put such bonds or securities in suit when necessary for the collection of the principal and interest.

As amended Feb. 28, 1889, p. 73, §1.

17. To report annually, in writing, to the governor, to be laid before the general assembly, his views as to the proper subjects of taxation, with such plans and estimates as in his opinion are expedient for using the public money to the best advantage for diminishing the public expenses, and sustaining the credit of the state; detailed estimates of the expenditures to be defrayed from the treasury for the two ensuing years must accompany the report, and also tables showing in detail the names of all persons in whose favor warrants have been drawn for the preceding fiscal year, when drawn, under what law in case of special appropriations, and for what amount; the amount of total assessments made in each county for the same year, showing in separate columns the amount of total assessments on each item of taxation, the amount in each county for retail and other licenses, the amount of insolvencies, of commissions, the net amount of revenue paid into the treasury for such year, the condition of the school fund, the two and three per cent. fund, and all other funds, the accounts of which are by law required to be kept in his office.

Ib. 2.

18. He shall embrace in his report a detailed statement of all payments made from the contingent fund during the fiscal year, setting forth the date and nature of the claim, and name of the person in

whose favor each warrant was drawn, and the same must be printed in connection with his report upon the finances.

19. To condense his report as far as consistent with intelligibility of its material parts, and to have fifteen hundred copies of the same printed for the use of the general assembly as soon as practicable after the close of the fiscal year.

20. To keep a book in which he shall make an entry of the amount of taxes received from each county, and from whom received; and the entries in such book shall be embraced in his annual report.

21. He must certify under his official seal, at all times when necessary for the public use, and on application and payment of the legal fees therefor, for private or personal use, copies of any paper required to be kept in his office.

22. To perform such other duties in relation to the fiscal affairs of the state as are, or may be required of him by law.

Timberlake v. Brewer, 59 Ala. 108; Brewer v. Watson, 61 Ala. 310; State v. Brewer, Ib. Ala. 318; State v. Brewer, 62 Ala. 215; State v. Brewer, 64 Ala. 287; Brewer v. Watson, 65 Ala. 88; s. c., 71 Ala. 299; Stanley v. State, 88 Ala. 154.

1996 (97) (86) (93) (63). **His salary and fees.**—The annual salary of the auditor shall be eighteen hundred dollars, to be paid in such manner as is now prescribed by law; and he must charge fifty cents for each annexation of his official seal for private or personal use, and for other services the same fees as the secretary of state for similar services; and all such fees shall be paid into the state treasury.

1997 (98) (87) (94) (64). **Office under superintendence of governor.**—The office of the auditor is under the general superintendence of the governor.

1998 (99) (88) (95). **Clerks; salary.**—The auditor may employ three clerks in his office, and remove them at pleasure, one at an annual salary of fifteen hundred dollars and two at an annual salary each of twelve hundred dollars, payable as the salaries of other officers are paid; and for additional clerical assistance in that office there is appropriated annually the sum of twelve hundred dollars, or so much thereof as may be necessary. Feb. 18, 1895, p. 789.

1999 (100) (89) (96). **Qualifications and duties of clerks.**—Such clerks must, before entering upon their duties, comply with such requisitions as the auditor may prescribe for his own security, and take an oath faithfully to discharge all such duties in the auditor's office, and connected with it, as are, or may be confided to them, and also the oath required of public officers.

2000 (101) (90) (97). **Official acts.**—The official acts of one of these clerks, to be assigned as chief clerk by the auditor, shall be presumed to be by the authority of, and shall be taken as done by the auditor, who shall be responsible for the same.

2001 (102) (91) (98). **Duration of appointment.**—The appointment of such clerk shall not be for a longer time than two years, and shall not continue longer than the incumbent making the appointment remains in office.

2002 (103) (92) (99). **Auditor to keep bonds approved by the governor.**—The auditor must keep all bonds approved by the governor, and place them in his iron safe or vault for safe-keeping.

2003 (104) (93) (418) (366). **May require proof of correctness of claim.**—The auditor has authority to require information on oath, to be by him administered, from any person, touching any claim or account he is required to audit.

2004 (105) (94) (416). **Evidence preliminary to payment from contingent fund.**—No money shall be paid out of the contingent fund, except upon account stated, setting forth the items upon which payment is claimed, signed by the proper party, with such authentication as the governor may require of the correctness of the same.

2005 (106) (95) (417). **Register of bonds in office.**—All bonds of the state, redeemed or paid, must be registered in the auditor's office.

2006 (107) (96) (419) (367). **Must not draw warrant in favor of defaulter.**—He must not give any public defaulter any warrant for moneys due him from the state, except the balance which is due after the application of the amount due from the state to the extinguishment of the debt, interest and damages, if any are given by law, due from such defaulter.

State v. Brewer, 62 Ala. 215.

2007 (108) (97) (420) (368). **Not to receive revenue unless expressly authorized.**—The auditor has no authority, in any suit or proceeding by him commenced or directed, or in any other case, unless such authority is expressly given, to receive any of the state revenue.

2008 (109) (98) (421) (369). **Accounts against state to be itemized and verified.**—All accounts against the state must be accurately and fully itemized, and accompanied with the affidavit of the party, stating the correctness of the same, and that no portion of such account has been paid.

2009 (110) (99) (4436). **Verification of claims against the state.** No claim against the state must be allowed, or ordered to be paid by the legislature, until satisfactory evidence is produced, by affidavit duly administered and authenticated, that the same is justly due and unpaid; and such affidavits must be filed with the secretary of state at the close of each session.

2010 (111) (100). **When required to issue duplicate warrants.** The auditor must issue duplicate warrants upon the treasury, whenever he is satisfied that the original warrant has been destroyed or lost; and the party holding the duplicate shall have the same right as if he held the original, and the treasurer is authorized to pay the same.

2011 (112) (355) (424) (371). **Fiscal year.**—The fiscal year ends on the thirtieth day of September.

2012 (643) (537) (431) (385). **Bonds, etc., deposited with auditor, and payments made to treasurer.**—All bonds and other securities for money belonging to the state, or under the control thereof, are to be deposited with, and kept in the office of the auditor; and

all payments on the same must be made to the treasurer, being first certified to him by the auditor.

ARTICLE 4.

STATE TREASURER.

2013 (114) (101) (100) (65). **Treasurer's bond.**—The state treasurer, before entering upon the duties of his office, must give bond in the sum of two hundred and fifty thousand dollars, with two or more sufficient sureties, to be approved by the governor, and recorded in the office of the secretary of state, and filed and kept in the office of the auditor.

2014 (115) (102) (101) (67). **Settlement of accounts and delivery of books, etc., on removal or resignation.**—If the state treasurer resigns, or is removed, he must, within ten days after such resignation or removal, state his account, and deliver the books, papers and money belonging to the treasury to his successor, taking his receipt therefor; and the auditor must record and file in his office a statement of such settlement and receipt, and report the same to the next session of the general assembly.

2015 (116) (103) (102) (68). **When auditor to state accounts, etc.**—If the treasurer, in the event of his resignation or removal, within ten days thereafter, fails to comply with the provisions of the preceding section, or if he dies or absconds, the auditor, after giving ten days' notice, by publication in some newspaper at the seat of government, must proceed, in the presence of any person attending on the part of such late treasurer, to state his account, and deliver the books, papers and moneys belonging to the treasury to his successor, taking his receipt for the same; to record and file such receipt and statement, and report the same to the next general assembly.

2016 (117) (104) (103) (69). **Governor has superintendence of office.**—The governor exercises a general superintendence over the office of state treasurer.

2017 (118) (105) (104) (70). **His salary.**—The annual salary of the state treasurer is two thousand one hundred dollars.

2018 (120) (107) (422) (370). **Duties of treasurer.**—It is the duty of the state treasurer—

1. To receive and keep the moneys of the state.
2. To pay all warrants drawn under authority of law by the auditor on the treasurer, and to pay no money out of the treasury except on the warrant of the auditor.
3. To take receipts for all payments.
4. To file such receipts and warrants, and to number the same in chronological order, for each fiscal year.
5. To keep accounts of the receipts and expenditures of the public money.
6. To enter in his books the amount of money he receives for

taxes, licenses, or on any other account for the state, so that the net proceeds of the whole revenue, as well as every branch thereof, and the amount of disbursements distinctly appear.

7. To give information in writing to the general assembly, or either house thereof, or to the governor, when required, reporting all matters appertaining to his office.

As amended Feb. 28, 1889, p. 73, §3.

8. To report annually, in writing, to the governor, to be laid before the general assembly, the amount paid into the treasury for the preceding fiscal year, showing the amount paid in by each county, and distinguishing such counties as have made partial payments from those which have paid in full; also statements of all sums of money he has paid out on account of the state for such year, specifying the amount, to whom paid, and for what, with an exact statement of the balance in the treasury.

9. To condense his report, as far as is consistent with intelligibility of its material parts, and to have fifteen hundred copies of the same printed for the use of the general assembly, as soon as possible after the close of the fiscal year.

10. To act as agent for the state, to receive the whole or any portion of the two or three per cent. fund, and to give on the part of the state his receipt therefor.

11. To perform such other duties in relation to the fiscal affairs of the state as are, or may be by law required of him.

2019 (121). **Fiscal agency in New York for payment of interest.** For the purpose of paying the interest on the bonded indebtedness of the state, which is payable in the city of New York, the treasurer, with the written approval of the governor, shall, from time to time, as he may see fit, designate some well-known, responsible, solvent bank or banking-house in such city, at which such interest will be paid.

As amended Feb. 4, 1893, p. 288.

2020 (122). **Money for payment of interest, how drawn.**—Not less than one nor more than two months before the first days of January and July of each year, the treasurer must certify to the governor the amount of money which will probably be needed to pay the interest on the bonded indebtedness of the state falling due next thereafter, and payable in the city of New York, and at the treasury of the state; and the governor shall thereupon, in writing, direct the auditor to draw his warrant on the treasury in favor of the treasurer for such amount, or so much thereof as the treasurer may deem necessary, to be paid out of any fund appropriated for the payment of interest on such indebtedness; and upon the receipt of such warrant, the treasurer shall enter the amount thereof, on the appropriate book of his office, to the credit of "Interest Account," and shall thereafter, from time to time, debit such account with amounts paid on such interest at the treasury, and at the fiscal agency provided for in the preceding section, and for the expenses necessarily incurred in providing for the payment of such interest.

Ib.

2021 (123). **How money sent to fiscal agency.**—The money to pay the interest on such bonded indebtedness which is to be paid in

the city of New York, shall be by the treasurer remitted by express or otherwise, as he may deem best, to the fiscal agency in such city, without taking out special insurance, except in cases where the governor in writing directs such insurance to be taken out.

2022 (124). **Payment of interest in New York.**—It is the duty of the fiscal agent in the city of New York to pay the interest on the bonded indebtedness of the state, upon presentation of the proper coupons and checks, and, upon payment, to immediately cancel such coupons and checks, and to forward the same to the treasurer by express, or otherwise, as he may direct.

2023 (125). **When treasurer not liable for loss in providing for payment of interest.**—The treasurer shall not be liable for any loss or damage sustained by the state in carrying out the provisions of the four preceding sections, which does not result from any fault or negligence on his part.

2024 (119) (106) (106). **Custodian of state bonds redeemed, and duties in reference to them.**—The treasurer is the custodian of all redeemed bonds and paid coupons of the state, which must be canceled; and he must register them in a book kept for that purpose, in such manner as to show a full and complete identification by date, number, amount, rate of interest, time and place of payment, and by whom issued, and such registry must be carefully preserved; and all bonds of the state, redeemed or paid, must be canceled and filed in the office of the treasurer.

2025. **Must record paid and canceled coupons.**—The treasurer must enter, in suitable books kept for that purpose, a record of all paid and canceled coupons of the coupon bonds called "Class A," "Class B" and "Class C," and all the six per cent. bonds, and all the coupon bonds which the state may hereafter issue, such record to be made as soon as practicable after such payment and cancellation. Feb. 28, 1887, p. 104.

2026. **When duplicate of lost or destroyed registered state bond may issue.**—Whenever it shall be made to appear to the governor, auditor and treasurer, by clear and satisfactory evidence, that any duly registered bond of the State of Alabama bearing interest has been lost or destroyed so that the same is not held by any person as his property, they shall issue a duplicate of such registered bond, in like amount, bearing like interest and executed and marked in like manner as the bond so proved to have been lost or destroyed. But the owner of such lost or destroyed bond shall first execute a penal bond in double the amount of such lost or destroyed bond and the interest which would thereafter accrue thereon, with two good and sufficient sureties, to be approved by the governor, payable to the State of Alabama, with condition to indemnify and save harmless the state from any claim because of such lost or destroyed bond. Such penal bond shall be filed and kept in the office of the treasurer, and a copy thereof, duly certified by the treasurer, is admissible in evidence in any court. Feb. 21, 1893, p. 1044.

ARTICLE 5.

ATTORNEY-GENERAL.

2027 (126) (108) (107) (71). **His bond.**—The attorney-general, before entering upon the duties of his office, must give bond in the sum of ten thousand dollars, and, upon requisition of the governor, must give additional bond whenever the public interest demands. His bond must be approved by the governor, and recorded in the office of the secretary of state, and filed in the office of the auditor.

2028 (127) (109) (108) (72). **His duties.**—He shall keep his office at the seat of government, and perform the following duties, viz.:

1. He must give his opinion in writing, or otherwise, on any question of law connected with the interests of the state, or with the duties of any of the departments, when required by the governor, secretary of state, auditor, treasurer, superintendent of education, commissioner of agriculture, examiner of public accounts, president of the convict bureau, state health officer, or railroad commissioners, in writing to do so; and he shall also give his opinion to the chairman of the judiciary committee of either house, when required, upon any matter under the consideration of the committee.

2. He must, on the application of the governor, prepare all contracts and writings in relation to any matter in which the state is interested.

3. He must attend, on the part of the state, to all criminal cases pending in the supreme court, and to all civil suits in which the state is a party in the same court. He shall also attend to all causes other than criminal that may be pending in the courts of Montgomery county, in which the state may be in any manner concerned; and when required to do so by the governor, in writing, shall appear in the courts of other states, or of the United States, in any cause in which the state may be interested in the result.

Ex parte State, Ala. (21 So. 210).

4. He must superintend the collection of all notes for school lands which may be turned over to him by the superintendent of education; and for this purpose may appoint agents in different parts of the state.

Feb. 21, 1893, p. 852.

5. He must, in the month of October of each even-numbered year, make to the governor a report of the business of his office for the two years next preceding, with such suggestions tending to the suppression of crime and the improvement of the criminal administration as he may deem proper. Such report shall also contain a statement of the number of criminal cases disposed of in the entire state for the past two years, as shown by reports of solicitors; and, taking each character of cases separately, it shall show the number disposed of in each judicial circuit, and in each city or criminal court or other court or territory having a separate solicitor, the number of convictions, the number of acquittals, the number of

nolle prosequies entered, the number of cases which were abated or otherwise disposed of; the number of sentences to death, the number of sentences to the penitentiary, the number of other sentences including fines imposed, and the totals under each head above mentioned. Such report may also contain such opinions of the attorney-general as may be deemed of public interest; and such report shall, when printed, be transmitted by the governor to the general assembly.

6. He shall keep and preserve, with proper indexes thereto, press copies of all his official opinions and correspondence.

7. He shall keep, in a well-bound book with proper index thereto, a docket of all civil suits and claims in which the state is in any manner concerned and to which he is required to give attention, showing the names and address of the parties, the nature and amount of the suit or claim, when and in what court suit was brought, the steps taken therein and the final determination and result thereof; and, as to claims for collection, showing, also, when and from whom the claim was received by him, the name and address of any agent or attorney to whom sent for collection and the date thereof, and, in all cases, the amount and date of each collection, the amount of commissions or other expenses deducted, if any, the net amount collected, when and to whom paid over and the receipt of the proper officer therefor.

2029. May institute and prosecute civil actions for the state. The attorney-general is authorized to institute and prosecute, in the name of the state, all suits and other proceedings at law or in equity, requisite or necessary to protect the rights and interests of the state.

2030. May appoint clerk.—The attorney-general may appoint one clerk in his office and remove him at pleasure. The salary of such clerk is six hundred dollars per annum, payable as the salaries of other officers are paid.

2031 (128) (110) (109) (73). **His salary.**—The salary of the attorney-general is twenty-five hundred dollars per annum. Dec. 8, 1890, p. 51, §1.

2032. Fees and commissions to be paid into state treasury. Ib. §2. All fees and commissions to which the attorney-general is entitled by law, shall, when collected, be paid into the state treasury.

CHAPTER 50.

EXEMPTIONS.

ARTICLE 1.—EXEMPTIONS FROM LEVY AND SALE UNDER PROCESS. 2033–2040.
2.—CLAIM AND CONTEST OF EXEMPTIONS. 2041–2068.
3.—EXEMPTIONS FROM ADMINISTRATION AND THE PAYMENT OF DEBTS. 2069–2077.
4.—SETTING APART EXEMPTIONS TO WIDOW AND MINOR CHILDREN. 2078–2103.
5.—WAIVER OF EXEMPTIONS. 2104–2109.

ARTICLE 1.

EXEMPTIONS FROM LEVY AND SALE UNDER PROCESS.

2033 (2507) (2820). **Homestead exemption.**—The homestead of every resident of this state, with the improvements and appurtenances, not exceeding in value two thousand dollars, and in area one hundred and sixty acres, shall be, to the extent of any interest he may have therein, whether a fee or less estate, or whether held in common or in severalty, exempt from levy and sale under execution or other process for the collection of debts contracted after the twenty-third day of April, 1873, during his life and occupancy, and if he leave surviving him a widow and minor child or children, or either, during the life of the widow and minority of the child or children; but the area of the homestead shall not be enlarged by reason of any incumbrance thereon, or of the character of the estate or interest owned therein by him.

Residence within state essential to the right of homestead or other exemption.—Talmadge v. Talmadge, 66 Ala. 199; McCrary v. Chase, 71 Ala. 540; McBrayer v. Dillard, 49 Ala. 174; Murphy v. Hunt, 75 Ala. 438; Beard v. Johnson, 87 Ala. 729; Auerbach v. Pritchett, 58 Ala. 451. **Domicil of the husband that of the wife.**—Talmadge v. Talmadge, 66 Ala. 199; Auerbach v. Pritchett, 58 Ala. 451. **An adopted child may claim during minority.**—Cofer v. Scroggins, 98 Ala. 342. **Whether an absconding debtor can claim homestead, quære.**—McBrayer v. Dillard, 49 Ala. 174. **"Debts contracted" what liabilities within.**—Williams v. Bowden, 69 Ala. 433; Schuessler v. Dudley, 80 Ala. 547; Wright v. Jones, 103 Ala. 539; McDaniel v. Johnston, 110 Ala. 526. **Costs adjudged in a civil suit in action ex contractu.**—Clingman v. Kemp, 57 Ala. 195; Stuckey v. McKibbon, 92 Ala. 622; Penton v. Diamond, 92 Ala. 610. **Surety on a bond, or on confession of judgment may claim.**—State v. Allen, 71 Ala. 543; Schuessler v. Dudley, 80 Ala. 547. **Also judgment for injury by common carrier.**—McDaniel v. Johnson, 110 Ala. 526. **Liabilities ex delicto not within.**—Meredith v. Holmes, 68 Ala. 190; Stuckey v. McKibbon, 92 Ala. 622; Penton v. Diamond, 92 Ala. 610; McLaren v. Anderson, 81 Ala. 106; Vincent v. State, 74 Ala. 274; Schuessler v. Dudley, 80 Ala. 547; Callen v. Schuessler, 86 Ala. 527; Wright v. Jones, 103 Ala. 539; Dangaix v. Lunsford, 112 Ala. 403. **Nor statutory penalties.**—Williams v. Bowden, 69 Ala. 433; State v. Allen, 71 Ala. 543. **Nor statutory liens.**—Ex parte Barnes, 84 Ala. 540; Bryan v. Kelly, 85 Ala. 569; Tyler v. Jewett, 82 Ala. 93; Blum v. Carter, 63 Ala. 235, 240. **Nor vendor's lien.**—Tyler v. Jewett, 82 Ala. 93; Weber v. Short, 55 Ala. 311; Moses v. Home B. & L. Asso., 100 Ala. 465. **Nor valid mortgage.**—Weber v. Short, 55 Ala. 311; McGuire v. VanPelt, Ib. 344; Pollak v. McNeil, 100 Ala. 203; Preiss v. Campbell, 59 Ala. 635; Blum v. Carter, 63 Ala. 235. **No exemption as against the state.**—Vincent v. State, 74 Ala. 274. **Executor cannot claim as against judgment for devastavit.**—Dangaix v. Lunsford, 112 Ala. 403; **Right governed by law of force when debt contracted.**—Young v. Hubbard, 102 Ala. 373; Randolph v. Little, 62 Ala. 396;

Wilson v. Brown, 58 Ala. 62; Miller v. Marx, 55 Ala. 322; McLaren v. Anderson, 81 Ala. 106; Watts v. Burnett, 56 Ala. 340; Blum v. Carter, 63 Ala. 235; Ala. Conf. v. Vaughan, 54 Ala. 443; Nelson v. McCrary, 60 Ala. 301; Cochran v. Miller, 74 Ala. 50; Keel v. Larkin, 72 Ala. 493; DeGraffenried v. Clark, 75 Ala. 425; Slaughter v. McBride, 69 Ala. 510; Giddens v. Williamson, 65 Ala. 439; Lovelace v. Webb, 62 Ala. 271; Clark v. Spencer, 75 Ala. 49. **And by the facts existing at the time lien attached.**—McCrary v. Chase, 71 Ala. 540; Murphy v. Hunt, 75 Ala. 438; Block v. George, 83 Ala. 178; Hines v. Duncan, 79 Ala. 112; Scaife v. Argall, 74 Ala. 473; Boyle v. Shulman, 59 Ala. 566; Banks v. Speers, 97 Ala. 560; Stow v. Lillie, 63 Ala. 257; Hudson v. Kelly, 70 Ala. 393; Lyons v. Connor, 57 Ala. 181; Bell v. Anderson, Ala. (21 So. 414). **Repeal of law destroys right.**—Clark v. Snodgrass, 66 Ala. 233. **When the law is unconstitutional.**—Wilson v. Brown, 58 Ala. 62. **Homestead in what right may be claimed. In land purchased with non-exempt personalty.** Reeves v. Peterman, 109 Ala. 366. **May be selected by debtor from a larger tract.**—Jaffrey v. McGough, 88 Ala. 648; Alford v. Alford, Ib. 656. **In parcels not contiguous.**—Dicus v. Hall, 83 Ala. 159; Hodges v. Winston, 95 Ala. 514; Winston v. Hodges, 102 Ala. 304; Tyler v. Jewett, 82 Ala. 93; Beard v. Johnson, 87 Ala. 729; Jaffrey v. McGough, 88 Ala. 648. **And without regard to character of title.**—Tyler v. Jewett, 82 Ala. 93; Winston v. Hodges, 102 Ala. 304 (overruling Pizzala v. Campbell, 46 Ala. 35); McGuire v. VanPelt, 55 Ala. 344; Weber v. Short, 55 Ala. 311. **In leased lands.**—Watts v. Gordon, 65 Ala. 546; Tyler v. Jewett, 82 Ala. 93. **In equity of redemption.** McGuire v. VanPelt, 55 Ala. 344, 359. **In lands of tenants in common.** McGuire v. VanPelt, 55 Ala. 344; Snedecor v. Freeman, 71 Ala. 140; Blum v. Carter, 63 Ala. 235. **In lands belonging to married woman.**—Bender v. Meyer, 55 Ala. 576; Weiner v. Sterling, 61 Ala. 98; Beard v. Johnson, 87 Ala. 729; Schuessler v. Wilson, 56 Ala. 516; Hines v. Duncan, 79 Ala. 112. **In land purchased by husband taking title to wife.**—Reeves v. Peterman, 109 Ala. 366; Kelley v. Connell, 110 Ala. 543. **Husband living on lands of the wife cannot claim adjoining lands belonging to him.**—Beard v. Johnson, 87 Ala. 729. **Occupancy as a homestead essential to homestead.**—McConnaughy v. Baxter, 55 Ala. 379; Sides v. Scharff, 93 Ala. 106; Beckert v. Whitlock, 83 Ala. 123; Hines v. Duncan, 79 Ala. 112; Garrett v. Jones, 95 Ala. 96; Beard v. Johnson, 87 Ala. 729; Englehardt v. Yung, 76 Ala. 534; Kaster v. McWilliams, 41 Ala. 302; Preiss v. Campbell, 59 Ala. 635; Stow v. Lillie, 63 Ala. 257; Martin v. Lile, 63 Ala. 406; Murphy v. Hunt, 75 Ala. 438; Dexter v. Strobach, 56 Ala. 233; David v. David, 56 Ala. 49; Lyne v. Wann, 72 Ala. 43; Waugh v. Montgomery, 67 Ala. 573; Turner v. Turner, 107 Ala. 465. **Homestead determined by use to which house and lot adapted.**—Garrett v. Jones, 95 Ala. 96. **When left temporarily with animus revertendi** may be claimed.—Beckert v. Whitlock, 83 Ala. 123; Fuller v. Whitlock, 99 Ala. 411; Scaife v. Argall, 74 Ala. 473. **When intention of, and preparation for, occupancy sufficient.**—Blum v. Carter, 63 Ala. 235; Englehardt v. Yung, 76 Ala. 534, 541. **One wrongfully in possession, but claiming a right to hold,** may impress on premises the character of homestead as against creditors.—Winston v. Hodges, 102 Ala. 302, 311; Watts v. Gordon, 65 Ala. 546. **When going off on temporary visit with intention of returning** does not forfeit claim.—Pollak v. Caldwell, 94 Ala. 149; Boyle v. Shulman, 59 Ala. 566; Caldwell v. Pollak, 91 Ala. 353; Lehman v. Bryan, 67 Ala. 558. **Extent of homestead.**—Clark v. Spencer, 75 Ala. 49; Snedecor v. Freeman, 71 Ala. 140; Garner v. Bond, 61 Ala. 84; David v. David, 56 Ala. 49; Miller v. Marx, 55 Ala. 322; Clancy v. Stephens, 92 Ala. 577; Clark v. Allen, 87 Ala. 198; Hardy v. Sulzbacher, 62 Ala. 44; DeGraffenried v. Clark, 75 Ala. 425; Nelson v. McCrary, 60 Ala. 301; Dossey v. Pitman, 81 Ala. 381; Pollak v. McNeil, 100 Ala. 203; Blackman v. Moore, 106 Ala. 458. **Abandonment of homestead.**—Talmadge v. Talmadge, 66 Ala. 199; McCrary v. Chase, 71 Ala. 540; Caldwell v. Pollak, 91 Ala. 353; Pollak v. Caldwell, 94 Ala. 149; Lehman v. Bryan, 67 Ala. 558; Stow v. Lillie, 63 Ala. 257; Boyle v. Shulman, 59 Ala. 566; McConnaughy v. Baxter, 55 Ala. 379; Murphy v. Hunt, 75 Ala. 438; Scaife v. Argall, 74 Ala. 473; Kaster v. McWilliams, 41 Ala. 302; Alford v. Lehman, 76 Ala. 526. **A domicil once obtained is presumed to continue** until a change facto et animo is shown.—Caldwell v. Pollak, 91 Ala. 353; Talmadge v. Talmadge, 66 Ala. 199; Murphy v. Hunt, 75 Ala. 438; Glover v. Glover, 18 Ala. 367; State v. Hallett, 8 Ala. 159; Herzfeld v. Beasley, 106 Ala. 447; Metcalf v. Smith, 106 Ala. 301. **When a claim of homestead is filed, right will be held waived as to lands not embraced.**—Motley v. Jones, 98 Ala. 443; Clark v. Spencer, 75 Ala. 49, 57. **Right not lost by preparations to abandon homestead.**—Talmadge v. Talmadge, 66 Ala. 199; McCrary v. Chase, 71 Ala. 540; Caldwell v. Pollak, 91 Ala. 353; Herzfeld v. Beasley, 106 Ala. 447. **What will not amount to an abandonment.**—Caldwell v. Pollak, 91 Ala. 353; Boyle v. Shulman, 59 Ala. 566; Lehman v. Bryan, 67 Ala. 558; Beckert v. Whitlock, 83 Ala. 123; Metcalf v. Smith, 106 Ala. 301; Herzfeld v. Beasley, 106 Ala. 447. **Right of homestead does not follow and adhere to purchase-**

money when sale voluntarily made.—Giddens v. Williamson, 65 Ala. 439. **Does adhere to purchase-money if sale is involuntary.**—Ex parte Hunt, 62 Ala. 1; Falconer v. Head, 31 Ala. 513; Giddens v. Williamson, 65 Ala. 439; Kennedy v. First Nat. Bank, 107 Ala. 170. **Interest of the wife in the homestead not such that she alone may file a bill to set aside a conveyance.** Dooley v. Villalonga, 61 Ala. 129; Long v. Mostyn, 65 Ala. 543; Seaman v. Nolen, 68 Ala. 463; VanCleave v. Wilson, 73 Ala. 387; Grider v. Am. F. L. & Mortg. Co., 99 Ala. 281. **When equity will reform conveyance of homestead by correcting misdescription.**—Gardner v. Moore, 75 Ala. 394; Jenkins v. Harrison, 66 Ala. 345; Ala. M. R. Co. v. Brown, 98 Ala. 647. **Voluntary conveyance of, not void.**—Pollak v. McNeil, 100 Ala. 203; Wright v. Smith, 66 Ala. 514; McWilliams v. Jenkins, 72 Ala. 480; Ala. Conference v. Vaughan, 54 Ala. 445; Fellows v. Lewis, 65 Ala. 343; Lehman v. Bryan, 67 Ala. 558; Shirley v. Teal, 67 Ala. 449; Alley v. Daniel, 75 Ala. 403; Clark v. Spencer, 75 Ala. 49; Hines v. Duncan, 79 Ala. 112; Caldwell v. Pollak, 91 Ala. 353; Brinson v. Edwards, 94 Ala. 447; Hodges v. Winston, 95 Ala. 514; Fargason v. Hall, 99 Ala. 209; Fuller v. Whitlock, 99 Ala. 411, 415; Kennedy v. First Nat. Bank, 107 Ala. 170. **The selection and claim of homestead when it does not exceed in area and value the limits fixed by law.**—Alley v. Daniel, 75 Ala. 403; Jarrell v. Payne, 75 Ala. 577; Nance v. Nance, 84 Ala. 375; Clark v. Spencer, 75 Ala. 49; Chandler v. Chandler, 87 Ala. 300; Pollak v. McNeil, 100 Ala. 203. **When the right lost by failure to assert.**—Motley v. Jones, 98 Ala. 443; Clark v. Spencer, 75 Ala. 49, 57; Bell v. Davis, 42 Ala. 460; Waugh v. Montgomery, 67 Ala. 573; Sherry v. Brown, 66 Ala. 51; Martin v. Lile, 63 Ala. 406; Wright v. Grabfelder, 74 Ala. 460; DeGraffenried v. Clark, 75 Ala. 425; Henderson v. Tucker, 70 Ala. 381; Gresham v. Walker, 10 Ala. 370. **Claim of bankrupt** must be asserted in bankrupt court.—Gayle v. Randall, 71 Ala. 469; Steele v. Moody, 53 Ala. 418.

2034 (2508)(2822). **Alienation of homestead when owner a married man.**—No mortgage, deed, or other conveyance of the homestead by a married man shall be valid without the voluntary signature and assent of the wife, which must be shown by her examination, separate and apart from him, before an officer authorized by law to take acknowledgments of deeds, and the certificate of such officer upon, or attached to such mortgage, deed, or other conveyance, which certificate must be substantially in the following form:

"State of Alabama, } I, ——— ———, judge of ——— (or other
——— county. } officer, as the case may be), do hereby certify that on the —— day of ———, 18—, came before me the within named——— ———, known to me (or made known to me) to be the wife of the within named ——— ———, who, being examined separate and apart from the husband touching her signature to the within ———, acknowledged that she signed the same of her own free will and accord, and without fear, constraints, or threats on the part of the husband. In witness whereof, I hereto set my hand, this —— day of ———, 18—. ——— ———,
Judge (or other officer, as the case may be)."

Conveyance of homestead by husband alone, or defectively executed by wife, a nullity.—McGuire v. VanPelt, 55 Ala. 344; Miller v. Marx, 55 Ala. 322; Balkum v. Wood, 58 Ala. 642; Cahall v. Citizens' Building Asso., 61 Ala. 232; Garner v. Bond, Ib. 84; Seaman v. Nolen, 68 Ala. 463; Slaughter v. McBride, 69 Ala. 510; Vancleave v. Wilson, 73 Ala. 387; Scott v. Simmons, 70 Ala. 352; Halso v. Seawright, 65 Ala. 431; Snedecor v. Freeman, 71 Ala. 140; Hood v. Powell, 73 Ala. 171; DeGraffenried v. Clark, 75 Ala. 425; Alford v. Lehman 76 Ala. 526; Crim v. Nelms, 78 Ala. 604; Strauss v. Harrison, 79 Ala. 324; Striplin v. Cooper, 80 Ala. 256; Goodloe v. Dean, 81 Ala. 479; Moses v. McClain, 82 Ala. 370; Thompson v. Sheppard, 85 Ala. 611; Richardson v. Woodstock I. Co., 90 Ala. 266; Daniels v. Lowery; 92 Ala. 519; Woodstock I. Co. v. Richardson, 94 Ala. 629; Winston v. Hodges, 102 Ala. 304; Edinburgh Am. L. M. Co. v. Peoples, 102 Ala. 241. **Does not operate an estoppel against the husband.**—McGuire v. VanPelt, 55 Ala. 344; Halso v. Seawright, 65 Ala. 431; Miller v. Marx, 55 Ala. 322; Alford v. Lehman, 76 Ala. 526; Crim v. Nelms, 78 Ala. 604; Moses v. McClain, 82 Ala. 370; Richardson v. Woodstock I. Co., 90

Ala. 266. **Husband may convey to wife,** without her joining.—Turner v. Bernheimer, 95 Ala. 241. **If more than homestead embraced, conveyance valid as to excess** when executed by husband alone or defectively executed by wife. McGuire v. VanPelt, 55 Ala. 344; Garner v. Bond, 61 Ala. 84; Snedecor v. Freeman, 71 Ala. 140; DeGraffenried v. Clark, 75 Ala. 425; Woodall v. Kelly, 85 Ala. 368; Clark v. Allen, 87 Ala. 198. **When lands not homestead, certificate of separate acknowledgment of wife will be treated as surplusage.**—Orr v. Blackwell, 93 Ala. 212. **Deed, though void, a cloud upon title, and color of title.**—Watson v. Mancill, 76 Ala. 600; Grider v. Am. F. L. Mortg. Co., 99 Ala. 281. **Conveyance by husband alone, of right of way over homestead, void.**—McGhee v. Wilson, 111 Ala. 615. **When acknowledgment insufficient.**—Scott v. Simons, 70 Ala. 352; Motes v. Carter, 73 Ala. 553; Cox v. Holcomb, 87 Ala. 589; Winston v. Hodges, 102 Ala. 304. **Word "persuasion" in certificate insufficient** after act of Feb. 9, 1877, which employed the word "threats."—Motes v. Carter, 73 Ala. 553; Strauss v. Harrison, 79 Ala. 324; Smith v. Pearce, 85 Ala. 264; Daniels v. Lowery, 92 Ala. 519. **The certificate of acknowledgment liberally construed.** Sharp v. Orme, 61 Ala. 263; Scott v. Simons, 70 Ala. 352; Gates v. Hester, 81 Ala. 357; Homer v. Schonfeld, 84 Ala. 313; Cox v. Holcomb, 87 Ala. 589. **A substantial compliance sufficient.**—Sharp v. Orme, 61 Ala. 263; Gates v. Hester, 81 Ala. 357. **Defective conveyance of homestead will not be enforced in equity** as an agreement to convey.—Jenkins v. Harrison, 66 Ala. 345; Blythe v. Dargin, 68 Ala. 370; Gardner v. Moore, 75 Ala. 394; Cox v. Holcomb, 87 Ala. 589. **Nor will husband's agreement to convey homestead** be enforced.—Moses v. McClain, 82 Ala. 370. **But reformation of conveyance of homestead may be had as to description.**—Gardner v. Moore, 75 Ala. 394; Witherington v. Mason, 86 Ala. 345; Tillis v. Smith, 108 Ala. 264. **When signature and assent sufficiently shown prior to act of April 23, 1873.**—Miller v. Marx, 55 Ala. 322; Lyons v. Connor, 57 Ala. 181; Cahall v. Citizens' M. B. Asso., 61 Ala. 232; Weiner v. Sterling, 61 Ala. 98; Forsyth v. Preer, 62 Ala. 443; Scott v. Simons, 70 Ala. 352; Butts v. Brughton, 72 Ala. 294; Jones v. Roper, 86 Ala. 210. **Statute does not apply to conveyance of homestead when the property of wife.**—Weiner v. Sterling, 61 Ala. 98; Fisk v. Stubbs, 30 Ala. 335; Weber v. Short, 55 Ala. 316; Dawson v. Burrus, 73 Ala. 111. **Sufficient though wife is not named as grantor.**—Hood v. Powell, 73 Ala. 171; Dooley v. Villalonga, 61 Ala. 129; Long v. Mostyn, 65 Ala. 543 (overruling Harrison v. Simons, 55 Ala. 510); Shelton v. Aultman, 82 Ala. 315. **Acknowledgment may be taken before sworn clerk of judge of probate in name of judge.**—Halso v. Seawright, 65 Ala. 431; Hood v. Powell, 73 Ala. 171; Shelton v. Aultman, 82 Ala. 315. **Conveyance properly acknowledged by wife, but reciting that she joined for the sole purpose of relinquishing her dower interest,** ineffectual as to homestead.—Thompson v. Sheppard, 85 Ala. 611; Long v. Mostyn, 64 Ala. 543. **How and when defective acknowledgment may be cured after delivery.**—Cahall v. Citizens' M. B. Asso., 61 Ala. 232; Vancleave v. Wilson, 73 Ala. 387; Hood v. Powell, Ib. 171; Nelson v. Holly, 50 Ala. 3; Hendon v. White, 52 Ala. 597; Johnson v. McGehee, 1 Ala. 186; Balkum v. Wood, 58 Ala. 642; McGuire v. VanPelt, 55 Ala. 344; Miller v. Marx, 55 Ala. 322; March v. England, 65 Ala. 275. **Subsequent acknowledgment by wife cannot affect intervening rights** of heirs or creditors of husband.—Alford v. Lehman, 76 Ala. 526; Smith v. Pearce, 85 Ala. 264; Richardson v. Woodstock I. Co., 90 Ala. 266; s. c., 94 Ala. 629; Griffith v. Ventress, 91 Ala. 366; Hodges v. Winston, 95 Ala. 514; Winston v. Hodges, 102 Ala. 304; Parks v. Barnett, 104 Ala. 438; Balkum v. Wood, 58 Ala. 642. **Acknowledgment of wife after death of husband a nullity.**—Richardson v. Woodstock I. Co., supra; Parks v. Barnett, supra. **In the absence of fraud or duress, certificate of proper officer conclusive as to facts stated therein.**—Miller v. Marx, 55 Ala. 322; Coleman v. Smith, 55 Ala. 368; Cahall v. Citizens' M. B. Asso., 61 Ala. 232; Barnett v. Proskauer, 62 Ala. 486; Worrell v. McDonald, 66 Ala. 572; Moog v. Strang, 69 Ala. 98; Scott v. Simons, 70 Ala. 352; Downing v. Blair, 75 Ala. 216; Shelton v. Aultman, 82 Ala. 315; Griffith v. Ventress, 91 Ala. 366; Grider v. Am. F. L. Mtg. Co., 99 Ala. 281; Edinburgh, etc., Co. v. Peoples, 102 Ala., 241; Am. F. L. Mtg. Co. v. James, 105 Ala. 347; Jinwright v. Nelson, 105 Ala. 399 (limiting Grider v. Am. F. L. Mtg. Co., 99 Ala. 281, and Giddens v. Bolling, 99 Ala. 319). **Conveyance of dwelling-house on leased land within statute.**—Watts v. Gordon, 65 Ala. 546. **The acknowledgment in due form may be impeached when party never in fact appeared before the officer.**—Barnett v. Proskauer, 62 Ala. 486; Giddens v. Bolling, 99 Ala. 319; Grider v. Am. F. L. Mtg. Co., 99 Ala. 281 (explaining Cahall v. Citizens' M. B. Asso., 61 Ala. 232; and Shelton v. Aultman, 82 Ala. 315); Edinburgh Am. L. M. Co. v. Peoples, 102 Ala. 241; Am. F. L. Mtg. Co. v. James, 105 Ala. 347. **When the officer acted out of his county.** Edinburgh Am. L. M. Co. v. Peoples, 102 Ala. 241; N. E. Mtg. Co. v. Payne, 107 Ala. 578. **When the true issue is limited to the fact of execution.**—Barnett v. Proskauer, 62 Ala. 486; Shelton v. Aultman, 82 Ala. 315. **Whether the**

officer acts in a judicial or ministerial capacity.—Grider v. Am. F. L. Mtg. Co., 99 Ala. 281; Am. F. L. Mtg. Co. v. James, 105 Ala. 347. **Deficiencies in certificate cannot be supplied by parol.**—Scott v. Simons, 70 Ala. 352; Griffith v. Ventress, 91 Ala. 366, 373. **Courts of law or equity have no jurisdiction to amend or correct defective acknowledgments.**—Cox v. Holcomb, 87 Ala. 589; Griffith v. Ventress, 91 Ala. 366. **Nor can the officer, after the completed execution of the power, alter, add to, or make a new certificate,** without a reacknowledgment by parties.—Griffith v. Ventress, 91 Ala. 366; Hodges v. Winston, 95 Ala. 514. **Husband cannot alone convey homestead, though wife insane.**—Thompson v. N. E. Mtg. S. Co., 110 Ala. 400. See also citations to Constitution, Art. X.

2035 (2509) (2822). **What liens not affected by exemptions.** The provisions of this chapter shall not, however, be so construed as to prevent any lien attaching to the homestead in favor of any laborer, mechanic, or material-man, for work and labor done, or for materials furnished, or in favor of any vendor for unpaid purchase-money, or so as to affect any deed, mortgage, or lien on such homestead, lawfully executed or created.

Weber v. Short, 55 Ala. 311; McGuire v. Van Pelt, 55 Ala. 344; Newbold v. Smart, 67 Ala. 326; Tyler v. Jewett, 82 Ala. 93; Ex parte Barnes, 84 Ala. 540; Bryan v. Kelly, 85 Ala. 569; Moses v. Home B. & L. Asso., 100 Ala. 465; White v. Simpson, 107 Ala. 386; McAnnally v. Hawkins, 109 Ala. 397.

2036 (2510) (2823). **Exemption of burial-place and church-pew.** In favor of such resident there shall also be exempt from levy and sale, under execution or other process, any lot or lots in cemeteries, or elsewhere, set apart or used as a burial-place for himself or family, and any pew or seat in any church or other place of worship, held and occupied by him for the use of himself or family.

2037 (2511) (2820, 2823). **Exemption of personalty.**—The personal property of such resident, to the amount of one thousand dollars in value, to be selected by him, and, in addition thereto, all necessary and proper wearing-apparel for himself and family, and all family portraits or pictures, and all books used in the family, shall also be exempt from levy and sale under execution or other process for the collection of debts contracted after the twenty-third day of April, 1873.

Williamson v. Harris, 57 Ala. 40; Borden v. Bradshaw, 68 Ala. 362; Enzor v. Hurt, 76 Ala. 595; Daniels v. Hamilton, 52 Ala. 105; Ala. Conference v. Vaughan, 54 Ala. 443; Weis v. Levy, 69 Ala. 209; Brown v. Leitch, 60 Ala. 313; Schuessler v. Wilson, 56 Ala. 516; Dane v. Loomis, 51 Ala. 487; Alley v. Daniel, 75 Ala. 403; Bibb v. Janney, 45 Ala. 329; Meyers v. Conway, 90 Ala. 109; Brinson v. Edwards, 94 Ala. 447; Frank v. Myers, 97 Ala. 437; Kennedy v. Smith, 99 Ala. 83; Pinkus v. Bamberger, 99 Ala. 266; Aiken v. Steiner, 98 Ala. 355; Penton v. Diamond, 92 Ala. 610; Patillo v. Taylor, 83 Ala. 230; Chandler v. Chandler, 87 Ala. 300; Wright v. Smith, 66 Ala. 514; Nance v. Nance, 84 Ala. 375; Hardin v. Pulley, 79 Ala. 381; Richardson v. L. & N. R. Co., 85 Ala. 559; McDaniel v. Johnston, 110 Ala. 526; Dangaix v. Lunsford, 112 Ala. 403. See also citations to section 2033 (2507).

2038 (2512) (2823). **Exemption of wages of employes.**—The wages, salaries, or other compensation of laborers or employes, residents of this state, for personal services, to the amount of twenty-five dollars per month, shall also be exempt from levy under writs of garnishment or other process for the collection of such debts; and every such levy is void as to such amount.*

Enzor v. Hurt, 76 Ala. 595; S. & N. R. Co. v. Falkner, 49 Ala. 115; Archer v. People's Savings Bank, 88 Ala. 249; Courie v. Goodwin, 89 Ala. 569.

*"And every such levy," etc., added by joint committee.

2039 (2513) (2820). **When partnership property not exempt.** No property, real or personal, held or owned by partners as partnership property, or purchased with partnership funds for partnership purposes, shall be the subject of homestead or other exemption, as against co-partners or partnership creditors.

Giovanni v. First Nat. Bank, 55 Ala. 305; Flournoy v. Lyon, 62 Ala. 213; Terrell v. Hurst, 76 Ala. 588; Little v. McPherson, 76 Ala. 552; Levy v. Williams, 79 Ala. 171; Schlapback v. Long, 90 Ala. 525; Beachman v. Koch, 92 Ala. 452; Aiken v. Steiner, 98 Ala. 355.

2040 (2514) (2845). **Exemptions in favor of counties and municipal corporations.**—All property, real or personal, belonging to the several counties or municipal corporations in this state, and used for county or municipal purposes, shall be exempt from levy and sale under any process, judgment, or decree whatsoever.

Birmingham v. Rumsey, 63 Ala. 352; Murphree v. Mobile, 104 Ala. 532; s. c., 108 Ala. 663; Ellis v. Pratt City, 111 Ala. 629.

ARTICLE 2.

CLAIM AND CONTEST OF EXEMPTION.

2041 (2515) (2828). **Declaration of claim of exemption; how made and filed.**—Any resident of this state, entitled to, and desiring to claim a homestead or other exemption from levy and sale under execution or other process, may, at any time, make and file in the office of the judge of probate of the county in which the property is situate, if a homestead, or if personal property, of the county in which such resident resides, a declaration in writing, subscribed and sworn to by him, describing the property selected and claimed by him as exempt, item by item, in case of personal property, with its value; and other declarations may, from time to time as occasion may require, be made and filed.

How declaration of claim made and filed.—Bledsoe v. Gary, 95 Ala. 70; Mitchell v. Corbin, 91 Ala. 599; Beckert v. Whitlock, 83 Ala. 123; Block v. George, 83 Ala. 178; Stevenson v. Moody, 85 Ala. 33; Cofer v. Scroggins, 98 Ala. 342; Pollak v. Caldwell, 94 Ala. 149; Ex parte Redd, 73 Ala. 548; Murphy v. Hunt, 75 Ala. 438. **What constitutes "filing."**—Schuer v. King, 100 Ala. 238. **"Filing" operates as notice.**—Murphy v. Hunt, 75 Ala. 438. **Right of exemption, does not operate ex proprio vigore; must be asserted.**—Wright v. Grabfelder, 74 Ala. 460; Sherry v. Brown, 66 Ala. 51; Jarrell v. Payne, 75 Ala. 577; Clark v. Spencer, 75 Ala. 49. **Right lost by failure to assert.**—Motley v. Jones, 98 Ala. 443; Clark v. Spencer, 75 Ala. 49; Bell v. Davis, 42 Ala. 460; Waugh v. Montgomery, 67 Ala. 573; Martin v. Lile, 63 Ala. 406; DeGraffenreid v. Clark, 75 Ala. 425; Henderson v. Tucker, 70 Ala. 381; Gresham v. Walker, 10 Ala. 370. **Claim must state with certainty when the debt was contracted.**—Randolph v. Little, 62 Ala. 396; Young v. Hubbard, 102 Ala. 373; Wilson v. Brown, 58 Ala. 62; Miller v. Marx, 55 Ala. 322; McLaren v. Anderson, 81 Ala. 106; Keel v. Larkin, 72 Ala. 493; DeGraffenreid v. Clark, 75 Ala. 425; Slaughter v. McBride, 69 Ala. 510; Giddens v. Williamson, 65 Ala. 439; Lovelace v. Webb, 62 Ala. 271; Clark v. Spencer, 75 Ala. 49; Ely v. Blacker, 112 Ala. 311; Block v. Bragg, 68 Ala. 291. **Claim filed is prima facie correct.** Alley v. Daniel, 75 Ala. 403; Abbott v. Gillespy, 75 Ala. 180; Block v. George, 83 Ala. 178; Murphy v. Hunt, 75 Ala. 438. **Such claim must be made before sale.**—Alley v. Daniel, 75 Ala. 403; Jarrell v. Payne, 75 Ala. 577; Clark v. Spencer, 75 Ala. 49; Martin v. Lile, 63 Ala. 406; Sherry v. Brown, 66 Ala. 51; Bell v. Davis, 42 Ala. 460; Henderson v. Tucker, 70 Ala. 381; Kennedy v. First Nat. Bank, 107 Ala. 170. **The claim may be amended.**—Kennedy v. Smith, 99 Ala. 83; McLaren v. Anderson, 81 Ala. 106; Block v. Bragg, 68 Ala. 291; Block v. George, 83 Ala. 178; Schuer v. King, 100 Ala. 238; Zelnicker

v. Brigham, 74 Ala. 598. **If property diminished in maintaining family may file claim to other property.**—Weis v. Levy, 69 Ala. 209. **Or may pay his debts with some.**—Trager v. Feibleman, 95 Ala. 60; Weis v. Levy, 69 Ala. 209; Ala. Conference v. Vaughan, 54 Ala. 443. **When claim is vague and indefinite.** Tonsmere v. Buckland, 88 Ala. 312. **When claim is regularly made, a levy and sale made before claim is contested will be set aside on timely application.**—Block v. George, 83 Ala. 178; Clark v. Spencer, 75 Ala. 49; Block v. Bragg, 68 Ala. 291; Milligan v. Cox, 108 Ala. 497. **When claim not made till after order of sale it comes too late.**—Stanley v. Ehrman, 83 Ala. 215; Sherry v. Brown, 66 Ala. 51; Randolph v. Little, 62 Ala. 396; Lackland v. Rogers, Ala. (21 So. 341); Toenes v. Moog, 78 Ala. 558. **When fraudulent grantor may claim from proceeds of sale of property embracing homestead.**—Kennedy v. First Nat. Bank, 107 Ala. 170. **Declaration is serviceable only when claim made and filed before levy.**—Wright v. Grabfelder, 74 Ala. 460; Schuer v. King, 100 Ala. 238. **Claim of homestead and exemptions will be allowed in chancery.**—Zelnicker v. Brigham, 74 Ala. 598; Collier v. Wood, 85 Ala. 91; Thompson v. Sheppard, 85 Ala. 611; Patillo v. Taylor, 83 Ala. 230. **When right protected by injunction.**—Allen v. Buchanan, 97 Ala. 399.

2042 (2516) (2829). **Record, receipt for, and copy of declaration.** Such declarations of claims of exemptions shall be recorded in a separate book, kept for that purpose, and the judge of probate, on request, shall give a receipt therefor, and shall furnish a certified copy thereof, when requested, on payment of lawful fees therefor.

A certified transcript, or the record-book itself admissible in evidence. Weis v. Levy, 69 Ala. 209; Stevenson v. Moody, 85 Ala. 33; Cofer v. Scroggins, 98 Ala. 342.

2043 (2517) (2828, 2831). **Effect of declaration as evidence and notice.**—After the filing of such declaration, the claim of exemption therein asserted shall be taken and considered as prima facie correct; and the filing thereof shall operate as notice of its contents.

Weis v. Levy, 69 Ala. 209; Abbott v. Gillespy, 75 Ala. 180; Alley v. Daniel, Ib. 403; Todd v. McCravey, 77 Ala. 468; Jones v. Motley, 78 Ala. 370; McAbee v. Parker, 83 Ala. 169; Block v. George, 83 Ala. 178; Cofer v. Scroggins, 98 Ala. 342.

2044 (2518) (2829). **Fees of judge of probate.**—The fees for filing, recording, copying and certifying such declarations shall be the same as are allowed by law for filing, recording, copying and certifying deeds.

2045 (2519) (2830). **Effect of filing claim as to levy on property therein embraced.**—After such declaration of claim has been filed for record, the property therein embraced shall not be subject to levy, unless there is indorsed on the process the fact that there has been a waiver of exemption as to the kind of property on which the levy is sought to be made, or the claim is contested.

Wright v. Grabfelder, 74 Ala. 460; Schuer v. King, 100 Ala. 238; Beckert v. Whitlock, 83 Ala. 123; Tonsmere v. Buckland, 88 Ala. 312; Bledsoe v. Gary, 95 Ala. 70.

2046 (2520) (2830). **How contest of such claim instituted.**—A plaintiff, in person, or by his agent or attorney, may contest a claim of exemption after a declaration thereof has been filed, by making and filing with the officer holding the process an affidavit that, in his belief, either (1) the claim is invalid entirely, or (2) it is invalid in part, or is excessive, specifying wherein such invalidity or excess consists, and if excessive, also specifying the property alleged to be in excess, to be, in all cases, the last named in the claim; and, if the claim is of personal property, he must also deliver to the officer a bond in

double the value of the property sought to be levied on, with sureties to be approved by the officer, payable to the defendant claiming the exemption, and conditioned that if the plaintiff fails in the contest, he will pay the defendant all such costs and damages as he may sustain by reason of the wrongful institution of the contest; and thereupon the officer shall proceed to make a levy, and, within three days thereafter, shall notify the defendant in writing of the same.

No bond required of plaintiff to obtain levy on property of defendant not theretofore claimed as exempt.—Ex parte Redd, 73 Ala. 548. **But if valid claim has been made and filed in probate office, affidavit and bond essential unless waiver indorsed on process.**—Clark v. Spencer, 75 Ala. 49; Bledsoe v. Gary, 95 Ala. 70; Totten v. Sale, 72 Ala. 488. **Sheriff has not right to disregard claim.**—Kennedy v. Smith, 99 Ala. 83; Milligan v. Cox, 108 Ala. 497. **Unless the writ shows that the claim is invalid.**—Ex parte Barnes, 84 Ala. 540; Bryan v. Kelly, 85 Ala. 569. **Contestation of a claim is a suit in which plaintiff in execution is the actor.**—McCrary v. Chase, 71 Ala. 540. **The onus is on the plaintiff.**—Kolsky v. Loveman, 97 Ala. 543. **When an insufficient claim is made, if property is levied on and sold without a contest, it is irregular.**—Clark v. Spencer, 75 Ala. 49. **But such sales will not be declared void on collateral attack.**—Masters v. Eastis, 3 P. 368; Ware v. Bradford, 2 Ala. 677; Clark v. Spencer, 75 Ala. 49. **When the declaration filed in probate office the affidavit of contest must be filed with sheriff.**—Beckert v. Whitlock, 83 Ala. 123; Tonsmere v. Buckland, 88 Ala. 312. **And no inventory need be furnished by claimant except on written demand of plaintiff.**—Tonsmere v. Buckland, 88 Ala. 312; Bledsoe v. Gary, 95 Ala. 70. **When the officer shall proceed to make levy.**—Bledsoe v. Gary, 95 Ala. 70. **Notice.**—Betancourt v. Eberlin, 71 Ala. 461; Fears v. Thompson, 82 Ala. 294; Bledsoe v. Gary, 95 Ala. 70. **Comprehensive signification of term "personal property."**—Enzor v. Hurt, 76 Ala. 595; Kennedy v. Smith, 99 Ala. 83. **Insufficiency of claim waived if affidavit of contest filed without objection.**—Young v. Hubbard, 102 Ala. 373.

2047 (2521) (2834). **Claim and contest when no declaration filed; notice of claim; effect of failure to contest.**—The right of homestead or other exemption shall not be waived or lost by a failure, before the levy of process, to file for record a declaration claiming the same; but the defendant, in person, or by his agent or attorney, may, at any time after the levy and prior to a sale, file with the officer making the levy a claim in writing, verified by oath, to such property, or any part thereof, as exempt, and if of a part, describing the same, and, within three days thereafter, such officer must give to the plaintiff, his agent or attorney, written notice of the filing of the claim; and thereupon the plaintiff, in person, or by his agent or attorney, may contest the claim in the mode provided in the last preceding section, except that no bond need be executed; and on the institution of such contest, the officer shall, within three days thereafter, give the defendant written notice of the same. But if the plaintiff does not institute such contest within ten days after notice of the claim, the levy shall be discharged, and the property, if personal, be returned to the defendant, and the plaintiff shall be taxed with the costs of making the levy and keeping the property; but when the levy has been made on personal property the defendant must file with his claim the statement of personal property, choses in action and money, with the value and location thereof, as required by the provisions of section 2051 (2525).

Defendant claiming exemption must affirmatively show the right thereto. Ely v. Blacker, 112 Ala. 311. **The contestation of claim is essentially a suit in which plaintiff in execution is actor.**—McCrary v. Chase, 71 Ala. 540.

What not sufficient "filing" with officer making the levy.—Wright v. Grabfelder, 74 Ala. 460; Murphy v. Hunt, 75 Ala. 438; Block v. George, 83 Ala. 178; Mitchell v. Corbin, 91 Ala. 599; Schuer v. King, 100 Ala. 238. **What sufficient.** Wright v. Grabfelder, 74 Ala. 460; Murphy v. Hunt, 75 Ala. 438. **What sheriff may be compelled by mandamus to do.**—Clark v. Spencer, 75 Ala. 49. **Claim must be made before an order of sale.**—Sherry v. Brown, 66 Ala. 51; Toenes v. Moog, 78 Ala. 558; Randolph v. Little, 62 Ala. 396. **When the officer may not disregard the claim.**—Block v. Bragg, 68 Ala. 291; Abbott v. Gillespy, 75 Ala. 180; Kennedy v. Smith, 99 Ala. 83. **When the officer may disregard the claim.**—McLaren v. Anderson, 81 Ala. 106; Ex parte Barnes, 84 Ala. 540; Bryan v. Kelly, 85 Ala. 569; Kennedy v. Smith, 99 Ala. 83. **The sheriff must give notice of claim.**—Mead v. Larkin, 66 Ala. 87; Ex parte Harrison, 75 Ala. 543; Allen v. Towns, 90 Ala. 479. **Must be contested ten days after notice or right to contest lost.**—Block v. Bragg, 68 Ala. 291; Block v. George, 70 Ala. 409. **Though indemnity given, sheriff cannot sell, if plaintiff, after** notice, fails to contest.—Kennedy v. Smith, 99 Ala. 83. **Claim filed with officer after levy is insufficient unless accompanied with proper inventory sworn to and filed.**—Ex parte Redd, 73 Ala. 548; Tonsmere v. Buckland, 88 Ala. 312. **If inventory insufficient defect in claim is waived if plaintiff in writing demand a complete inventory.**—Trager v. Feibleman, 95 Ala. 60. **What an insufficient inventory.**—Tonsmere v. Buckland, 88 Ala. 312.

2048 (2522) (2836). **When, on contest, property delivered to defendant.**—When any contest of a claim of exemption to personal property has been instituted, the defendant claiming the exemption, may, within five days after service of notice of the contest, deliver to the officer making the levy a bond in double the amount of the value of the property, to be fixed by, and with sureties to be approved by the officer, payable to the plaintiff and conditioned that if the defendant is cast in the contest he will, within thirty days thereafter, deliver the property to such officer, and will pay all costs and damages that may result from its detention, and thereupon the property shall be delivered to the defendant.

Ex parte Harrison, 75 Ala. 543; Ex parte Barnes, 84 Ala. 540.

2049 (2523) (2836). **When property delivered to plaintiff; when to defendant without bond.**—If the defendant fails to deliver such bond within the five days allowed him, and the plaintiff shall, within five days thereafter, deliver to the officer a bond in the amount and with the sureties provided in the preceding section, conditioned that if the plaintiff is cast in the contest, he will, within thirty days thereafter, deliver the property to the defendant, and pay all costs and damages that may result from the detention thereof, the property shall be delivered to the plaintiff; but if the plaintiff fails to deliver such bond within the five days allowed, the property must be returned to the defendant without bond.

Ex parte Haralson, 75 Ala. 543.

2050 (2524) (2836). **On contest, papers returned to court.**—In case of such contest, the officer making the levy must, within fifteen days after the institution of the contest, return the process and other papers to the court to which the process is returnable, accompanied with a full statement of the facts.

Levy v. Moog, 69 Ala. 63.

2051 (2525) (2837). **When inventory of personalty must be filed; effect of failure to file.**—On any contest of a claim of exemption to personal property, on the plaintiff's written demand, made at any time before the first day of the term of the court to which the

process is returned, the defendant claiming the exemption shall, within the first three days of the term, file a full and complete inventory, duly verified by oath, of all his personal property, except the wearing-apparel, portraits, pictures and books specifically exempted from levy and sale, with the value and location of each item of such property, and of all money belonging to him, whether in his possession or held by others for him, and of all debts and choses in action belonging to him, or in which he is beneficially interested, with the value of each of them; and if such inventory is not filed within the time prescribed, the plaintiff shall not be required to tender an issue on the claim, but the court must render judgment by default against the defendant, unless good and sufficient cause be shown to the contrary.

Ex parte Redd, 73 Ala. 548; Davis v. Hays, 89 Ala. 563; Tonsmere v. Buckland, 88 Ala. 312; Buckland v. Tonsmere, 90 Ala. 503; Mitchell v. Corbin, 91 Ala. 599; Decatur Mercantile Co. v. Deford, 93 Ala. 347; Trager v. Feibleman, 95 Ala. 60; Bledsoe v. Gary, 95 Ala. 70; Young v. Hubbard, 102 Ala. 373; Roden v. Brown, 103 Ala. 324; Ely v. Blacker, 112 Ala. 311.

2052 (2526) (2838). **Issues in, and trial of contest; exceptions and appeal.**—The contest of any claim of exemption shall stand for trial at the first term of the court after the return of the process, when, if both parties appear, an issue or issues shall be formed under the direction of the court, as to whether the property in contest, or any and what part of it, is exempt as claimed; and such issue or issues, if in the circuit court, or court of like jurisdiction, or probate court, or before a justice of the peace, shall be tried as other cases therein are tried, or if in the chancery court, as the chancellor may direct; and in all cases, the party in whose favor the levy was made shall be deemed the plaintiff, upon whom shall rest the burden of proof, and both parties shall be entitled to the same right of objection, exception and of appeal, as in other cases. No contest, however, of a homestead exemption shall be had before a justice of the peace; but when such contest is founded on the levy of process returnable before such officer, the same, with all the papers, shall be returned to the next term of the circuit court, or other court having like jurisdiction, and there tried as other contests are tried in such court.

Sherry v. Brown, 66 Ala. 51; Levy v. Moog, 69 Ala. 63; Beckert v. Whitlock, 83 Ala. 123; Allen v. Towns, 90 Ala. 479; Kelly v. Edmundson, 105 Ala. 619; Moore v. Scharf, 110 Ala. 518. On contest, **valuation ascertained at time of trial.**—Moore v. Scharf, 110 Ala. 518.

2053 (2527) (2838). **Trial by jury in probate court, or before justice.**—When a contest of a claim of exemption is triable in the probate court, or before a justice of the peace, either party shall be entitled to a trial by jury, on demand therefor, made on or before the first day of the term; but if not then made, the right of trial by jury shall be waived. Before justices of the peace, however, the jury shall be composed of seven householders or freeholders of the precinct or ward.

2054 (2528) (2838). **Judgment on contest.**—If the plaintiff fails to appear in support of his contest, or if on the trial all the prop-

erty in contest is found exempt, judgment must be rendered against him for the costs of the levy and contest, and releasing the property from the levy; but if the defendant fails to appear in support of his claim of exemption, or if on the trial all the property is found liable to the process, judgment must be rendered against him for costs, and condemning the property to sale.

Beckert v. Whitlock, 83 Ala. 123; Allen v. Towns, 90 Ala. 479; Kolsky v. Loveman, 97 Ala. 543.

2055 (2529) (2839). **Judgment, when claim of personalty excessive.**—When, on a contest of a claim of exemption to personal property, the issue is whether or not the claim is excessive, and such issue is found in favor of the plaintiff, it must also be ascertained, by the finding of the court, or the verdict of the jury, as the case may be, how much and what portion of the property is exempt, describing the same, with its value, approximating in value, as nearly as practicable, one thousand dollars; and the residue of the property shall be sold, and out of the proceeds of sale there shall be paid to the defendant an amount which, when added to the value of the property found to be exempt, will make the exemption equal to one thousand dollars, and the balance shall be applied to the payment of the costs and satisfaction of the process.

2056 (2530). **Proceedings when inventory shows property not claimed as exempt.**—When, on a contest of a claim of exemption to personal property, an inventory filed by the defendant on the plaintiff's demand discloses other personal property owned by the defendant and subject to sale under the process, not embraced in the claim of exemption, the defendant, at the time of filing the inventory, shall deliver such property to the officer making the levy, who shall, whether he has returned the process or not, in case of an execution, sell the property, as in other cases, and apply the proceeds to the satisfaction of the execution; or, in case of an attachment, or other mesne process, shall hold the property to await the final determination of the suit; and, in either event, he shall make due return of the facts to the court.

Davis v. Hays, 89 Ala. 563.

2057 (2531) (2839). **Failure to include property in inventory, or to deliver property not claimed as exempt.**—When, on a contest of a claim of exemption to personal property, an inventory has been filed by the defendant, an issue may be tendered by the plaintiff that the defendant has other personal property subject to levy and sale under the process, not embraced in the inventory, or that the inventory discloses that the defendant has other personal property subject to levy and sale under the process, not embraced in the claim of exemption, which he has failed to deliver to the officer levying the process; and if such issue is determined in favor of the plaintiff, the value of such property shall be ascertained and estimated in ascertaining the amount of the exemption to which the defendant is entitled, and be deducted from his claim in contest, as if such property had been selected by him as part of his exemption.

Davis v. Hays, 89 Ala. 563; Trager v. Feibleman, 95 Ala. 60; Pinkus v. Bamberger, 99 Ala. 266.

2058 (2532) (2836). **When bond given, value of property and damages assessed.**—When bond has been executed by the plaintiff or defendant for the forthcoming of the property in contest, the value of the property and the damages resulting from its detention must be assessed by the court or jury trying the contest; and if the unsuccessful party fails for twenty days after judgment to deliver the property and pay the damages, as required by the condition of the bond, it shall be the duty of the sheriff to make due return of that fact; and upon such return being made, the bond shall have the force and effect of a judgment, and execution may issue thereon, against the obligors on the bond for the value of the property and the damages assessed, or either, and costs.

2059 (2533) (2842). **Claim to money and choses in action garnished; contest.**—When money or choses in action, or personal property, are garnished, and the defendant claims the same, or any part thereof, as exempted, he shall file his claim thereto in writing, verified by oath, in the court in which such proceedings are pending, accompanied by a statement setting forth the personal property, choses in action and money, and the location and value thereof, as required in the statement to be filed under the provisions of section 2051 (2525), and such claim the plaintiff, in person, or by his agent or attorney, may contest as in cases of contest after declaration filed; and such contest shall be tried and determined as other contests of claims of exemption are tried and determined. If the defendant has notice of the garnishment, the claim of exemption must be interposed before judgment of condemnation; but if not, such judgment shall not operate to impair or affect his claim of exemption. Notice of the garnishment must be in writing, and may be given by the plaintiff or garnishee.

Claim of exemption against garnishment must be filed in court where proceedings pending.—Todd v. McCravey, 77 Ala. 468; Tonsmere v. Buckland, 88 Ala. 312; Courie v. Goodwin, 89 Ala. 569. **Must file inventory prescribed in section 2051 (2525).**—Tonsmere v. Buckland, 88 Ala. 312; Buckland v. Tonsmere, 90 Ala. 503; Decatur Mercantile Co. v. Deford, 93 Ala. 347; Young v. Hubbard, 102 Ala. 373; Roden v. Brown, 103 Ala. 324. **When wages claimed as exempt, inventory not necessary.**—Courie v. Goodwin, 89 Ala. 569. **May be contested as prescribed in section 2047 (2521).**—Tonsmere v. Buckland, 88 Ala. 312. **Right lost if does not precede condemnation.**—Randolph v. Little, 62 Ala. 396, (overruling Webb v. Edwards, 46 Ala. 16); Craft v. L. & N. R. Co., 93 Ala. 22; White v. Hobart, 90 Ala. 368; Toenes v. Moog, 78 Ala. 558; Tonsmere v. Buckland, 88 Ala. 312.

2060 (2534) (2832). **Homestead exemption; proceedings on contest when it exceeds value or area allowed.**—If, on the trial of a contest of a claim of homestead exemption, it is found that the homestead, as claimed, exceeds two thousand dollars in value, or one hundred and sixty acres in area, the court shall forthwith issue an order to the sheriff, returnable to the next term thereafter, commanding him to summon three disinterested householders or freeholders of the county in which the homestead is situated, who, after having been sworn by the sheriff, or some officer authorized to administer oaths, to faithfully discharge their duty, shall, if practica-

ble, set off and allot, by metes and bounds, the homestead exempt to the defendant from levy and sale under the process, having regard both to the quality and value of the real estate, and to the selection of the defendant, and taking land most contiguous to the dwelling, and including such dwelling and appurtenances; and the commissioners, as soon as practicable, shall make return of the homestead so allotted and set off by them, in writing subscribed by them, to the sheriff, who shall make due return thereof to the court issuing the order; and the homestead thus allotted and set off shall be released from the levy, and the residue of the land sold under the order of the court, unless for good cause shown, the courts shall set aside the commissioners' return, in which event, another order for summoning commissioners shall be issued. If the commissioners summoned, or any of them, shall fail to act, the sheriff shall summon others to fill their places.

Jaffrey v. McGough, 88 Ala. 648; Hardy v. Sulzbacher, 62 Ala. 44; Clark v. Spencer, 75 Ala. 49; Keel v. Larkin, 72 Ala. 493; Peevy v. Cabaniss, 70 Ala. 253; Jones v. DeGraffenreid, 60 Ala. 145; Pomroy v. Bunting, 42 Ala. 250; Moses v. McClain, 82 Ala. 370.

2061 (2535) (2832). **Proceedings in such case when area cannot be reduced.**—If the homestead, after having been reduced to its lowest practicable area, still exceeds in value two thousand dollars, thereby rendering it impracticable to allot and set it off under the preceding section, the commissioners shall so make return to the sheriff, who shall thereupon proceed, as in other cases, to advertise and offer the same for sale under the process; and if at the sale he receives a bid therefor exceeding two thousand dollars, he shall sell the same, and of the purchase-money two thousand dollars shall be paid to the defendant, or into court for him, in lieu of the homestead, and the excess only shall be applied to the satisfaction of the process; but, if no bid in excess of two thousand dollars shall be received, the sheriff shall discharge the levy at the plaintiff's cost, and return the process; and thereafter no process issued to enforce the plaintiff's demand shall be levied on such homestead, so long as it shall continue a homestead, except on the written demand of the plaintiff, accompanied by an offer in writing to purchase the same for an amount exceeding two thousand dollars, which offer must state the amount, and, at the election of the defendant, shall be binding on the plaintiff.

See citations to preceding section.

2062 (2536) (2832). **Disposition of purchase-money in lieu of homestead, when defendant dies.**—When a sale is made under the preceding section, and the defendant dies before receiving the two thousand dollars standing in lieu of the homestead, the same shall be paid to his personal representative, who shall receive and hold it subject to the homestead rights of the defendant's widow and minor child or children, or either, if there be such; but, if there be none such, the personal representative shall first apply the same to the payment of the demand for the enforcement of which the process

issued, and the balance he shall administer as personal assets of the estate.

Kennedy v. First Nat. Bank, 107 Ala. 170. See citations to section 2060 (2534).

2063 (2537) (2837). **When wife or minor child may interpose claim; revivor.**—If a husband or father, entitled to a homestead or other exemption, absconds, or abandons his family, or leaves the state, or is insane, or is confined under a charge or conviction for felony or misdemeanor, or is under any other disability or inability, the wife, or if there is no wife, the minor child or children, residents of this state, with the intention so to continue, shall be entitled to interpose any and all claims of homestead or other exemption which the husband or father could have interposed; but the right to such exemptions shall continue only so long as the wife and minor child or children, or either, shall remain bona fide residents of this state. In the event of the death of the husband or father pending any contest of a claim of homestead, or other exemption, such contest may be revived in the name of the widow, if there be one, or if there be none, in the name of the minor child or children, if there be such; but if neither widow nor minor shild is left surviving, the claim of exemption shall abate, and the property ordered sold for the satisfaction of the process.

Cofer v. Scroggins, 98 Ala. 342. See citations to section 2033 (2507).

2064 (2538) (2832). **When homestead may be sold on bill in equity.**—When the homestead, after being reduced to the lowest practicable area, exceeds two thousand dollars in value, and the husband has aliened the same by deed, mortgage, or other conveyance, without the voluntary signature and assent of the wife, shown and acknowledged as required by law, the husband, or if he fails to act, the wife, or if there is no wife, or she fails to act, his minor child or children may, by bill in equity, have the land sold, and the homestead interest separated from that of the alienee.

Thompson v. Sheppard, 85 Ala. 611.

2065 (2539) (2843). **When homestead not abandoned by leasing or temporary leaving.**—When a declaration of claim to a homestead exemption has been filed in the office of the judge of probate, leaving the homestead temporarily, or a leasing of the same shall not operate an abandonment thereof, or render it subject to levy and sale; but the right thereto shall remain the same as if the actual occupancy thereof had continued.

McConnaughy v. Baxter, 55 Ala. 379; Boyle v. Shulman, 59 Ala. 566; Stow v. Lillie, 63 Ala. 257; Lehman v. Bryan, 67 Ala. 558; Scaife v. Argall, 74 Ala. 473; Murphy v. Hunt, 75 Ala. 438; Hines v. Duncan, 79 Ala. 112; Beckert v. Whitlock, 83 Ala. 123; Sides v. Scharff, 93 Ala. 106, 109; Pollak v. Caldwell, 94 Ala. 149; Fuller v. Whitlock, 99 Ala. 411; Blackman v. Moore, 106 Ala. 458; Turner v. Turner, 107 Ala. 465.

2066 (2540) (2833). **When no action lies against officer levying process on exempt property.**—If no declaration of claim of exemption has been filed in the office of the judge of probate, or if so filed,

and the same is contested, no action shall lie against the officer levying the process, on the ground that the property levied on is exempt.

Alley v. Daniel, 75 Ala. 403, 406; Abbott v. Gillespy, 75 Ala. 180; Mitchell v. Corbin, 91 Ala. 599.

2067 (2541) (2835). **Property not sold until contest terminated; lien preserved.**—When a contest of a claim of exemption has been instituted, the property in contest shall not be sold by the officer until the contest is decided; but the lien thereon under the process or levy shall not be destroyed or impaired by the pendency of the contest.

Lien not impaired.—Sims v. Eslava, 74 Ala. 594. When sale set aside.—Allen v. Towns, 90 Ala. 479.

2068 (2542) (2844). **By what law right governed; how ascertained, etc.**—The right of homestead or other exemption shall be governed by the law of force when the debt or demand was created; but the mode and remedy for asserting, ascertaining, contesting and determining claims thereto shall be as prescribed in this chapter.

Taylor v. Pettus, 52 Ala. 287; Ala. Conference v. Vaughan, 54 Ala. 443; Miller v. Marx, 55 Ala. 322; Watts v. Burnett, 56 Ala. 340; Wilson v. Brown, 58 Ala. 62; Nelson v. McCrary, 60 Ala. 301; Randolph v. Little, 62 Ala. 396; Blum v. Carter, 63 Ala. 235; Giddens v. Williamson, 65 Ala. 439; Kelly v. Garrett, 67 Ala. 304; Carlisle v. Godwin, 68 Ala. 137; Slaughter v. McBride, 69 Ala. 510; Peevey v. Cabaniss, 70 Ala. 253; Keel v. Larkin, 72 Ala. 493; Cochran v. Miller, 74 Ala. 50; Clark v. Spencer, 75 Ala. 49; DeGraffenreid v. Clark, Ib. 425; Todd v. McCravey, 77 Ala. 468; McLaren v. Anderson, 81 Ala. 106; Young v. Hubbard, 102 Ala. 373.

ARTICLE 3.

EXEMPTIONS FROM ADMINISTRATION AND THE PAYMENT OF DEBTS.

2069 (2543) (2821, 2827). **Homestead exemption in favor of widow and minor children.**—The homestead of any resident of this state, leaving surviving him at his death a widow and minor child or children, or either, with the improvements and appurtenances, not exceeding in value two thousand dollars, and in area one hundred and sixty acres, shall be exempt from administration and the payment of debts contracted after the twenty-third day of April, 1873, in favor of such widow and minor child or children, or either, in any event, during the life of the widow, or the minority of the child or children, whichever may last terminate; and the rents and profits of such homestead, if there be a widow and no minor child, shall enure to her benefit during her life; or if there be a minor child or children, and no widow, then to the benefit of such child or children during minority; or if there be both widow and minor child or children, then to their equal benefit during the life of the widow and the minority of the child or children. Such homestead may be retained by the widow or minor child or children, until it is ascertained whether the estate is solvent or insolvent; and if the estate is insolvent, it shall vest in them absolutely.

By what law right of exemptions governed.—Taylor v. Pettus, 52 Ala. 287; Taylor v. Taylor, 53 Ala. 135; Rottenberry v. Pipes, 53 Ala. 447; Miller v. Marx, 55 Ala. 322; Watts v. Burnett, 56 Ala. 340; Garner v. Bond, 61 Ala. 84;

Davis v. Davis, 63 Ala. 293; Smith v. Cockrell, 66 Ala. 64; Bolling v. Jones, 67 Ala. 508; Munchus v. Harris, 69 Ala. 506; Slaughter v. McBride, 69 Ala. 510; Keel v. Larkin, 72 Ala. 493; Bell v. Hall, 76 Ala. 546; Skinner v. Chapman, 78 Ala. 376; Dossey v. Pitman, 81 Ala. 381; McDonald v. Berry, 90 Ala. 464. **Dower no bar.**—Chisholm v. Chisholm, 41 Ala. 327; Jordan v. Strickland, 42 Ala. 315; Johnston v. Davenport, Ib. 317; McCuan v. Turrentine, 48 Ala. 68, 70; Thompson v. Thompson, 51 Ala. 493; Darden v. Reese, 62 Ala. 311. **Not to be diminished because widow statutory separate estate.**—Darden v. Reese, 62 Ala. 311; Johnston v. Davenport, 42 Ala. 317; Thompson v. Thompson, 51 Ala. 493; Johnston v. Strickland, 42 Ala. 317. **Adopted child entitled to exemption.**—Cofer v. Scroggins, 98 Ala. 342. **Dissent from will not necessary.** Hubbard v. Russell, 73 Ala. 578; Bell v. Bell, 84 Ala. 64; Chandler v. Chandler, 87 Ala. 300. **Family of non-resident not entitled to exemptions.**—Talmadge v. Talmadge, 66 Ala. 199; Auerbach v. Pritchett, 58 Ala. 451. **Nor where family are non-residents, though husband resident here.**—Ex parte Pearson, 76 Ala. 521. **What the ascertainment of insolvency.**—Munchus v. Harris, 69 Ala. 506; Baker v. Keith, 72 Ala. 121; Smith v. Boutwell, 101 Ala. 373; DeArmond v. Whitaker, 99 Ala. 252; Kilgore v. Kilgore, 103 Ala. 614. **When not affected by removal from state.**—Munchus v. Harris, 69 Ala. 506. **In what land entitled to homestead.** Weber v. Short, 55 Ala. 311 (overruling Pizzala v. Campbell, 46 Ala. 35); Chambers v. McPhaul, 55 Ala. 367; David v. David, 56 Ala. 49; Munchus v. Harris, 69 Ala. 506; Coffey v. Joseph, 74 Ala. 271; Englehardt v. Yung, 76 Ala. 534; Jackson v. Rowell, 87 Ala. 685; Alford v. Alford, 88 Ala. 656; Cofer v. Scroggins, 98 Ala. 342; Turner v. Turner, 107 Ala. 465. **No additional allowances made for incumbrances.**—Chambers v. McPhaul, 55 Ala. 367. **Estate or interest of widow and minor children in homestead.**—Weber v. Short, 55 Ala. 311; Miller v. Marx, Ib. 322; Fellows v. Lewis, 65 Ala. 343; Hunter v. Law, 68 Ala. 365; Barber v. Williams, 74 Ala. 331; Little v. McPherson, 76 Ala. 552; Skinner v. Chapman, 78 Ala. 377; Eatman v. Eatman, 83 Ala. 478; Caldwell v. Pollak, 91 Ala. 353; Banks v. Speers, 97 Ala. 560; Cofer v. Scroggins, 98 Ala. 342; Smith v. Boutwell, 101 Ala. 373; Kilgore v. Kilgore, 103 Ala. 614. **Child reaching majority cannot demand partition as against widow.**—Smally v. Chisenhall, 108 Ala. 683. **Alienation to third person, an abandonment in favor of heirs.**—Wallace v. Hall, 19 Ala. 367; Barber v. Williams, 74 Ala. 331; Norton v. Norton, 94 Ala. 481; Banks v. Speers, 97 Ala. 560. **Homestead when estate insolvent.**—Munchus v. Harris, 69 Ala. 506; Hartsfield v. Harvoley, 71 Ala. 231; Baker v. Keith, 72 Ala. 121; McDonald v. Berry, 90 Ala. 464. **When selection unnecessary.** Jarrell v. Payne, 75 Ala. 577; Mitcham v. Moore, 73 Ala. 542; Bell v. Hall, 76 Ala. 546; James v. Clark, 89 Ala. 606; Gamble v. Kellum, 97 Ala. 677. **Claim of contest where tried.**—Cochran v. Sorrell, 74 Ala. 310; Baker v. Keith, 72 Ala. 121; Kelly v. Garrett, 67 Ala. 304.

2070 (2544) (2840). **Exemption in lieu of homestead.**—If such decedent, at the time of his death, has no homestead exempt to him from levy and sale under process, his widow and minor child or children, or either, shall be, unless they have obtained the benefit of such exemption under section 2062 (2536), entitled to a homestead exemption out of any other real estate owned by him, which, in value, area, interest and estate, shall conform to the provisions of the preceding section.

Seals v. Pheiffer, 84 Ala. 359; Taylor v. Pettus, 52 Ala. 287; Toenes v. Moog, 78 Ala. 558; Jackson v. Rowell, 87 Ala. 685; Beard v. Johnson, Ib. 729; Dolan v. Dolan, 91 Ala. 152; Chandler v. Chandler, 87 Ala. 300; Tygh v. Dolan, 95 Ala. 269; Turner v. Turner, 107 Ala. 465; Steiner v. McDaniel, 110 Ala. 409.

2071. When all real estate of decedent set apart as homestead, title vests absolutely.—When the homestead set apart to the widow and minor child or children, or either, constitutes all the real estate owned in this state by the decedent at the time of his death, the title to such homestead vests absolutely in them, whether there be administration on the estate of the decedent or not. Dec. 13, 1892, p. 188.

2072 (2545) (2824). **Exemption of specific personal property.** In favor of the widow and minor child or children, or either, of such decedent, there shall also be exempt from administration and the

payment of debts contracted after the twenty-third day of April, 1873, all the wearing-apparel of the decedent, and of the widow and minor children, all yarn and cloth on hand intended for their use and consumption, all books kept for use in the family, all family portraits and pictures, all grain, stores and groceries on hand, necessary for the support of the family for twelve months after the decedent's death, and all bedding and household and kitchen furniture, necessary for the use and comfort of the family; to be selected by the widow, if there be one, or if there be no widow, or she fails to act, by the guardian of the minor child or children.

Davis v. Davis, 63 Ala. 293; Mitcham v. Moore, 73 Ala. 542, 544; Englehardt v. Yung, 76 Ala. 534; Davenport v. Brooks, 92 Ala. 627; Gamble v. Kellum, 97 Ala. 677; Wiggins v. Mertins, 111 Ala. 164.

2073 (2546) (2825). **Additional personal property exempt.**—In favor of such widow and minor child or children, or either, there shall also be exempt from administration and the payment of such debts, personal property belonging to such decedent at the time of his death, to the amount of one thousand dollars in value, to be selected and set apart for them; but if the estate is solvent, the value of such property so selected and set apart shall be, on final settlement and distribution of the estate, credited on the distributive shares of the widow and children receiving the benefit thereof, or on their respective legacies, if by will disposition is made of the entire estate; and any of such children, on leaving the family, shall be entitled to an equal share of the property so exempt, and then on hand.

Ex parte Reavis, 50 Ala. 210; Thompson v. Thompson, 51 Ala. 493; Childs v. Jones, 60 Ala. 352; Darden v. Reese, 62 Ala. 311; Tucker v. Henderson, 63 Ala. 280; Hunter v. Law, 68 Ala. 365; Beard v. Smith, 71 Ala. 568; Jenks v. Terrell, 73 Ala. 238; Mitcham v. Moore, 73 Ala. 542; Hubbard v. Russell, 73 Ala. 578; Loeb v. Richardson, 74 Ala. 311; Englehardt v. Yung, 76 Ala. 534; Bell v. Hall, 76 Ala. 546; Little v. McPherson, 76 Ala. 552; Hardin v. Pulley, 79 Ala. 381; Blair v. Murphree, 81 Ala. 454; Bell v. Bell, 84 Ala. 64; Byrd v. Jones, 84 Ala. 336; Chandler v. Chandler, 87 Ala. 300; Davenport v. Brooks, 92 Ala. 627; Henderson v. Tucker, 70 Ala. 381; Wiggins v. Mertins, 111 Ala. 164. See also citations to section 2069 (2543).

Feb. 28, 1889, p. 69

2074. Wages and salary of deceased employe, to the amount of one hundred dollars, paid to widow and exempted.—Whenever an employe of another shall die intestate and there shall be due him as wages or salary, a sum not exceeding one hundred dollars, the debtor may discharge himself from liability therefor by paying such amount to the widow of the deceased employe, or, if there be no widow, to the person having the actual custody and control of his minor child or children, if any; and the sum so paid is exempted to the widow and minor child or children, or either, as the case may be, as part of the one thousand dollars in personalty exempted to them.

2075 (2547) (2826). **Delivery of personalty exempt.**—The personal property exempted under this article shall be delivered to the widow, if there be one, to be by her employed or used in maintenance of herself and minor children; or if there be no widow, then to the guardian of the minor children, to be by him employed or used in the maintenance of his wards.

Davenport v. Brooks, 92 Ala. 627.

2076 (2564). **Use, etc., of such property before exemptions set apart; right to sue and defend.**—Before grant of administration, and before the exempt property is set apart, the right of the widow and minor child or children, or either, to the use and benefit of such property shall be the same as if it had been set apart as exempt; and suits respecting the same may be maintained or defended by the widow, or if there is no widow, by the minor child or children, as fully, and to the same extent as if such property had been set apart as exempt from administration.

Mitcham v. Moore, 73 Ala. 542; Bell v. Hall, 76 Ala. 546; James v. Clark, 89 Ala. 606; Gamble v. Kellum, 97 Ala. 677.

2077. Exemptions to minor child or children allowed from estate of deceased mother.—When any woman, a resident of this state, dies, leaving surviving her a minor child or children, there shall be exempt from administration and the payment of debts, in favor of such minor child or children, such property of her estate, real and personal, as is exempt by law to the widow and minor child or children, or either, from the estate of a deceased husband or father, and such exempt property shall be set apart and appraised, and held by such minor child or children, in all respects as provided in this chapter with respect to exemptions from the estate of a deceased father, so far as such provisions are applicable. Feb. 10, 1895, p. 1162.

ARTICLE 4.

SETTING APART EXEMPTIONS TO WIDOW AND MINOR CHILDREN.

2078 (2548) (2825). **Commission to set apart personal property exempt.**—When a decedent, who was at the time of his death a resident of this state, leaves surviving him a widow and minor child or children, or either, who are bona fide residents of this state, the probate court, at the time of appointing appraisers of the estate, shall issue a commission to them, stating the names of the widow and minor child or children, or either, as the case may be, and the nature and extent of the personal property exempt in their favor, and directing the appraisers to set apart the same.

Thompson v. Thompson, 91 Ala. 591.

2079 (2549). **Duty of appraisers to set same apart; return.** The appraisers, as early as practicable, shall set apart the personal property exempt under the provisions of section 2072 (2545) having regard, as far as consistent with their duties, to the selection made by the widow, or the guardian of the minor child or children, if such selection is made; and they shall also set apart personal property to the amount of one thousand dollars in value, exempt under the provisions of section 2073 (2546) estimating it at its appraised value, and permitting the widow, or if there is no widow, or she fails to act, the guardian of the minor child or children, to select the same; and within ten days thereafter, the appraisers shall return,

with the inventory and appraisement, a report of the property so set apart, showing each item thereof, and its appraised value.

Ex parte Reavis, 50 Ala. 210; Thompson v. Thompson, 51 Ala. 493; David v. David, 56 Ala. 49; Leslie v. Tucker, 57 Ala. 483; Darden v. Reese, 62 Ala. 311; Tucker v. Henderson, 63 Ala. 280; Hunter v. Law, 68 Ala. 365; Henderson v. Tucker, 70 Ala. 381; Abernathy v. Bankhead, 71 Ala. 190; Totten v. Sale, 72 Ala. 488; Mitcham v. Moore, 73 Ala. 542; Loeb v. Richardson, 74 Ala. 311; Bell v. Hall, 76 Ala. 546; Little v. McPherson, 76 Ala. 552.

2080 (2550). **Appraisement of homestead exemption.**—The appraisers shall also appraise the homestead of the decedent, occupied by him at the time of his death, or to which he was then entitled, and they shall report the appraisement thereof when the inventory and appraisement of the personal property are returned, with a full and accurate description of the same; and, if it is a part of a tract of land exceeding in area one hundred and sixty acres, they shall also report that fact.

Pettus v. McKinney, 56 Ala. 41; Mead v. Larkin, 66 Ala. 87; Kelly v. Garrett, 67 Ala. 304; Baker v. Keith, 72 Ala. 121; Farley v. Riorden, 72 Ala. 128 (qualified by 75 Ala. 577); Keel v. Larkin, 72 Ala. 493; Cochran v. Sorrell, 74 Ala. 310; Jarrell v. Payne, 75 Ala. 577; Dossey v. Pitman, 81 Ala. 381; James v. Clark, 89 Ala. 606; Thompson v. Thompson, 91 Ala. 591; Turner v. Turner, 107 Ala. 465.

As amended Feb. 28, 1889, p. 86.

2081 (2551). **Proceedings to set apart homestead, when it exceeds value or area allowed.**—When it appears from the report of the appraisers that the homestead exceeds in value two thousand dollars, or in area one hundred and sixty acres, the probate court shall forthwith appoint three commissioners, who shall, as soon as practicable, not exceeding thirty days after their appointment, set off and allot, by metes and bounds, the homestead exempt, having regard to both the quality and value of the real estate, and to the selection of the widow, or, if there is no widow, or she fails to act, of the guardian of the minor child or children, if there is such guardian, and including the dwelling and appurtenances; and, within ten days thereafter, the commissioners shall return to the court in writing the homestead set off and allotted by them. If the homestead, after being reduced to its lowest practicable area, still exceeds two thousand dollars in value, thereby rendering it impracticable to allot and set it off, the commissioners shall report that fact to the court.

Coffey v. Joseph, 74 Ala. 271; Jackson v. Rowell, 87 Ala. 685; Alford v. Alford, 88 Ala. 656; Dolan v. Dolan, 91 Ala. 152; Thompson v. Thompson, Ib. 591; Clancy v. Stephens, 92 Ala. 577.

2082 (2552). **Proceedings on failure of appraisers to set apart exemptions, and to appraise homestead.**—If, for more than twenty days after the grant of administration, the appraisers should fail to set apart the personal property exempt in favor of the widow and minor child or children, or either, or to appraise the homestead, or to make the report in reference to the homestead hereinbefore required, then, upon the written application of the widow, or of the guardian of the minor child or children, the probate court shall appoint three commissioners, who shall, as soon as practicable thereafter, not exceeding thirty days, set apart the personal property exempt and appraise the homestead in the manner required of the

appraisers; and, if practicable, they shall also allot and set off the homestead exemption in the manner provided in the preceding section; and, within ten days thereafter, they shall report to the court in writing the personal property set apart, with the value of each item thereof, and the homestead allotted and set off, with a full and accurate description of the same. If the homestead, after being reduced to its lowest practicable area, still exceeds two thousand dollars in value, thereby rendering it impracticable to allot and set it off, the commissioners shall report that fact.

Thompson v. Thompson, 91 Ala. 591; Dossey v. Pitman, 81 Ala. 381. Notice. See Dugger v. Tayloe, 60 Ala. 504; Wilburn v. McCalley, 63 Ala. 436; Keel v. Larkin, 72 Ala. 493.

2083 (2553). **Exemption in lieu of homestead; how claimed and set apart.**—When an exemption of real estate in lieu of homestead is claimed under section 2070 (2544), a petition in writing, duly verified by oath, must be filed by or on behalf of the widow and minor child, or children, or either, as the case may be, in the probate court having jurisdiction of the administration of the estate, setting forth the facts authorizing such exemption, describing the real estate out of which the exemption is claimed, and stating its value; and thereupon the court shall appoint three commissioners, who shall set off and allot the same by metes and bounds; and within ten days thereafter they shall make a written report to the court of the exemption set off and allotted by them.

2084 (2554) (2841). **Exceptions to report of homestead or other exemption; day fixed for hearing, and notice thereof.**—When any homestead or other exemption has been allotted or set apart by the appraisers, or by commissioners, the personal representative, widow, minor child or children, or other person in interest, feeling aggrieved, may, within thirty days after the making of the report, file written exceptions thereto, stating the grounds of such exceptions; and thereupon the court must fix a day for the hearing of the exceptions, of which ten days' notice must be given by personal service, if the adverse parties reside in the state, or if they reside out of the state, by publication in some newspaper published in the county. If the exceptions are filed by the widow and minor child or children, or either, such notice must be served on the personal representative; but if filed by the personal representative, or other person, the notice must be served on the widow, if there be one, or if not, and the minor children are over the age of fourteen years, on them, but if they are under the age of fourteen years, then on their guardian, or if there be none, on the person having the charge or custody of them; and if there is no guardian, the court must appoint a guardian ad litem to represent such minor child or children.

Dossey v. Pitman, 81 Ala. 381.

2085 (2555). **How issue made up and tried.**—On the day fixed for the hearing of such exceptions, an issue shall be made up under the direction of the court, and the same shall be tried as other issues in that court are tried, the party excepting being the plaintiff, on

whom shall rest the burden of proof; and on the hearing the court may confirm or set aside the report, as the right may appear.

2086 (2556). **Proceedings when exemption of personalty excessive or insufficient.**—But if the exceptions relate to the exemption of personal property, and are based on the ground that it is excessive or insufficient, the court, if the exceptions are sustained, must not set aside the report, but shall ascertain the amount of such excess or insufficiency, and, if excessive, shall order the restoration to the personal representative of property sufficient in value to cure the excess, describing the same, and enforce such order by a writ of restitution; but, if insufficient, the court shall order the personal representative to deliver to the party or parties thereto entitled property sufficient to make up the deficiency; and the personal representative shall forthwith obey such order, and report to the court the property so delivered by him and its value.

2087 (2557). **Proceedings when report set aside.**—If the report is set aside, the court must appoint three commissioners, who shall allot and set apart such exemptions, and report the same to the court under the provisions of this article, when the same proceedings may be had as on the report first made; and so on until the exemptions are finally allowed.

2088 (2558). **Costs on exceptions; against whom awarded.**—If the exceptions are filed by the widow, or on behalf of the minor child or children, and are not sustained, the costs shall be taxed against the widow or the next friend of the child or children, or against both, if they joined in the exceptions; and in all other cases against the unsuccessful party.

2089 (2559) (2841). **Appeal from decree on exceptions.**—From the decree of the probate court pronounced on such exceptions, either party feeling aggrieved, may, within twenty days, appeal to the supreme court by giving security for the costs of the appeal; or if he desires to supersede the decree, by executing bond with sufficient sureties, in such sum, and with such conditions as the probate court may prescribe.

2090 (2560). **Report of appraisers as to homestead; exceptions and proceedings.**—When the report of the appraisers shows that the homestead does not exceed in value two thousand dollars, or in area one hundred and sixty acres, exceptions may be filed thereto by the personal representative or other person in adverse interest; and if such exceptions are filed, proceedings may be had thereon, as in case of a report, allotting or setting apart the homestead.

Dossey v. Pitman, 81 Ala. 381.

2091 (2561). **Proceedings when no exceptions are filed.**—If no exceptions are filed to the report of the appraisers under the provisions of the preceding section, or to the report allotting or setting apart any homestead or other exemption, within the time allowed for filing such exceptions, a decree must be entered confirming the report, and allowing the exemption as reported.

2092. When widow and minors retain possession of homestead

incapable of allotment.—When the homestead, after being reduced to its lowest practicable area, still exceeds two thousand dollars in value, and no exemption in lieu of homestead has been obtained, the widow and minor child or children, or either, may retain the possession of the homestead as thus reduced, free from the payment of rent, until the same shall be sold, or there is a division of the lands of the decedent; and, in the event of a sale of such homestead in the course of administration, it shall be sold separately from the other lands of the decedent, if there be other.

2093. On sale of homestead incapable of allotment, two thousand dollars set apart to purchase home for widow and minors. Whenever, in the course of administration, a homestead incapable of allotment shall be sold, the terms of sale must require not less than two thousand dollars of the purchase-money to be paid in cash to the personal representative; and, upon the confirmation of the sale, the court must make an order setting apart, in the hands of the personal representative, two thousand dollars of the proceeds of such sale as a homestead fund and directing the representative to invest the same, or so much thereof as may be necessary, in the purchase of a suitable home for the widow and minor child or children, or either, as the case may be; and thereupon the representative must, as soon as practicable, make such investment, having regard to the wishes of the widow and the guardian of the minor child or children in making the selection. The personal representative must see that the land so purchased is free from incumbrance and that a good and sufficient deed, conveying a perfect title to the land, is made to the widow and minor child or children, or either, as the case may be, such title to vest in them absolutely, share and share alike; and for any defect or failure of title to such land, or neglect or failure to properly perform any of the duties herein required of him, he is liable to them on his bond. All costs and expenses necessarily incurred in the investigation of titles and making such investment must be paid from the estate of the decedent as costs of administration. If the entire sum of two thousand dollars shall not be required in the purchase of a suitable home, the residue of such sum must be paid by the personal representative to the widow and the guardian of the minor child or children, or either, as the case may be, share and share alike.

2094. When widow and minors purchasers, credit of two thousand dollars allowed on bid; conveyance.—When the purchase of such homestead is by or on behalf of the persons entitled to homestead exemption, the sum of two thousand dollars need not be actually paid to the representative, but, if the sale is confirmed, may be credited on the bid; and on the payment of the residue of such bid, a proper conveyance must be made to them as such purchasers, vesting the title in the persons entitled to the exemption, share and share alike.

2095. When no bid above two thousand dollars, fact reported to court; order; exceptions.—If, at such sale, or any subsequent

sale, no bid in excess of two thousand dollars is received, the representative must report that fact to the court; and thereupon the court must make an order directing the report to lie over thirty days, during which time any person interested in the sale may file written exceptions attacking the fairness of the sale, stating the grounds of such exceptions; and upon the filing of such exceptions a day must be appointed to hear the same and ten days' notice thereof given and other proceedings had as provided in this article for the hearing of exceptions to a report allotting homestead, so far as such provisions are applicable.

2096. If exceptions sustained, resale ordered; otherwise, homestead set apart by order of court.—If, on the hearing of such exceptions, the court is satisfied from the evidence that the failure to obtain a bid of more than two thousand dollars was due to a want of fairness in the conduct of the sale, or to fraud or collusion thereat, an order must be made directing a resale of such homestead; but if no exceptions are filed and sustained to such report, the court must make an order revoking the order of sale of the homestead and setting apart such homestead to the widow and minor child or children, or either, as the case may be.

Feb. 12, 1887, p. 112.

2097 (2562). **Setting apart exemptions before administration; inventory and appraisement.**—When the property, real or personal, owned by a decedent at the time of his death, does not exceed in amount and value the exemptions allowed in favor of his widow and minor child or children, or either, and no administration is granted on his estate within sixty days after his death, the probate court of the county in which he resided at the time of his death, upon the application of the widow, or, if there be no widow, or she does not act, upon the application of a suitable person who shall be appointed by the judge of probate as the next friend of such minor child or children, verified by oath, and setting forth such facts, must appoint two commissioners who shall make a full and complete inventory and appraisement of the real and personal property of such decedent, describing the property and stating the value of each item or parcel thereof; and in estimating the value of such property or any part thereof, if the same be held in pledge or under mortgage or other lien or incumbrance created prior to the death of the decedent, such encumbered property must be valued at only the excess of its value over and above the sum of such liens or other incumbrances.

Bell v. Hall, 76 Ala. 546; James v. Clark, 89 Ala. 606; Gamble v. Kellum, 97 Ala. 677; DeArmond v. Whitaker, 99 Ala. 252; Smith v. Boutwell, 101 Ala. 373.

2098 (2563). **If property does not exceed exemptions, same set apart.**—If such property, real or personal, or both, does not exceed in amount or value the exemptions allowed in such property, the commissioners must set apart the same to the widow and minor child or children, or either, as exempt from administration; and within ten days thereafter, they shall return to the court the inventory and appraisement with a report of their action in the premises.

2099. Exceptions.—Exceptions to such report may be filed, heard

and determined as in other cases of exception to reports setting apart exemptions.

2100. Absolute title vests in widow, etc.—If no exceptions are filed and sustained to such report of the commissioners setting apart exemptions, the title to the property so set aside, whether real or personal, vests absolutely in the widow and minor child or children, or either, as the case may be, share and share alike. Dec. 13, 1892, p. 138.

2101. Actual occupancy of homestead by widow and minors not essential to preservation of right.—When homestead exemption has been allotted to the widow and minor child or children, or either, under any of the provisions of this chapter, they shall not be held to have abandoned or forfeited the same by a removal therefrom. Feb. 28, 1889, p. 113.

Not retroactive.—Banks v. Speers, 97 Ala. 560.

2102 (2565). **Qualification and oath of commissioners.**—Commissioners appointed to allot or set apart the homestead or other exemptions under this chapter must be disinterested householders or freeholders of the county, and, before executing their commission, must be sworn by some officer authorized to administer oaths, or by one of themselves, to faithfully discharge the duties for which they were appointed.

2103 (2566). **Fees to commissioners.**—Commissioners appointed under any of the provisions of this chapter shall be entitled to compensation for their services, at the rate of two dollars per day during the time they are actually engaged.

ARTICLE 5.

WAIVER OF EXEMPTIONS.

2104 (2567) (2846). **Right of waiver declared.**—Any person, by an instrument in writing, may waive his right to an exemption in any property exempt from levy and sale under execution or other process.

Exemption a personal privilege and may be waived.—Brown v. Leitch, 60 Ala. 313; Martin v. Lile, 63 Ala. 406; Clark v. Spencer, 75 Ala. 49; Motley v. Jones, 98 Ala. 443. **Intention to waive must be clearly expressed.**—Knox v. Wilson, 77 Ala. 309. **But a technical construction will not be adopted.** Lesser v. Scholze, 93 Ala. 338. **Note waiving exemptions creates no lien.** Craft v. Stoutz, 95 Ala. 245. **Waiver good only during life of maker—as against widow and minors.**—Wiggins v. Mertins, 111 Ala. 164. **Waiver executed in another state; when good here.**—Holland v. Bergan, 89 Ala. 622. **When not.**—Seay v. Palmer, 93 Ala. 381.

2105 (2568) (2847, 2848). **Waiver as to personalty; how made.** As to personal property, the waiver may be made by a separate instrument in writing, subscribed by the party making the same, or it may be included in any bond, bill of exchange, promissory note, or other written contract executed by him.

In absence of fraud or misrepresentation, **party signing instrument containing waiver cannot avoid because not informed of contents.**—Goetter v. Pickett, 61 Ala. 387; Pacific Guano Co. v. Anglin, 82 Ala. 492. **Instrument waiving "all exemptions" is effectual as to all personalty.**—Brown v. Leitch, 60 Ala. 313; Neely v. Henry, 63 Ala. 261; Terrell v. Hurst, 76 Ala. 588; Wagnon v. Keenan, 77 Ala. 519; Agnew v. Walden, 95 Ala. 108. **When intended**

to apply to part only, such part must be specified.—Neely v. Henry, 63 Ala. 261. **Waiver in partnership note binds only the partner executing unless authorized by the others.**—Terrell v. Hurst, 76 Ala. 588; Reed L. Co. v. Lewis, 94 Ala. 626. **But they must controvert the fact of waiver, before judgment.**—Hutchison v. Powell, 92 Ala. 619. **Investment of money or property in homestead**; good as against waiver as to personalty.—Reeves v. Peterman, 109 Ala. 366. **Waiver ineffectual as against widow and minor children of deceased maker.**—Wiggins v. Mertins, 111 Ala. 164. **Waiver note indorsed in blank; waiver not binding on indorser.**—Jordan v. Long, 109 Ala. 414.

2106 (2569) (2847, 2848). **Waiver as to homestead; how made.** As to the homestead, the waiver must be by a separate instrument in writing, subscribed by the party making the same and attested by one witness; and if such party is a married man, such waiver shall not be valid without the voluntary signature and assent of the wife, shown and acknowledged as her signature and assent to conveyances of the homestead are required to be shown and acknowledged. And if such party is a married woman, such waiver shall be executed only in the mode prescribed by section 2528 (2348) for the alienation of her lands.*

Waiver in promissory note, though attested by witness, not valid as to homestead; must be in separate instrument.—Neely v. Henry, 63 Ala. 261; Baker v. Keith, 72 Ala. 121; Terrell v. Hurst, 76 Ala. 588; Wagnon v. Keenan, 77 Ala. 519; Holland v. Bergan, 89 Ala. 622. **Waiver of "all homestead exemptions"; when void.**—Reed Lumber Co. v. Lewis, 94 Ala. 626.

2107 (2570) (2849). **How waiver alleged and proved.**—In any suit, at law or in equity, in which a waiver of the right of homestead or other exemption is sought to be enforced, the fact of waiver and its extent must be averred in the complaint, petition, or bill, and by appropriate pleading may be controverted; and if such averment is sustained, the fact of waiver and its extent must be declared in the judgment or decree, and indorsed on the execution or other process issued thereon; and such waiver shall extend to the costs of the suit.

Fact of waiver must be averred in complaint; or, when suit commenced by attachment, **indorsed on writ.**—Goetter v. Pickett, 61 Ala. 387; Taylor v. Cockrell, 80 Ala. 236; Fears v. Thompson, 82 Ala. 294; Hutchison v. Powell, 92 Ala. 619. **When specially controverted, issue must be found in favor of plaintiff, else waiver cannot be incorporated in judgment.**—Taylor v. Cockrell, 80 Ala. 236. **Presumption in favor of judgment.**—Hearn v. State, 62 Ala. 218; Hosea v. Talbert, 65 Ala. 173; Hutchison v. Powell, 92 Ala. 619; Agnew v. Walden, 95 Ala. 108. **Waiver lost by failure of judgment to recite fact.** Hosea v. Talbert, 65 Ala. 173; Courie v. Goodwin, 89 Ala. 569; Agnew v. Walden, 95 Ala. 108. **"And against this judgment, and the execution to be issued thereon, there is no exemption of personal property of the defendant"; when proper judgment-entry.**—Brown v. Leitch, 60 Ala. 313; Wagnon v. Keenan, 77 Ala. 519. **When fact of waiver controverted and evidence in conflict, jury determines issue.**—Slaughter v. First Nat. Bank, 109 Ala. 157.

As amended Dec. 3, 1896, p. 33.

2108 (2571) (2850). **Waiver indorsed on attachment; evidence produced or affidavit filed.**—When such suit is commenced by attachment, or, in aid thereof, an ancillary attachment is sued out, the officer issuing the writ, on the plaintiff, in person, or by his agent or attorney, producing before him the written evidence of the waiver, or making and filing with him an affidavit that the exemption has been waived, must indorse on the writ the fact of such waiver and the extent thereof.

In suit commenced by attachment, fact of waiver must be indorsed on

*Married woman feature added by joint committee.

writ.—Fears v. Thompson, 82 Ala. 294; Hutchison v. Powell, 92 Ala. 619. But if only averred in complaint, to which defendant pleads without objection, failure to indorse writ is waived.—Hutchison v. Powell, Ib. In absence of averment, waiver clause excluded as evidence, or recital excluded from judgment entry.—Golden v. Conner, 89 Ala. 598.

2109 (2572). **Proceedings in attachment, on claim of exemptions, when waiver not sustained.**—When such attachment is levied on property embraced in a declaration of claim of exemption which has been filed for record, or subsequent to the levy a claim to such property as exempt is interposed, if, on the trial, the averment of waiver is not sustained, the levy shall be discharged and the property returned to the defendant, unless the plaintiff, within five days after judgment, shall contest the claim; and if he should desire to contest, such contest may be instituted and prosecuted as in other cases.

CHAPTER 51.

FENCES. 2110–2123.

2110 (1364) (1586) (1282) (1099). **Lawful fence defined.**—All inclosures and fences must be made at least five feet high, and if made of rails, the rails not more than four inches apart from the ground to the height of every two feet, or, if made of palings, the palings not more than three inches apart, or if made with a ditch, such ditch must be four feet wide at the top, and the fence, of whatever material composed, at least five feet high from the bottom of the ditch, and three feet high from the top of the bank, and so close as to prevent stock of any kind from getting through; but a rail fence five feet high, with the rails not more than eighteen inches apart from the ground to the height of every three feet, shall be a lawful fence so far as cattle, horses and mules are concerned.

2111. **Fence made of three or more wires lawful as to mules, horses and cattle.**—A fence made of three or more wires securely fastened to trees or posts not more than eight feet apart, the wires being not more than fifteen inches apart and the top wire at least four feet from the ground, is a lawful fence so far as concerns mules, horses and cattle. Feb. 27, 1889, p. 63 §1.

2112. **Fence made of seven or more wires lawful as to all live stock.**—A fence made of seven or more wires securely fastened to trees or posts not more than eight feet apart, the first four wires being of four-inch barb and not over four inches apart, commencing with first wire four inches from the ground, the fifth wire not over six inches from the fourth, the sixth wire not over eight inches from the fifth and the seventh wire fifteen inches from the sixth, is a lawful fence as against all stock whatsoever. Ib. §2.

2113 (1365) (1587) (1283) (1100). **No trespass, if fence not a**

lawful one; penalty for injury to cattle.—If any trespass or damage is done by any animal breaking into lands not inclosed by a lawful fence as defined in this chapter, the owner is not liable therefor; and if any person injures or destroys any such animal, he is liable to the owner for five times the amount of injury done, to be recovered before any court of competent jurisdiction.

Smith v. Causey, 22 Ala. 568; s. c., 28 Ala. 655; Tankersly v. Wedgworth, 22 Ala. 677; Jean v. Sandiford, 39 Ala. 317; Joiner v. Winston, 68 Ala. 129; McKenzie v. Gibson, 73 Ala. 204; Wilhite v. Speakman, 79 Ala. 400; Hurd v. Lacy, 93 Ala. 427; Shehane v. Bailey, 110 Ala. 308.

2114 (1366) (1588) (1284) (1101). **Penalty for setting stakes, pits, etc.**—If any person, not having a fence as herein prescribed, sets in his inclosure any stakes, pits, poison, or anything which may injure or kill any animal or stock, such person forfeits fifty dollars for every such act to any person suing for the same; and any stakes, pits, or poison on any such lands are presumptive evidence that the same were set by the person in charge of such land.

Feb. 26, 1887, p. 67.

2115 (1367) (1589) (1285) (1102). **Damages for trespass by stock.**—If any stock trespass upon any lands inclosed as herein prescribed, or embraced in a district in which such stock is by law prohibited from running at large, the owner of such stock must pay the damages; and for each trespass after the first, double damages.

2116 (1368) (1590) (1286) (1103). **Remedy.**—Upon complaint made before any justice of the precinct, he must immediately issue an order in writing to three disinterested householders of the neighborhood, not related to either of the parties, reciting the complaint, and directing them to examine the fence, ascertain its condition, and report the same in writing to the justice; and such report is evidence of the condition of the fence.

2117 (1369) (1591) (1287) (1104). **Assessment of damages.**—The householders appointed under the preceding section must also assess the damages; or double damages, as the case may be; and if the party pays such damages, or tenders the same to the party injured, it is a bar to any action for such trespass.

2118 (1370) (1592) (1288) (1105). **Owners of adjoining lands bear equal proportion of expense in repairing, etc., partition fences.**—Partition fences between improved lands are to be erected and repaired at the joint expense of the occupants; or if any person makes a fence a partition fence by joining to or using it as such, he must pay to the person erecting it his proportion of the expense, taking into consideration the condition of such fence at the time it is so joined to or used.

Walker v. Watrous, 8 Ala. 493; Moore v. Levert, 24 Ala. 310; Henry v. Jones, 28 Ala. 385; Garrett v. Sewell, 95 Ala. 456; s. c., 108 Ala. 521.

2119 (1371) (1593) (1289) (1106). **Assessment of value of partition fence.**—If the parties cannot agree, on application by either to a justice of the precinct in which such fence is, such justice must issue an order to three disinterested freeholders of such precinct, not related to either of the parties, to examine such fence, and to ascertain the amount to be paid to the owner erecting the same; and such

freeholders, on a day to be by them appointed, of which both parties must have notice, must examine such fence and report to the justice the proportionate amount to be paid to the person erecting the fence; and if such amount is not paid within ten days after such report, the justice must issue execution therefor, with costs, as provided in the following section, to be collected and returned as other executions.

2120 (1372) (1594) (1290) (1107). **Costs.**—The justice is entitled to fifty cents for issuing the order, and the fence-viewers to one dollar each; one-half of which is to be paid by each party; and not being paid in ten days after the report, execution must issue therefor, with costs for issuing such execution.

2121 (1373) (1595) (1291) (1108). **Oath of viewers.**—The fence-viewers, before proceeding to act, must take an oath, which may be administered by one to the other, to discharge their duties fairly and impartially.

2122 (1374) (1596). **Where adjacent owners agree to keep up separate parts of partition fence.**—Where a partition fence has been, or may hereafter be established by agreement of adjacent owners of land, each to keep up a particular part of such fence, if either fails to keep such part assigned to him in good repair, it shall be lawful for the other joint owner to repair such fence, the cost thereof to be paid by the one so failing; and if they cannot agree as to the amount to be paid for such repairs, the same to be ascertained and collected as provided by the preceding sections.

2123 (1375) (1597) (1292) (1109). **Partition fences defined.** Partition fences, within the meaning of this chapter, are fences erected on the line between lands owned by different persons.

CHAPTER 52[1]

FORCIBLE ENTRY AND UNLAWFUL DETAINER. 2124-2149.

2124 (3378) (3694) (3297) (2850). **Cognizable before justice of the peace.**—The forcible entry upon and detainer, or the unlawful detainer of lands, tenements and hereditaments, is cognizable before a justice of the peace of the county in which the offense is committed.

Not unconstitutional.—Ward v. Lewis, 1 Stew. 26; Beck v. Glenn, 69 Ala. 121; Webb v. Carlisle, 65 Ala. 313; Nicrosi v. Phillipi, 91 Ala. 299. **Triable only before justice of the peace.**—Lykes v. Schwarz, 91 Ala. 461; Olmstead v. Thompson, 91 Ala. 130.

2125 (3379) (3695) (3298). **Courts for such trials always open.** Courts having jurisdiction under this chapter must be held open at all times, for the consideration and determination of questions arising under this chapter, and judgments had thereon without delay.

2126 (3380) (3696) (3299) (2851). **Forcible entry and detainer defined.**—A forcible entry and detainer is, where one, by force or

strong hand, or by exciting fear or terror, enters upon and detains lands or tenements in the possession of another; as by breaking open doors, windows, or any other part of a house, whether any person be within or not; by threats of violence to the party in possession, or by such words or actions as have a tendency to excite fear or apprehension of danger; by putting out of doors, or removing the goods or chattels of the party in possession; or by entering peaceably, and then, by unlawful refusal, or by force or threats, turning or keeping the party out of possession.

Nature of the remedy.—Knowles v. Ogletree, 96 Ala. 555; Welden v. Schlosser, 74 Ala. 355; Hamilton v. Adams, 15 Ala. 596; Wright v. Lyle, 4 Ala. 112. **"Unlawful refusal" defined; presupposes a prior demand.** Demand need not be in writing and may be inferred from acts or declarations.—Knowles v. Ogletree, 96 Ala. 555; Welden v. Schlosser, 74 Ala. 355. **Plaintiff must show actual prior possession.**—O'Donohue v. Holmes, 107 Ala. 489; Knowles v. Ogletree, 96 Ala. 555; Espalla v. Gottschalk, 95 Ala. 254; Clements v. Hays, 76 Ala. 281; Brady v. Huff, 75 Ala. 80; May v. Taylor, 56 Ala. 190; House v. Camp, 32 Ala. 541; Lecatt v. Stewart, 2 Stew. 474; Cunningham v. Green, 3 Ala. 127; Clark v. Stringfellow, 4 Ala. 353; McRae v. Tillman, 6 Ala. 486; Mead v. Daniel, 2 Port. 86; McDonald v. Gayle, Minor, 98. **A tenant in possession may sue.**—House v. Camp, 32 Ala. 541; McRae v. Tillman, 6 Ala. 486; McDonald v. Gayle, Minor, 98. **That defendant entered as agent merely, no defense.**—Luling v. Sheppard, 112 Ala. 588.

2127 (3381) (3697) (3300) (2852). **Unlawful detainer defined.** An unlawful detainer is, where one who has lawfully entered into possession of lands or tenements, after the termination of his possessory interest, refuses, on demand in writing, to deliver the possession thereof to any one lawfully entitled thereto, his agent, or attorney.

Action defined; grows out of relation of landlord and tenant.—Giddens v. Bolling, 92 Ala. 586; Brown v. Beatty, 76 Ala. 250; Houston v. Fariss, 71 Ala. 570; Norwood v. Kirby, 70 Ala. 397; Beck v. Glenn, 69 Ala. 121; Hurst v. Thompson, 68 Ala. 560; Womach v. Powers, 50 Ala. 5; Spear v. Lomax, 42 Ala. 576; Dwine v. Brown, 35 Ala. 596; Russell v. Desplous, 29 Ala. 308; Rainey v. Capps, 22 Ala. 288; McGonegal v. Walker, 23 Ala. 361; Stinson v. Gossett, 4 Ala. 170; Mounger v. Burks, 17 Ala. 48. **May be brought against one holding under, or by collusion with the tenant.**—Kellum v. Balkum, 93 Ala. 317; Giddens v. Bolling, 92 Ala. 586; Espalla v. Gottschalk, 95 Ala. 254; McGonegal v. Walker, 23 Ala. 361; Snoddy v. Watt, 9 Ala. 609; Clark v. Stringfellow, 4 Ala. 353; Mounger v. Burks, 17 Ala. 48. **Prior possession; possession of tenant is possession of landlord.**—Kellum v. Balkum, 93 Ala. 317; Nicrosi v. Phillipi, 91 Ala. 299; Espalla v. Gottschalk, 95 Ala. 254; Anderson v. Anderson, 104 Ala. 428; Barefoot v. Wall, 108 Ala. 327; Giddens v. Bolling, 92 Ala. 586; Brown v. Beatty, 76 Ala. 250; Houston v. Fariss, 71 Ala. 570; Norwood v. Kirby, 70 Ala. 397; Beck v. Glenn, 69 Ala. 121; Lecatt v. Stewart, 2 Stew. 474. **The heir acquires the possession of his ancestor.**—Kellum v. Balkum, 93 Ala. 317; Hightower v. Fitzpatrick, 42 Ala. 597; Stinson v. Gossett, 4 Ala. 170; Dwine v. Brown, 35 Ala. 596; McKeen v. Nelms, 9 Ala. 507. **The administrator that of his intestate.**—Espalla v. Gottschalk, 95 Ala. 254; Nicrosi v. Phillipi, 91 Ala. 299; Spear v. Lomax, 42 Ala. 576. **Attornment; will support the action.**—Barefoot v. Wall, 108 Ala. 327; Anderson v. Anderson, 104 Ala. 428; Nicrosi v. Phillipi, 91 Ala. 299; Kellum v. Balkum, 93 Ala. 317. **No defense to action by original landlord.**—Pugh v. Davis, 103 Ala. 316. **Equity will not enjoin such action.**—Davis v. Pou, 108 Ala. 443. **Demand; distinct from notice to terminate tenancy at will;** in such case, two notices may be necessary.—McDevitt v. Lambert, 80 Ala. 536. **Must be in writing.** Bates v. Ridgeway, 48 Ala. 611. **And in name of plaintiff.**—Kennedy v. Hitchcock, 4 Port. 230. **Secondary evidence of, when admissible.**—King v. Bolling, 77 Ala. 594; Dumas v. Hunter, 30 Ala. 75. **Proceeding may be revived against personal representative.**—Ridgeway v. Waugh, 57 Ala. 423. **Judgment; conclusive of the questions involved.**—Hamilton v. Adams, 15 Ala. 596; Norwood v. Kirby, 70 Ala. 397; Davis v. Pou, 108 Ala. 443; Brady v. Huff, 75 Ala. 80; Chestnut v. Tyson, 105 Ala. 149; Bishop v. Truett, 85 Ala. 376. **Verdict.**—Beck v. Glenn, 69 Ala. 121; Spear v. Lomax, 42 Ala. 576; Huffaker v. Boring, 8 Ala. 87; Grice v. Furguson, 1 Stew. 36. **Declarations of tenant;**

when admissible.—Turnley v. Hanna, 82 Ala. 139; Humes v. O'Bryan, 74 Ala. 71.

2128 (3382) (3698) (3301) (2853). **What estates in land included.**—The two preceding sections extend to, and comprehend terms for years, and all estates, whether freehold or less than freehold.

2129 (3383) (3699) (3302) (2854). **Issue and form of notice upon complaint filed.**—Upon complaint being made, the justice of the peace must issue a notice to the party against whom the complaint is made, to the following effect:

"The State of Alabama, ——— county. } To ——— ———:

You are hereby commanded to be and appear before me, at ———, on the —— day of ———, 18—, to answer to, and make defense against a complaint exhibited to me against you by ——— ———, for a forcible entry and detainer (or for an unlawful detainer, as the case may be).

Witness my hand, this —— day of ———, 18—.

——— ———, Justice of the Peace."

Sufficiency of complaint.—Ward v. Lewis, 1 Stew. 26; Mead v. Daniel, 2 Port. 86; Bliss v. Winston, 1 Ala. 344; Cunningham v. Green, 3 Ala. 127. Wright v. Lyle, 4 Ala. 112; Huffaker v. Boring, 8 Ala. 87; Bell v. Killcrease, 11 Ala. 685; Matlock v. Thompson, 18 Ala. 600; House v. Camp, 32 Ala. 541; Ferguson v. Carter, 40 Ala. 607; Townsend v. VanAspen, 38 Ala. 572; Jonsen v. Nabring, 50 Ala. 392; Spear v. Lomax, 42 Ala. 576; Hightower v. Fitzpatrick, Ib. 597. **When a misjoinder of plaintiffs.**—Ware v. Warwick, 48 Ala. 295. **Forcible entry and unlawful detainer may be joined.**—Littleton v. Clayton, 77 Ala. 571. **Parol evidence admissible to identify the lands.**—Giddens v. Bolling, 92 Ala. 586.

2130 (3384) (3700) (3303) (2855). **Time and mode of serving notice.**—The notice must be served on the defendant at least six days before the return-day of the process, and may be served on him anywhere within the state. The return of the service thereof by any sheriff or constable of the state is sufficient, or proof of the fact may be made before the justice. It is sufficient to leave a copy thereof at his usual place of abode.

2131 (3385) (3714) (3317) (2868). **Before whom tried.**—The complaints provided for in this chapter must be exhibited to, and be tried by a justice of the peace for the precinct in which the lands or tenements are situated; if in a city or corporate town, before the mayor, intendant, or any justice of the peace thereof; and if the office is vacated, or such justice, mayor, or intendant, is disqualified, from any cause, from sitting, then by the justice of some adjoining precinct.

2132 (3386) (3701) (3304) (2856). **Issue and trial.**—If the parties appear, an issue must be made between them upon the complaint; but if the defendant, having been duly cited, does not appear, or appearing declines to plead, the cause proceeds as if the defendant had pleaded not guilty; or, for good cause, the trial may be postponed not more than fifteen days, at the cost of the applicant.

2133 (3387) (3702) (3305) (2857). **If plaintiff succeeds, writ of restitution issued; costs.**—If the justice determines in favor of the

plaintiff, he must record the decision, and render judgment with costs, upon which he must issue a writ of execution, commanding the sheriff to restore the plaintiff to the possession of his lands and tenements according to the complaint, and to levy and sell a sufficiency of the defendant's goods and chattels, lands and tenements, to satisfy the costs of the proceedings.

Writ may issue immediately.—Olmstead v. Brewer, 91 Ala. 124; Olmstead v. Thompson, Ib. 130. **When judgment reversed on appeal, circuit court may award writ to restore possession.**—Wright v. Hurt, 92 Ala. 591. See note to section 2127.

2134 (3388) (3703) (3306) (2858). **If plaintiff fails, judgment entered against him for costs; execution.**—If the justice determines in favor of the defendant, judgment must be rendered in his favor for the costs, upon which an execution may issue as in other cases; and in either case, the items composing the bill of costs must be stated at the foot of the execution.

2135 (3389) (3704) (3307) (2859). **Title not in issue.**—The estate or merits of the title cannot be inquired into on the trial of any complaint exhibited under this chapter.

"Merits of the title."—Davis v. Pou, 108 Ala. 443; Pugh v. Davis, 103 Ala. 316; O'Donohue v. Holmes, 107 Ala. 489; Knowles v. Ogletree, 96 Ala. 555; Espalla v. Gottschalk, 95 Ala. 254; Nicrosi v. Phillipi, 91 Ala. 299; Kellum v. Balkum, 93 Ala. 317; Houston v. Farris, 71 Ala. 570; Bishop v. Truett, 85 Ala. 376; Murphree v. Bishop, 79 Ala. 404; Brown v. Beatty, 76 Ala. 250; Beck v. Glenn, 69 Ala. 121; Townsend v. VanAspen, 38 Ala. 572; Milner v. Wilson, 45 Ala. 478; Ward v. Lewis, 1 Stew. 26; Webb v. Carlisle, 65 Ala. 313; Dumas v. Hunter, 25 Ala. 711; Clark v. Stringfellow, 4 Ala. 353; Cunningham v. Green, 3 Ala. 127. **Muniments of title admissible as evidence of the extent of possession only.**—Barefoot v. Wall, 108 Ala. 327; O'Donohue v. Holmes, 107 Ala. 489; Turnley v. Hanna, 82 Ala. 139; Brady v. Huff, 75 Ala. 80; Bohannon v. State, 73 Ala. 47; Cunningham v. Green, 3 Ala. 127.

2136 (3390) (3705) (3308) (2860). **Statute of limitations.**—The uninterrupted occupation of the premises in controversy by the defendant, for the space of three entire years preceding the exhibition of the complaint, is, if the estate of the defendant is not determined, a bar to any proceeding under this chapter.

Statute must be pleaded.—Hightower v. Fitzpatrick, 42 Ala. 597; Furguson v. Carter, 40 Ala. 607. **Does not run until right of action accrues.**—Posey v. Pressly, 60 Ala. 243. Promise to pay rent prevents the running of the statute. King v. Bolling, 77 Ala. 594; Barefoot v. Wall, 108 Ala. 327.

2137 (3391) (3709) (3312). **Damages for detainer after expiration of term of lease.**—Any person who, having entered into the possession of lands and tenements under a contract of lease, forcibly or unlawfully retains the possession thereof after the expiration of his term, or refuses to surrender the same on the written demand of the lessor, his agent, or attorney, or legal representative, is liable for double the amount of the annual rent agreed to be paid under such contract, and for such other special damages as may be thereby sustained by the party thus unlawfully kept out of possession, to be recovered as now provided by law in actions of unlawful detainer, or by an action at law for damages.

Landlord entitled to recover "double the amount of the annual rent" without regard to the time of the wrongful detention.—Ullman v. Herzberg, 91 Ala. 458; Lykes v. Schwarz, Ib. 461. **And such other damages as he may sustain.**—Powell v. Sturdevant, 85 Ala. 243. **If rent and damages claimed**

exceed one hundred dollars, the justice has no jurisdiction to award them. Lykes v. Schwarz, supra. **Neither has the circuit court on appeal.**—Ib.; Giddens v. Bolling, 92 Ala. 586. Remedy is by separate action.—Ib., see also Spear v. Lomax, 42 Ala. 576; Lomax v. Spear, 51 Ala. 532; Hurst v. Thompson, 68 Ala. 560.

2138 (3392) (3708) (3311) (2863). **Proceedings no bar to other remedies.**—No proceeding had under this chapter, or judgment rendered, bars or prevents the party injured from prosecuting an action of trespass, or other action, against the aggressor or party offending.

Belshaw v. Moses, 49 Ala. 283; Abrams v. Watson, 59 Ala. 530.

2139 (3393) (3706) (3309) (2861). **Subpœnas and depositions.** The justice before whom the complaint is exhibited must issue subpœnas for witnesses, at the request of either party, which may be served either by the sheriff, or by a constable; and either party may also take the testimony of witnesses by deposition, as in other cases before justices of the peace.

2140 (3394) (3707) (3310) (2862). **Penalty for failure to execute process.**—Any sheriff or constable, neglecting or refusing to execute any process placed in his hands by a justice of the peace, in virtue of the authority conferred by this chapter, forfeits to the party aggrieved two hundred dollars, to be recovered by action in the circuit court, or court of like jurisdiction.

2141 (3395) (3715) (3318) (2869). **Fine against defaulting witness.**—Any witness, duly subpœnaed, and failing to attend, or refusing to testify, may be fined by the justice of the peace not exceeding one hundred dollars, for the use of the county, for which he may issue execution directed to the constable.

2142 (3396) (3716) (3319) (2870). **Notice to witness before judgment is made absolute.**—The judgment specified in the preceding section must not be made absolute, until ten days after service of a written notice on such witness, informing him of the rendition of such judgment.

2143 (3397) (3717) (3320) (2871). **Fees of witnesses, sheriffs and constables.**—In proceedings under this chapter, the following fees shall be allowed: To witnesses, the same fees as are allowed by law in the circuit court; to the sheriffs, for serving summons and return, one dollar; for executing writ of restitution, two dollars; for making money on execution, serving subpœnas, etc., the same fees as in cases in the circuit court; to the constables, the same fees as in other cases.

2144 (3398) (3654, 3710) (3257, 3313) (2811, 2864). **Appeals.** Any party may appeal from a judgment rendered against him by a justice of the peace to the circuit court at any time within ten days after the rendition thereof, and such appeal and the proceedings thereon shall in all respects, except as otherwise provided in this chapter, be governed by the provisions of this Code relating to appeals from justices of the peace.

Appeal bond secures only such judgment as could be rendered by the justice.—Lykes v. Schwartz, 91 Ala. 461; Waite v. Ward, 93 Ala. 271. See note to next section.

2145 (3401) (3711) (3314) (2865). **When writ of restitution in unlawful detainer, etc., not suspended.**—In cases of forcible entry or unlawful detainer, an appeal does not prevent the issue of a writ of restitution, unless the defendant also executes bond, with sufficient sureties, payable to the plaintiff, in the sum of twice the yearly value of the rent of the premises, to be ascertained by the justice, with condition to pay the plaintiff all such damages as he may sustain by the prosecution of the appeal.

Supersedeas bond only stays writ of restitution, and secures the plaintiff for rent and damages pending the appeal.—Lykes v. Schwartz, 91 Ala. 461; Waite v. Ward, 93 Ala. 271; Robbins v. Battle House, 74 Ala. 499.

2146 (3411) (3712, 3713) (3315, 3316) (2866, 2867). **Judgment in forcible entry or unlawful detainer; writ of restitution.**—In cases of forcible entry or unlawful detainer, the judgment, if against the appellant, must be rendered in the appellate court against him and the sureties on the appeal or certiorari bond, including the costs in the inferior and appellate courts; and if the appeal or certiorari was sued out by the defendant, and a supersedeas bond was executed, a writ of restitution must be awarded, and, on motion of the plaintiff, judgment must also be rendered against the defendant and the sureties on his supersedeas bond for the value of the rent of the premises pending the appeal.

Giddens v. Bolling, 92 Ala. 586; Lykes v. Schwartz, 91 Ala. 461; Waite v. Ward, 93 Ala. 271.

Feb. 16, 1897, p. 1125, §1. **2147. When defendant may remove cause from justice's to circuit court for trial of title; petition and contents.**—Any defendant in a suit for forcible entry and detainer or unlawful entry and detainer may remove such action from the justice of the peace or other officer before whom the same is brought, to the circuit court of the county in which the real estate sued for is situated in the following manner: The defendant desiring to remove such case shall, at any time before the judgment is rendered against him by the justice or other officer before whom the same is brought, file a sworn petition to the judge of probate of the county in which such suit is commenced, or any judge of the circuit court or judge of the city court or chancellor in the state. Such petition to contain the following statements: The fact that such suit is pending before a justice of the peace or other officer, the name of the plaintiff, with description of the property sued for, the name and title of the officer before whom the suit is pending, the county and precinct of the justice, and also stating that the defendant entered on the land sued for peaceably and under claim of title thereto and not under claim of any agreement, contract or understanding with the plaintiff, or those under whom he claims, and that petitioner bona fide desires to contest with plaintiff the title to said land, and asking that such suit be removed from before such justice or other officer to the circuit court of the county in which such lands are situated.

Ib. §2. **2148. Order on petition; bond; writ to justice, etc.**—Upon the presentation of a verified petition as provided for in the preceding

section to any judge or chancellor as above set forth, it shall be the duty of the judge or chancellor to forthwith indorse thereon an order directed to the clerk of the circuit court of the county in which such land lies, commanding him, on petitioner entering into a bond in an amount to be fixed by such judge or chancellor in such order, payable to the plaintiff in such suit, with surety to be approved by said clerk, and conditioned to pay all costs of suit and all damages which may be assessed in the circuit court against the defendant for the rent, or for the use and occupation of said lands, and all other damages which may be assessed against the defendant in the event the plaintiff should recover in the said cause, to issue a writ directed to such justice or other officer before whom such suit is pending, commanding him to certify all the papers and proceedings in such case to the circuit court of said county; and the justice of the peace or other officer to whom such writ is issued shall at once on the service thereof certify and transmit all the papers and proceedings in said case to said circuit court.

Ib. §3.

2149. Trial of title in circuit court as in statutory ejectment; rents; judgment; execution against sureties on removal bond. On the trial of all cases removed under the provisions of the two preceding sections, to the circuit court, the plaintiff must recover on the strength of his legal title as in a statutory action in the nature of an action of ejectment, unless he can prove that the defendant, or those under whom he claims, entered on said lands under some contract or agreement between plaintiff, or those under whom he claimed, or by use of force; in which latter case no inquiry can be had as to the respective strength of the legal title of the plaintiff or defendant. On the trial of such cases in the circuit court evidence may be introduced to the rental value of the land sued for during the detention, and should the jury find for the plaintiff they will assess his damages, and judgment shall be rendered accordingly. Writs of possession and fieri facias shall issue on such judgment as in cases of judgment in statutory real actions, and should the same be returned "no property found," as to damages and costs assessed against the defendant, execution may at once issue against the sureties provided for by the preceding section for all such damages and costs.

CHAPTER 53.

FRAUDS AND PERJURIES.

ARTICLE 1.—THE PREVENTION OF FRAUDS AND PERJURIES. 2150–2158.
2.—CONTRACTS IN CONSIDERATION OF NOT BIDDING FOR PUBLIC LANDS. 2159–2162.
3.—GAMBLING AND WAGERING CONTRACTS. 2163–2169.
4.—CONTRACTS MADE ON SUNDAY. 2170.

ARTICLE 1.

THE PREVENTION OF FRAUDS AND PERJURIES.

2150 (1730) (2120) (1861) (1550). **Conveyances of personal property in trust for the grantor are void as to creditors.**—All deeds of gift, all conveyances, transfers and assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, are void against creditors, existing or subsequent, of such person.

Sales by debtor to creditor, retaining possession or reserving any benefit, prima facie fraudulent.—Hobbs v. Bibb, 2 S. 54; P. & M. Bank v. Borland, 5 Ala. 531; Wiswall v. Ticknor, 6 Ala. 178; s. c., 9 Ala. 305; Mauldin v. Mitchell, 14 Ala. 814 (explaining Henderson v. Mabry, 13 Ala. 713); Millard v. Hall, 24 Ala. 209; Montgomery v. Kirksey, 26 Ala. 172; Mayer v. Clark, 40 Ala. 259; Moog v. Benedicks, 49 Ala. 512; Seaman v. Nolen, 68 Ala. 463; Rankin v. Vandiver, 78 Ala. 562; Hill v. Rutledge, 83 Ala. 162; Woodall v. Kelly, 85 Ala. 368; Tompkins v. Levy, 87 Ala. 263; Stephens v. Regenstein, 89 Ala. 561; Ullman v. Myrick, 93 Ala. 532; Bluthenthal v. Magnus, 97 Ala. 530; Troy Fertilizer Co. v. Norman, 107 Ala. 667. **Where mortgagor retains possession and sells for his own benefit, the mortgage is fraudulent and void.**—Grinshaw v. Walker, 12 Ala. 101; West v. Snodgrass, 17 Ala. 549; Wiley v. Knight, 27 Ala. 336; Constantine v. Twelves, 29 Ala. 607; Reynold v. Crook, 31 Ala. 634; King v. Kenan, 38 Ala. 63; Commercial Bank v. Brewer, 71 Ala. 574; Renfro v. Goetter, 78 Ala. 311; Benedict v. Renfro, 75 Ala. 121; Owens v. Hobbie, 83 Ala. 466; Jefferson County Bank v. Ebron, 84 Ala. 529; McDermott v. Ebron, 90 Ala. 258; Hayes v. Westcott, 91 Ala. 143; Howell v. Carden, 99 Ala. 100; O'Neil v. Birmingham Brewing Co., 101 Ala. 383. **But not if mortgagor sells as agent of mortgagee.**—Hindman v. Dill, 11 Ala. 689; Ticknor v. Wiswall, 9 Ala. 305; Constantine v. Twelves, 29 Ala. 607; Brown v. Lyon, 17 Ala. 659; Miller v. Stetson, 32 Ala. 161; Perry Ins. Co. v. Foster, 58 Ala. 502; Benedict v. Renfro, 75 Ala. 121; Murray v. McNealy, 86 Ala. 234; Howell v. Carden, 99 Ala. 100; Troy Fertilizer Co. v. Norman, 107 Ala. 667. **Nor when mortgage given to secure purchase-money of goods presently purchased from mortgagee.** Adkins v. Bynum, 109 Ala. 281. **Mortgage on farm supplies, to be used in growing mortgaged crop, excepted.**—Ravises v. Alston, 5 Ala. 297; DuBose v. DuBose, 7 Ala. 235; Bank v. Clarke, 7 Ala. 765; Graham v. Lockhart, 8 Ala. 9; Perry Ins. Co. v. Foster, 58 Ala. 502; Pugh v. Harwell, 108 Ala. 486. **Recording equivalent to change of possession.**—Benedict v. Renfro, 75 Ala. 121; Howell v. Carden, 99 Ala. 100; Cooper v. Berney Nat. Bank, 99 Ala. 119. See also citations to section 2156 (1735). **Pleading; existing and subsequent creditors may join in bill to set conveyance aside.**—O'Neil v. Birmingham Brewing Co., 101 Ala. 383.

2151 (1731). **Mortgage of personal property.**—A mortgage of personal property is not valid, unless made in writing and subscribed by the mortgagor.

Dowdell v. Empire Fur. Co., 84 Ala. 316; Weaver v. Bell, 87 Ala. 385; Winslow v. Jones, 88 Ala. 496; Barnhill v. Howard, 104 Ala. 412; Houston v. State, Ala. (21 So. 813).

2152 (1732) (2121) (1862) (1551). Certain contracts to be in writing, else void.—In the following cases, every agreement is void, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party to be charged therewith, or some other person by him thereunto lawfully authorized in writing:

1. Every agreement which, by its terms, is not to be performed within one year from the making thereof.

2. Every special promise by an executor or administrator to answer damages out of his own estate.

3. Every special promise to answer for the debt, default, or miscarriage of another.

4. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry.

5. Every contract for the sale of lands, tenements, or hereditaments, or of any interest therein, except leases for a term not longer than one year, unless the purchase-money, or a portion thereof, be paid, and the purchaser be put in possession of the land by the seller.

Contracts not void, but voidable.—Patterson v. Ware, 10 Ala. 444; Gillespie v. Buttle, 15 Ala. 276; Flinn v. Barber, 64 Ala. 193; Cooper v. Hornsby, 71 Ala. 62; Gordon v. Tweedy, 71 Ala. 202; Comer v. Sheehan, 74 Ala. 452; Shakespeare v. Allen, 76 Ala. 351; Lewis v. Teal, 82 Ala. 288; Jones v. Field, 83 Ala. 445; Espalla v. Wilson, 86 Ala. 487; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Lagerfelt v. McKie, 100 Ala. 430. **"Some note or memorandum thereof."** Adams v. McMillan, 7 P. 73; Hutton v. Williams, 35 Ala. 503; Benziger v. Miller, 50 Ala. 206; Carter v. Shorter, 57 Ala. 253; Jenkins v. Harrison, 66 Ala. 345; Harrison v. Parmer, 76 Ala. 157; Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417; Johnston v. Jones, 85 Ala. 286; Lakeside Land Co. v. Dromgoole, 89 Ala. 505; Alba v. Strong, 94 Ala. 163; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Troy Fertilizer Co. v. Logan, 96 Ala. 619; Trammell v. Craddock, 100 Ala. 266; Howard v. Stewart, 103 Ala. 644. **May consist of several writings if they can be connected without oral testimony.**—Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417; Alba v. Strong, 94 Ala. 163; Strouse v. Elting, 110 Ala. 132. **Note for purchase-money of land may fulfill requirements if expressing essential features.**—Reynolds v. Kirk, 105 Ala. 446. **"Expressing the consideration."**—Rigby v. Norwood, 34 Ala. 129; McQuaid v. Powers, 46 Ala. 44; Balling v. Munchus, 65 Ala. 558; Dunbar v. Smith, 66 Ala. 490; Moog v. Strang, 69 Ala. 98; Lehman v. Levy, 69 Ala. 48; Phillips v. Adams, 70 Ala. 373; Carter v. Shorter, 57 Ala. 253; Jenkins v. Harrison, 66 Ala. 345; Horton v. Wallner, 71 Ala. 452; Foster v. Napier, 74 Ala. 393; Smith v. Freeman, 75 Ala. 285; Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417; Johnston v. Jones, 85 Ala. 286; Lakeside Land Co. v. Dromgoole, 89 Ala. 505; Alba v. Strong, 94 Ala. 163; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Homan v. Stewart, 103 Ala. 644; Reynolds v. Kirk, 105 Ala. 446; White v. White, 107 Ala. 417. **"For value received."**—Flowers v. Steiner, 108 Ala. 440. **"Subscribed by the party, etc."**—Norman v. Mallett, 8 Ala. 548; Knox v. King, 36 Ala. 367; Heflin v. Milton, 69 Ala. 354; Chambers v. Ala. Iron Co., 67 Ala. 353; Linn v. McLean, 85 Ala. 250; Johnston v. Jones, 85 Ala. 286; Lakeside Land Co. v. Dromgoole, 89 Ala. 505; Alba v. Strong, 94 Ala. 163; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Troy Fertilizer Co. v. Logan, 96 Ala. 619; Lagerfelt v. McKie, 100 Ala. 430. **The statute avoids executory, not executed contracts.**—Rakes v. Pope, 7 Ala. 161; Rhodes v. Storr, 7 Ala. 346; Gafford v. Stearns, 51 Ala. 434; Lavender v. Hall, 60 Ala. 214; Gordon v. Tweedy, 71 Ala. 202; Mewburn v. Bass, 82 Ala. 622; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Lagerfelt v. McKie, 100 Ala. 430; McMahon v. Jacoway, 105 Ala. 585. **Neither complaint nor bill need allege that contract is in writing.**—Kizer v. Locke, 9 Ala. 269; Perrine v. Leachman, 10 Ala. 140; Robinson v. Tipton, 31 Ala. 595; Rich v. Thornton, 65 Ala. 309; Rose v. Gibson, 71 Ala. 35; Linn v. McLean, 80 Ala. 360; Jonas v. Field, 83 Ala. 445; Knox v. Childersburg Land Co., 86 Ala. 180; Dexter v. Ohlander, 89 Ala. 262; Trammell v. Craddock, 93 Ala. 450; Piedmont Land & Imp. Co. v. Piedmont Foundry Co., 96 Ala. 389. **Must be specially pleaded in defense.**—Patterson v. Ware, 10 Ala. 444; Rich v. Thornton, 65 Ala. 309; Gordon v. Tweedy, 71 Ala. 202; Bailey v. Irwin, 72 Ala. 505; Shakespeare v. Alba, 76 Ala. 351; Martin v. Blanchett, 77 Ala. 288; Brigham v. Carlisle, 78 Ala. 243; Lewis v. Teal, 82 Ala. 288; Jonas

v. Field, 83 Ala. 445; Campbell v. Davis, 85 Ala. 56; Espalla v. Wilson, 86 Ala. 487; White v. Levy, 93 Ala. 484; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Hunt v. Johnson, 96 Ala. 130; Smith v. Pritchett, 98 Ala. 649; Lagerfelt v. McKie, 100 Ala. 430; Whisenant v. Gordon, 101 Ala. 250; Beadle v. Seat, 102 Ala. 532; Harper v. Campbell, Ib. 342; Strouse v. Elting, 110 Ala. 132. **Defense may be interposed by demurrer when complaint or bill shows contract obnoxious, etc.**—Bolling v. Munchus, 65 Ala. 558; Phillips v. Adams, 70 Ala. 373; Lewis v. Teal, 82 Ala. 288; Manning v. Pippen, 86 Ala. 357; Trammell v. Craddock, 93 Ala. 450; White v. Levy, 93 Ala. 484; Clanton v. Scruggs, 95 Ala. 279; Beadle v. Seat, 102 Ala. 532; Harper v. Campbell, Ib. 342; Strouse v. Elting, 110 Ala. 132. **Stranger cannot take advantage of the statute.**—Gafford v. Stearns, 51 Ala. 434; Lavender v. Hall, 60 Ala. 214; Cooper v. Hornsby, 71 Ala. 62; Gordon v. Tweedy, 71 Ala. 202; Comer v. Sheehan, 74 Ala. 452; Shakespeare v. Alba, 76 Ala. 351; Welsh v. Coley, 82 Ala. 363; Mewburn v. Bass, 82 Ala. 622; Sayre v. Wilson, 86 Ala. 151. **Burden of proof.**—Jonas v. Field, 83 Ala. 445; Jones v. Hagler, 95 Ala. 529. **When parties estopped from pleading statute.** Firestone v. Firestone, 49 Ala. 128; Meyer v. Mitchell, 75 Ala. 475; Linn v. McLean, 85 Ala. 250; White v. Levy, 93 Ala. 484; Clanton v. Scruggs, 95 Ala. 279; Nelson v. Shelby Mfg. Co., 96 Ala. 515. **Subdivision 1.—What within.**—Crommelin v. Thiess, 31 Ala. 412; Scroggin v. Blackwell, 36 Ala. 351; Parker v. Hollis, 50 Ala. 411; Dickson v. Trisbee, 52 Ala. 165; Tredaway v. Smith, 56 Ala. 345; Horton v. Woolner, 71 Ala. 452; Martin v. Blanchett, 77 Ala. 288; Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417; White v. Levy, 93 Ala. 484. **Verbal contract for rent of land for one year, to commence at a future day.**—Bain v. McDonald, 111 Ala. 269. **What not within.**—Adams v. Adams, 26 Ala. 272; Derrick v. Brown, 66 Ala. 162; Heflin v. Milton, 69 Ala. 354; Singer Mfg. Co. v. Sayre, 75 Ala. 270; Shakespeare v. Alba, 76 Ala. 351; Prout v. Webb, 87 Ala. 593; Troy Fertilizer Co. v. Logan, 96 Ala. 619. **Verbal contract for rent of land, made on last day of year, for succeeding year.**—Smith v. Pritchett, 98 Ala. 649. **Part performance of parol lease;** when gives validity.—Rhodes v. Weeden, 108 Ala. 252. **Subdivision 2.**—Hester v. Wesson, 6 Ala. 415; Martin v. Black, 20 Ala. 309; Starke v. Wilson, 65 Ala. 576; Read v. Rowan, 107 Ala. 366. **Subdivision 3.—What within.**—Jordan v. Garnett, 3 Ala. 610; Milton v. DeYampert, 3 Ala. 648; Martin v. Black, 20 Ala. 309; s. c., 21 Ala. 721; Hollingsworth v. Martin, 23 Ala. 591; Rigby v. Norwood, 34 Ala. 129; Boykin v. Dohlonde, 37 Ala. 577; Sharman v. Jackson, 47 Ala. 329; Bullard v. Jones, 50 Ala. 382; Dunbar v. Smith, 66 Ala. 490; Foster v. Napier, 74 Ala. 393; Westmoreland v. Porter, 75 Ala. 452; Trammell v. Hudmon, 78 Ala. 222; Clark v. Jones, 85 Ala. 127; s. c., 87 Ala. 474; Webb v. Hawkins Lumber Co., 101 Ala. 630; White v. White, 107 Ala. 417; Read v. Rowan, 107 Ala. 366; Strouse v. Elting, 110 Ala. 132. **What not within.**—Click v. McAfee, 7 P. 62; McKenzie v. Jackson, 4 Ala. 230; Bates v. Starr, 6 Ala. 697; Brown v. Barnes, 6 Ala. 604; Faires v. Lodanc, 10 Ala. 50; Cameron v. Clark, 11 Ala. 259; Merrill v. Smith, 12 Ala. 569; Oliver v. Hire, 14 Ala. 590; Files v. McLeod, 14 Ala. 611; Blount v. Hawkins, 19 Ala. 100; Scott v. Myatt, 24 Ala. 489; Jolley v. Walker, 26 Ala. 690; Sanford v. Howard, 29 Ala. 684; Mason v. Hall, 30 Ala. 599; Ledlow v. Becton, 36 Ala. 596; Ragland v. Wynn, 37 Ala. 32; Rutledge v. Townsend, 38 Ala. 706; McQuaid v. Powers, 46 Ala. 44; Marx v. Bell, 48 Ala. 497; Davidson v. Rothschild, 49 Ala. 104; Carpenter v. Murphree, 49 Ala. 84; Wells v. Thompson, 50 Ala. 83; Boswell v. Carlisle, 55 Ala. 554; Graves v. Shulman, 59 Ala. 406; Lock v. Humphries, 60 Ala. 117; Underwood v. Lovelace, 61 Ala. 155; Dunbar v. Smith, 66 Ala. 490; Lehman v. Levy, 69 Ala. 48; Moog v. Strang, 69 Ala. 98; Madden v. Floyd, 69 Ala. 221; Thornton v. Williams, 71 Ala. 555; Thornton v. Guice, 73 Ala. 321; Carlisle v. Campbell, 76 Ala. 247; Wright v. State, 79 Ala. 262; Doss v. Peterson, 82 Ala. 253; Woodruff v. Scaife, 83 Ala. 152; Clark v. Jones, 85 Ala. 127; s. c., 87 Ala. 474; Espalla v. Wilson, 86 Ala. 487; Prout v. Webb, 87 Ala. 593; Aultman v. Fletcher, 110 Ala. 452. **The promise must not only be in writing, but must also be founded on a valuable consideration.**—Files v. McLeod, 14 Ala. 611; Thompson v. Hall, 16 Ala. 204; Beall v. Ridgway, 18 Ala. 117; Rutledge v. Townsend, 38 Ala. 706; Watson v. Reynolds, 54 Ala. 191; Underwood v. Lovelace, 61 Ala. 155; Bolling v. Munchus, 65 Ala. 558; Clark v. Jones, 85 Ala. 127; Read v. Rowan, 107 Ala. 366. **Subdivision 4.** Carter v. Worthington, 82 Ala. 334. **Subdivision 5.—What within.**—Agee v. Steele, 8 Ala. 948; Riddle v. Brown, 20 Ala. 412; Chambliss v. Smith, 30 Ala. 366; Hutton v. Williams, 35 Ala. 503; Martin v. Wharton, 38 Ala. 637; Carroll v. Powell, 48 Ala. 298; Parker v. Hollis, 50 Ala. 411; Hughes v. Hatchett, 55 Ala. 539; Sanders v. Robertson, 57 Ala. 465; Carter v. Shorter, Ib. 253; Patton v. Beecher, 62 Ala. 579; Lehman v. Collins, 69 Ala. 127; Heflin v. Milton, Ib. 354; Phillips v. Adams, 70 Ala. 373; Rose v. Gibson, 71 Ala. 35; Whaley v. Whaley, 71 Ala. 159; Jenkins v. Lovelace, 72 Ala. 303; Stringfellow v. Ivie, 73 Ala. 209; Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417; Hammond v. Winchester, 82 Ala. 470; DeBardelaben v. Stoudenmire, 82 Ala. 574; Williams v. Gibson, 84 Ala. 228; Linn v. McLean, 85 Ala. 250; Johnston v. Jones, Ib. 286; Powell v. Higley,

90 Ala. 103; Trammell v. Craddock, 93 Ala. 450; Bradfield v. Elyton Land Co., 93 Ala. 527; Goree v. Clements, 94 Ala. 337; Clanton v. Scruggs, 95 Ala. 279; Manning v. Pippen, 95 Ala. 537; s. c., 86 Ala. 357; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Garner v. Ullman, 99 Ala. 218. **What not within.**—Holman v. Bank, 12 Ala. 369; Scoggin v. Slater, 22 Ala. 687; Danforth v. Laney, 28 Ala. 274; Rhodes v. Otis, 33 Ala. 578; Arrington v. Porter, 47 Ala. 714; Gafford v. Stearns, 51 Ala. 434; Burkham v. Mastin, 54 Ala. 122; Harris v. Powers, 57 Ala. 139; Jenkins v. Harrison, 66 Ala. 345; Lakeside Land Co. v. Dromgoole, 89 Ala. 505; McLure v. Tennille, 89 Ala. 572; Powell v. Higley, 90 Ala. 103; Spies v. Price, 91 Ala. 166; Price v. Bell, 91 Ala. 180; E. T. V. & G. R. Co. v. Davis, 91 Ala. 615; Dahm v. Barlow, 93 Ala. 120; Franke v. Riggs, Ib. 252; Steadham v. Parrish, Ib. 465; L. & N. R. Co. v. Philyaw, 94 Ala. 463; Manning v. Pippen, 95 Ala. 537 (limiting Rakes v. Pope, 7 Ala. 161); Nelson v. Shelby Mfg. Co., 96 Ala. 515; Smith v. Pritchett, 98 Ala. 649; Trammell v. Craddock, 100 Ala. 266; Parrish v. Strodham, 102 Ala. 615; McMahon v. Jacoway, 105 Ala. 585; Reynolds v. Kirk, 105 Ala. 446; Eubank v. May, 105 Ala. 629. **Partial performance as affecting contract.**—Brewer v. Brewer, 19 Ala. 481; Chambliss v. Smith, 30 Ala. 366; Hart v. McClellan, 41 Ala. 251; White v. Smith, 51 Ala. 405; Heflin v. Bingham, 56 Ala. 566; Heflin v. Milton, 69 Ala. 354; Pike v. Pettus, 71 Ala. 98; Jenkins v. Lovelace, 72 Ala. 303; Shakespeare v. Alba., 76 Ala. 351; Martin v. Blanchett, 77 Ala. 288; Rhodes v. Weeden, 108 Ala. 252. See citations to preceding section. **Specific performance by party not signing.**—Chambers v. Ala. Iron Co., 67 Ala. 353; Heflin v. Milton, 69 Ala. 354; Moses v. McLain, 82 Ala. 370; Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417 (limiting Flinn v. Barber, 64 Ala. 193); Linn v. McLean, 85 Ala. 250; Powell v. Higley, 90 Ala. 103; Alba v. Strong, 94 Ala. 163; L. & N. R. Co. v. Philyaw, 94 Ala. 463; Nelson v. Shelby Mfg. Co., 96 Ala. 515; Whisenant v. Bordon, 101 Ala. 250; Homan v. Stewart, 103 Ala. 644. **When parol trusts within.**—Patton v. Beecher, 62 Ala. 579; Rose v. Gibson, 71 Ala. 35; Whaley v. Whaley, 71 Ala. 159; Stringfellow v. Ivie, 73 Ala. 209; Manning v. Pippen, 86 Ala. 357; s. c., 95 Ala. 537; Spies v. Price, 91 Ala. 166; Hodges v. Verner, 100 Ala. 612; Beadle v. Seat, 102 Ala. 532. See citations to section 1041 (1845). **Recovery back of money paid on contract void under statute.**—Nelson v. Shelby Mfg. Co., 96 Ala. 515; Flinn v. Barber, 59 Ala. 446; s. c., 64 Ala. 193; Oliver v. Ala. Gold Life Ins. Co., 82 Ala. 417; Donaldson v. Waters, 35 Ala. 107; s. c., 30 Ala. 175, 22 Ala. 460; Cope v. Williams, 4 Ala. 362; Allen v. Booker, 2 Stew. 21; Keath v. Patton, Ib. 38. **Verbal promise to make will void.**—Manning v. Pippen, 86 Ala. 357.

2153 (1733) (2122) (1863) (1552). **Auctioneer's written memorandum sufficient.**—When lands, tenements, or hereditaments are sold or leased at public auction, and the auctioneer, his clerk, or agent, makes a memorandum of the property, and price thereof at which it is sold or leased, the terms of sale, the name of the purchaser, or lessee, and the name of the person on whose account the sale or lease is made, such memorandum is a note of the contract, within the meaning of the preceding section.

Adams v. McMillan, 7 P. 73; Hutton v. Williams, 35 Ala. 503; Knox v. King, 36 Ala. 367; Carroll v. Powell, 48 Ala. 298; Lewis v. Wells, 50 Ala. 198; Sanders v. Cassady, 86 Ala. 246. **Memorandum cannot be afterwards added to so as to comply with statute.**—Knox v. King, 36 Ala. 367. **Who may take advantage of defect.**—Hutton v. Williams, 35 Ala. 503; Lewis v. Wells, 50 Ala. 198; Cooper v. Hornsby, 71 Ala. 62; Welsh v. Coley, 82 Ala. 363. **Sheriff is an auctioneer.**—White v. Farley, 81 Ala. 563.

2154. Officer's return or report of judicial sale sufficient.—When lands, tenements or hereditaments are sold at judicial sale, the return or report of the officer making the sale, showing the names of the parties to the cause or proceeding, a description of the property and the price at which it was sold and the name of the purchaser, is a note of the contract within the meaning of the second preceding section.

2155 (1734) (2123) (1864) (1553). **Representation of another's credit to be in writing, or else not actionable.**—No action can be maintained to charge any person, by reason of any representation or assurance made, concerning the character, conduct, ability, trade,

or dealings of any other person, when such action is brought by the person to whom such representation or assurance was made, unless the same is in writing, signed by the party sought to be charged.

Ball v. Farley, 81 Ala. 288; Mobile Savings Bank v. McDonnell, 87 Ala. 736. Fraudulent representations without the operation of the statute.—Clark v. Dunham Lumber Co., 86 Ala. 220; Mobile Savings Bank v. McDonnell, 87 Ala. 736.

2156 (1735) (2124) (1865) (1554). **All instruments made to hinder, delay, or defraud creditors, void as to creditors.**—All conveyances, or assignments in writing, or otherwise, of any estate or interest in real or personal property, and every charge upon the same, made with intent to hinder, delay, or defraud creditors, purchasers, or other persons of their lawful suits, damages, forfeitures, debts or demands; and every bond, or other evidence of debt given, suit commenced, decree or judgment suffered, with the like intent, against the persons who are or may be so hindered, delayed or defrauded, their heirs, personal representatives and assigns, are void.

Creditors entitled to benefits of statute.—Crawford v. Kirksey, 50 Ala. 590; Bibb v. Freeman, 59 Ala. 612; King v. King, 61 Ala. 479; Donley v. McKiernan, 62 Ala. 34; Pickett v. Pipkin, 64 Ala. 520; Anderson v. Anderson, 64 Ala. 403; Fearn v. Ward, 65 Ala. 33; Jenkins v. Lockard, 66 Ala. 377; Houston v. Blackman, 66 Ala. 559; Keel v. Larkin, 72 Ala. 493; Zelnicker v. Brigham, 74 Ala. 598; Hornthall v. Schonfeld, 79 Ala. 107; Tryon v. Flournoy, 80 Ala. 321; Carter v. Coleman, 82 Ala. 177; Gordon v. McIlwain, Ib. 247; Bragg v. Patterson, 85 Ala. 233; Bangs v. Edwards, 88 Ala. 382; Lammons v. Allen, 88 Ala. 417; Gilliland v. Fenn, 90 Ala. 230; Jones v. Smith, 92 Ala. 455; Pollock v. Jones, 96 Ala. 492; Yeend v. Weeks, 104 Ala. 331; Kahn v. Peter, Ib. 523; Echols v. Peurrung, 107 Ala. 660. **Gifts and voluntary conveyances within statute, without regard to intent as to existing creditors.**—Stokes v. Jones, 21 Ala. 731; Stiles v. Lightfoot, 26 Ala. 443; Huggins v. Perrine, 30 Ala. 396; Cole v. Garner, 31 Ala. 244; Williams v. Avery, 38 Ala. 115; Spencer v. Godwin, 30 Ala. 355; Leonard v. Forcheimer, 49 Ala. 145; Davidson v. Lanier, 51 Ala. 318; Bibb v. Freeman, 59 Ala. 612; McAnally v. O'Niel, 56 Ala. 299; Kirksey v. Snedecor, 60 Ala. 192; Anderson v. Anderson, 64 Ala. 403; Fern v. Ward, 65 Ala. 33; Fellows v. Lewis, 65 Ala. 343; Jenkins v. Lockard, 66 Ala. 377; Early v. Owens, 68 Ala. 171; Seals v. Robinson, 75 Ala. 363; Caldwell v. King, 76 Ala. 149; Gordon v. McIlwain, 82 Ala. 247; Keel v. Larkin, 83 Ala. 142; Jaffrey v. McGough, 83 Ala. 202; Walton v. Atkinson, 84 Ala. 592; Bangs v. Edwards, 88 Ala. 382; Lammons v. Allen, 88 Ala. 417; Ruse v. Bromberg, 88 Ala. 619; Moody v. Walker, 89 Ala. 619; Gilliland v. Fenn, 90 Ala. 230; First Nat. Bank v. Kennedy, 91 Ala. 470; Sides v. Scharff, 93 Ala. 106; McGehee v. Bank, 93 Ala. 192; Craft v. Wilcox, 102 Ala. 378; Dickson v. McLarney, 97 Ala. 383; Williams v. Spraggins, 102 Ala. 424; Yeend v. Weeks, 104 Ala. 331; Seasongood v. Ware, 104 Ala. 212; Heinz v. White, 105 Ala. 612; McTeers v. Perkins, 106 Ala. 411; Echols v. Orr, 106 Ala. 237; Echols v. Perrung, 107 Ala. 660; Beall v. Lehman-Durr Co., 110 Ala. 446; Stantz v. Huger, 107 Ala. 248. **Of what fraud attacking creditor may avail himself.**—Henry v. Murphy, 54 Ala. 246. **Badges of fraud; evidence; burden of proof.**—Borland v. Mayo, 8 Ala. 104; Terrell v. Green, 11 Ala. 207; Harkins v. Bailey, 48 Ala. 376; Marshall v. Croom, 52 Ala. 554; Tompkins v. Nichols, 53 Ala. 197; Hubbard v. Allen, 59 Ala. 283; Harrell v. Mitchell, 61 Ala. 270; Shelby v. Edwards, 75 Ala. 411; Meyer v. Sulzbacher, 76 Ala. 120; Levy v. Williams, 79 Ala. 171; Leinkauff v. Frenkle, 80 Ala. 136; Tryon v. Flournoy, 80 Ala. 321; Lawson v. Ala. Warehouse Co., 80 Ala. 341; N. Y. & Havana Cigar Co. v. Bernheim, 81 Ala. 138; Roswald v. Hobbie, 85 Ala. 73; Morrison v. Morris, 85 Ala. 196; Cooper v. Davison, 86 Ala. 367; Campbell v. Hopkins, 87 Ala. 179; Calhoun v. Hannan, 87 Ala. 277; Tompkins v. Levy, 87 Ala. 263; Lehman v. Greenhut, 88 Ala. 478; Ruse v. Bromberg, 88 Ala. 619; Dollins v. Pollock, 89 Ala. 351; Mobile Savings Bank v. McDonnell, 89 Ala. 434; Kellar v. Taylor, 90 Ala. 289; Caldwell v. Pollak, 91 Ala. 353; Waxelbaum v. Bell, 91 Ala. 331; First Nat. Bank v. Kennedy, 91 Ala. 470; Robinson v. Moseley, 93 Ala. 70; Harris v. Russell, 93 Ala. 59; Schaungut v. Udell, 93 Ala. 302; Skipper v. Reeves, 93 Ala. 332; Bell v. Kendall, 93 Ala. 489; Ullman v. Myrick, 93 Ala. 532; Zeigler v. Carter, 94 Ala. 291; Smith v. Collins, 94 Ala. 394; Smith v. Kauffman, 94 Ala. 364; Reeves v. Skipper, 94 Ala. 407; Buford v. Shannon, 95 Ala. 205; Page v. Francis, 97 Ala. 379; Dickson v. McLarney, 97 Ala. 383; Chapman v. Glennon, 98 Ala. 263; Howell v. Carden, 99 Ala.

100; Richardson v. Stringfellow, 100 Ala. 416; Bates v. Morris, 101 Ala. 282; Murray v. Heard, 103 Ala. 400 (qualifying Moore v. Penn, 95 Ala. 200); Schall v. Weil, 103 Ala. 411; Thompson v. Tower Mfg. Co., 104 Ala. 140; Yeend v. Weeks, 104 Ala. 331; Rice v. Less, 105 Ala. 298; Seasongood v. Ware, 104 Ala. 212; H. B. Shoe Co. v. Ware, 104 Ala. 212; Hudson v. Baur Grocery Co., 105 Ala. 200; Teague v. Lindsay, 106 Ala. 266; McTeers v. Perkins, 106 Ala. 411; Jordan v. Collins, 107 Ala. 572; Stoutz v. Huger, 107 Ala. 248. **Transactions between relatives, as showing fraud; burden of proof as to consideration, etc.**—Moog v. Farley, 79 Ala. 246; Gordon v. McIlwain, 82 Ala. 247; Owens v. Hobbie, 82 Ala. 466; Pollak v. Searcy, 84 Ala. 259; Lehman v. Greenhut, 88 Ala. 478; Harmon v. McRae, 91 Ala. 401; Robinson v. Moseley, 93 Ala. 70; Sides v. Scharff, 93 Ala. 106; Marx v. Leinkauff, 93 Ala. 453; Smith v. Collins, 94 Ala. 394; Reeves v. Skipper, 94 Ala. 407; Schloss v. McGuire, 102 Ala. 626; Teague v. Lindsay, 106 Ala. 266; Troy Fertilizer Co. v. Norman, 107 Ala. 667. **Transactions between husband and wife; burden of proof.**—Booker v. Walker, 81 Ala. 549; Bangs v. Edwards, 88 Ala. 382; Lammons v. Allen, 88 Ala. 417; Kelly v. Connell, 110 Ala. 543. **A fraudulent intent of debtor, participated in by purchaser, necessary to invalidate sale.**—Borland v. Mayo, 8 Ala. 104; Anderson v. Hooks, 9 Ala. 704; Ala., etc., Co. v. Pettway, 24 Ala. 544; Hall v. Heydon, 41 Ala. 242; Wiley v. Knight, 27 Ala. 336; Marshall v. Croom, 52 Ala. 554; s. c., 60 Ala. 121; Tompkins v. Nichols, 53 Ala. 197; Crawford v. Kirksey, 55 Ala. 282; Coleman v. Smith, 55 Ala. 368; McWilliams v. Rodgers, 56 Ala. 87; Flewellen v. Crane, 58 Ala. 627; Florence S. M. Co. v. Zeigler, 58 Ala. 221; Bradley v. Ragsdale, 64 Ala. 558; Pickett v. Pipkin, 64 Ala. 520; Leinkauff v. Morris, 66 Ala. 406; Crommelin v. McCauley, 67 Ala. 542; Warren v. Jones, 68 Ala. 449; Lehman v. Kelly, 68 Ala. 192; Gordon v. Tweedy, 71 Ala. 202; Kiser v. Gamble, 75 Ala. 386; Shealy v. Edwards, 75 Ala. 411; s. c., 78 Ala. 176; Benedict v. Renfro, 75 Ala. 121; Meyer v. Sulzbacher, 76 Ala. 120; Hodges v. Coleman, 76 Ala. 103; Levy v. Williams, 79 Ala. 171; Moog v. Farley, 79 Ala. 246; Leinkauff v. Frenkle, 80 Ala. 136; Tryon v. Flournoy, 80 Ala. 321; Lawson v. Ala. Warehouse Co. 80 Ala. 341; Carter v. Coleman, 82 Ala. 177; Gordon v. McIlwain, 82 Ala. 247; Gilkey v. Pollock, 82 Ala. 503; Keel v. Larkin, 83 Ala. 142; Jaffrey v. McGough, 83 Ala. 202; Hoyt v. Turner, 84 Ala. 523; Stix v. Keith, 85 Ala. 465; Campbell v. Davis, 85 Ala. 56; Woodall v. Kelly, 85 Ala. 368; Cooper v. Davison, 86 Ala. 367; McDowell v. Steele, 87 Ala. 493; Tompkins v. Levy, 87 Ala. 263; Globe Co. v. Thacher, 87 Ala. 458; Bangs v. Edwards, 88 Ala. 382; Lammons v. Allen, 88 Ala. 417; Ruse v. Bromberg, 88 Ala. 619; Stephens v. Regenstein, 89 Ala. 561; Gilliland v. Fenn, 90 Ala. 230; Kellar v. Taylor, 90 Ala. 289; Truss v. Davidson, 90 Ala. 359; Cartwright v. Bamberger, 90 Ala. 405; First Nat. Bank v. Kennedy, 91 Ala. 470; Beachman v. Koch, 92 Ala. 452; Schaungut v. Udell, 93 Ala. 302; Skipper v. Reeves, 94 Ala. 407; Smith v. Collins, 94 Ala. 394; Smith v. Kauffman, 94 Ala. 364; Reeves v. Skipper, 94 Ala. 407; Pattison v. Bragg, 95 Ala. 55; Dickson v. McLarney, 97 Ala. 383; Chapman v. Glennon, 98 Ala. 263; Aiken v. Steiner, 98 Ala. 355; Howell v. Carden, 99 Ala. 100; Cooper v. Berney Nat. Bank, 99 Ala. 119; Cartwright v. Bamberger, 99 Ala. 622; Kelly v. Schillinger, 102 Ala. 336; Ft. Payne Bank v. The Ala. Sanitarium, 103 Ala. 358; Rice v. Less, 105 Ala. 298; Carter v. O'Bryan, 105 Ala. 305; Beall v. Lehman-Durr Co., 110 Ala. 446; Jordan v. Collins, 107 Ala. 572; Barrett v. Pollak Co., 108 Ala. 390. **Conveyance may be good in part, and void as to remainder.**—Hooks v. Anderson, 9 Ala. 704; Tatum v. Hunter, 14 Ala. 557; Jaffrey v. McGough, 83 Ala. 202; Campbell v. Davis, 85 Ala. 56; Ruse v. Bromberg, 88 Ala. 619; First Nat. Bank v. Kennedy, 91 Ala. 470. **Sales to creditors, in payment of debts; preferences.**—Young v. Dumas, 39 Ala. 60; Crawford v. Kirksey, 50 Ala. 590; s. c., 55 Ala. 282; Flewellen v. Crane, 58 Ala. 627; Eskridge v. Abrahams, 61 Ala. 134; Warren v. Jones, 68 Ala. 449; Lehman v. Kelly, Ib. 192; Lyne v. Wann, 72 Ala. 43; Shealy v. Edwards, 75 Ala. 411; Hodges v. Coleman, 76 Ala. 103; Meyer v. Sulzbacher, 76 Ala. 120; Rankin v. Vandiver, 78 Ala. 562; Hornthall v. Schonfeld, 79 Ala. 107; Levy v. Williams, 79 Ala. 171; Moog v. Farley, 79 Ala. 246; Leinkauff v. Frenkle, 80 Ala. 136; Tryon v. Flournoy, 80 Ala. 321; Robinson v. Fairbanks, 81 Ala. 132; Robinson v. Levi, 81 Ala. 134; N. Y. & Havana Cigar Co. v. Bernheim, 81 Ala. 138; McCord v. Tennille, 81 Ala. 168; Carter v. Coleman, 82 Ala. 177; Pritchett v. Pollock, 82 Ala. 169; Dixon v. Higgins, 82 Ala. 284; Owens v. Hobbie, 82 Ala. 466; Wood v. Moore, 84 Ala. 253; Carter v. Coleman, 84 Ala. 256; Pollak v. Searcy, 84 Ala. 259; Jefferson County Bank v. Ebron, 84 Ala. 529; Walton v. Atkinson, 84 Ala. 592; Morrison v. Morris, 85 Ala. 196; Knowles v. Street, 87 Ala. 357; McDowell v. Steele, 87 Ala. 493; Dollins v. Pollock, 89 Ala. 351; Chipman v. Stern, Ib. 207; Mobile Savings Bank v. McDonnell, Ib. 434; Harmon v. McRae, 91 Ala. 401; Harris v. Russell, 93 Ala. 59; Bell v. Kendall, Ib. 489; Ullman v. Myrick, Ib. 532; Zeigler v. Carter, 94 Ala. 291; Brinson v. Edwards, 94 Ala. 447; Moore v. Penn, 95 Ala. 200; Buford v. Shannon, 95 Ala. 205; Ellison v. Moses, 95 Ala. 221; Lathrop Co. v. Bessemer Savings Bank, 96 Ala. 350; Montgomery v. Bayliss, 96 Ala. 342; Pollock v. Mayer, 96 Ala. 172; Page v. Francis, 97 Ala. 379; Blumenthal v. Magnus, 97 Ala. 530; Dawson v.

Flash, 97 Ala. 539; Steiner v. Lowery, 98 Ala. 208; Fargason v. Hall, 99 Ala. 209; Chaflin v. Rodenberg, 101 Ala. 213; s. c., 104 Ala. 560; Curran v. Olmstead, 101 Ala. 692; Bates v. Vandiver, 102 Ala. 249; Schloss v. McGuire, 102 Ala. 626; Goetter v. Smith, 104 Ala. 481; Seasongood v. Ware, 104 Ala. 212; H. B. Shoe Co. v. Ware, 104 Ala. 212; Bray v. Ely, 105 Ala. 553; Troy Fertilizer Co. v. Norman, 107 Ala. 667; National Bank v. Dickinson, 107 Ala. 265. **Judgment confessed by debtor.**—Rochester v. Armour, 92 Ala. 432 (distinguished Bell v. Goetter, 106 Ala. 462). **Collusive attachment.**—Comer v. Hidelbach, 109 Ala. 220. **Sales by corporations to creditors governed by same rules as those made by natural persons.**—O'Bear Jewelry Co. v. Valfer, 106 Ala. 205 (overruling Goodyear Rubber Co. v. Geo. D. Scott Co., 96 Ala. 439; Corey v. Wadsworth, 99 Ala. 68; Gibson v. Trowbridge Fur. Co., 96 Ala. 357); Pollak v. Muscogee Mfg. Co., 108 Ala. 467; Barrett v. Pollak Co., 108 Ala. 390. **"Fraudulent intent supersedes inquiry into the consideration."**—Bryant v. Young, 21 Ala. 264; Reeves v. Skipper, 94 Ala. 407; Blumenthal v. Magnus, 97 Ala. 530. **Character of fraud for relief against judgment or decree.**—Crommelin v. McCauley, 67 Ala. 542. **Conveyance, absolute on its face, but intended as security, fraudulent.**—Bryant v. Young, 21 Ala. 264; Hartshorn v. Williams, 31 Ala. 149; Sims v. Gaines, 64 Ala. 392; Danner v. Stonewall Ins. Co., 77 Ala. 184; Proskauer v. Savings Bank, 77 Ala. 257; Tryon v. Flournoy, 80 Ala. 321; Hill v. Rutledge, 83 Ala. 162; Jefferson County Bank v. Ebron, 84 Ala. 529; Campbell v. Davis, 85 Ala. 56; Ruse v. Bromberg, 88 Ala. 619; O'Neal v. Birmingham, etc., Co., 101 Ala. 383; Moog v. Barrow, 101 Ala. 209; Birmingham Dry Goods Co. v. Roden, 110 Ala. 511; Steiner v. Scholze, Ala. (21 So. 428). **Conveyances of exempt property not within the statute.**—Fellows v. Lewis, 65 Ala. 343; Smith v. Cockrell, 66 Ala. 64; Lehman v. Bryan, 67 Ala. 558; Wright v. Smith, 66 Ala. 514; Alley v. Daniel, 75 Ala. 403; Stephens v. Regenstein, 89 Ala. 561; Myers v. Conway, 90 Ala. 109; Southern Suspender Co. v. Van Borries, 91 Ala. 507; Brinson v. Edwards, 94 Ala. 447; Hodges v. Winston, 95 Ala. 514; Chipman v. Glennon, 98 Ala. 263; Fuller v. Whitlock, 99 Ala. 411; Pollak v. McNeil, 100 Ala. 203; Kennedy v. First Nat. Bank, 107 Ala. 170. **When usurious consideration not fraudulent.**—Harris v. Russell, 93 Ala. 59; Lauchheim v. First Nat. Bank, 98 Ala. 521. **Simulated consideration.** Proskauer v. People's Sav. Bk., 77 Ala. 257. **When conveyance by principal to surety supported by adequate consideration.**—Proskauer v. People's Sav. Bk., 77 Ala. 257; Harmon v. McRae, 91 Ala. 401; Pollock v. Jones, 96 Ala. 492. **Reservation of benefit by securing long time to debtor.**—McDowell v. Steele, 87 Ala. 493; Howell v. Bowman, 99 Ala. 100; Coal City C. & C. Co. v. Hazard Powder Co., 108 Ala. 218; Age-Herald Co. v. Potter, 109 Ala. 675; Berney Nat. Bank v. Guyon, 111 Ala. 491. **Other reservations of benefit.**—Stephens v. Regenstein, 89 Ala. 561; Page v. Francis, 97 Ala. 379; Blumenthal v. Magnus, 97 Ala. 530. **Reservation of benefit defined.**—Goetter v. Blumenthal v. Smith, 104 Ala. 481. **Relationship as a circumstance for consideration.**—Schloss v. McGuire, 102 Ala. 626; Teagon v. Lindsay, 106 Ala. 266; Goetter v. Norman, 107 Ala. 585; Troy Fertilizer Co. v. Norman, 107 Ala. 667; Robert Graves Co. v. McDade, 108 Ala. 420; Halsey v. Connell, 111 Ala. 221, qualifying earlier cases holding relationship a badge of fraud. **Fraudulent to delay creditor, although purpose is to prevent sacrifice by forced sale.**—Lehman v. Kelly, 68 Ala. 192; Berney Nat. Bank v. Guyon, 111 Ala. 491. **Fraudulent conveyance by solvent debtor.** Smith v. Collins, 94 Ala. 394; Dickson v. McLarney, 97 Ala. 389; Carter v. O'Bryan, 105 Ala. 305; Beall v. Lehman, 110 Ala. 446. **Mortgages of stocks of merchandise, when and when not fraudulent.**—Benedict v. Renfro, 75 Ala. 121; Owen v. Hobbie, 82 Ala. 466; Murray v. McNealy, 86 Ala. 234; McDermott v. Eborn, 90 Ala. 258; Thornton v. Cook, 97 Ala. 630; Adkins v. Bynum, 109 Ala. 281. **Mortgages of crops distinguished.**—Pugh v. Harwell, 108 Ala. 486, citing Ravisies v. Alston, 5 Ala. 297; P. & M. Bank v. Clark, 7 Ala. 765; Graham v. Lockhart, 8 Ala. 9; Perry Ins. Co. v. Foster, 58 Ala. 502. **Sales on new consideration, principles governing.**—Shealy v. Edwards, 78 Ala. 176; Levy v. Williams, 79 Ala. 171; Leinkauff v. Frenkle, 80 Ala. 136; Owens v. Hobbie, 82 Ala. 467; Stix v. Keith, 85 Ala. 465; Wilhoyte v. Udell, 93 Ala. 302; Smith v. Collins, 94 Ala. 394; Skipper v. Reeves, 94 Ala. 407; Montgomery v. Bayless, 96 Ala. 342; Smith v. Kauffman, 100 Ala. 408; s. c., 94 Ala. 364; Kelly v. Schillinger, 102 Ala. 336; Jordan v. Collins, 107 Ala. 572. **As to subsequent creditors, conveyances invalidated only for actual fraud.**—Craft v. Wilcox, 102 Ala. 378; Heinz v. White, 105 Ala. 765; Echols v. Orr, 106 Ala. 237; Stoutz v. Huger, 107 Ala. 248; Jordan v. Collins, 107 Ala. 572; Echols v. Puerrung, 107 Ala. 660; Elyton Land Co. v. Iron City S. B. Works, 109 Ala. 602; City Fur. Co. v. Simmons, 111 Ala. 438. **Frauds on partnership creditors: Sale to pay debt of one partner.**—Pritchell v. Pollock, 82 Ala. 169; Goetter v. Norman, 107 Ala. 585; Troy Fertilizer Co. v. Norman, 107 Ala. 667; Henderson v. Perryman (MS.); Muskegon Valley Fur. Co. v. Phillips, Ala. (21 So. Rep. 822). **Dissolving partnership, dividing assets and claiming exemptions.**—Levy v. Williams, 79 Ala. 171; Beachman v. Koch, 92 Ala. 92; Aiken v. Steiner, 98 Ala.

355; Porter v. Ullman, 105 Ala. 623. **Conveyances fraudulent as to creditors are valid inter partes.**—Pond v. Wadsworth, 24 Ala. 513; Wiley v. Knight, 27 Ala. 336; Strange v. Graham, 56 Ala. 614; Pickett v. Pipkin, 64 Ala. 520; Williams v. Higgins, 69 Ala. 517; Shealy v. Edwards, 75 Ala. 411; Coffey v. Norwood, 81 Ala. 512; Keel v. Larkin, 83 Ala. 142; Gilliland v. Fenn, 90 Ala. 230; Echols v. Peurrung, 107 Ala. 660; Heinz v. White, 105 Ala. 670; Glover v. Walker, 107 Ala. 540. **Insolvent may invest non-exempt personalty in exempt realty.**—Reeves v. Peterman, 109 Ala. 366. **Insolvency defined.**—Smith v. Collins, 94 Ala. 394. **Out of fraudulent sale vendor's lien does not arise.** Glover v. Walker, 107 Ala. 540. **Pleading. Averments of bill attacking conveyance as fraudulent.**—Flewellen v. Crane, 58 Ala. 627; Pickett v. Pipkin, 64 Ala. 520; Seals v. Robinson, 75 Ala. 363; Jones v. Massey, 79 Ala. 370; Buford v. Steele, 80 Ala. 147; Pollak v. Searcy, 84 Ala. 259; Curran v. Olmstead, 101 Ala. 692; Craft v. Wilcox, 102 Ala. 378; Williams v. Spraggins, 102 Ala. 424; Smith v. Hall, 103 Ala. 235; Mountain v. Whitman, 103 Ala. 630; McLarin v. Anderson, 104 Ala. 201; Hill v. Moore, 104 Ala. 353; Heinz v. White, 105 Ala. 670; Echols v. Orr, 106 Ala. 237; Echols v. Peurrung, 107 Ala. 660; Beall v. Lehman-Durr Co., 110 Ala. 446. **Answer must contain more than mere denial.**—Moog v. Barrow, 101 Ala. 209.

2157 (1736) (2125) (1866) (1555). **Mortgage void as to creditors, if the grantor reserve a benefit.**—Every deed of trust, mortgage, or other security, made to secure any pre-existing debt, whether such debt is due or not, or absolute, or conditional, is fraudulent and void, as to the creditors of the grantor, when any creditor provided for thereby is required to make any release, or to do any other act impairing his existing rights, before participating in, or receiving the securities therein provided for him.

Henry v. Murphy, 54 Ala. 246; Perry Ins. Co. v. Foster, 58 Ala. 502; City Nat. Bank v. Jeffries, 73 Ala. 183; Campbell v. Hopkins, 87 Ala. 179. But see Murphy v. Caldwell, 50 Ala. 461.

2158 (1737) (2126). **When general assignment or conveyance enures equally to the benefit of all creditors.**—Every general assignment made by a debtor, or a conveyance by a debtor, of substantially all of his property in payment of a prior debt, by which a preference or priority of payment is given to one or more creditors, over the remaining creditors of the grantor, shall be and enure to the benefit of all the creditors of the grantor equally; but this section shall not apply to, or embrace mortgages or pledges or pawns given to secure a debt contracted contemporaneously with the execution of the mortgage or pledge or pawn, and for the security of which the mortgage or pledge or pawn was given. A general assignment within the meaning of this section shall include, in addition to the conveyances now defined as such by law, every judgment confessed, attachment procured by a debtor, or other disposition of property by which a debtor conveys all or substantially all of his property subject to execution, in payment of, or as security for a prior debt, or charges such property with the payment of such debt.

Feb. 21, 1893, p. 1046. Feb. 16, 1897, p. 1089, §§1, 2.

Definition of "general assignment."—Holt v. Bancroft, 30 Ala. 193; Price v. Mazange, 31 Ala. 701; Longmire v. Goode, 38 Ala. 577; Stetson v. Miller, 36 Ala. 642; Harkins v. Bailey, 48 Ala. 376; Crawford v. Kirksey, 55 Ala. 282; Perry Ins. Co. v. Foster, 58 Ala. 502. **Partial assignment not within the statute; substantially all of debtor's property must be conveyed.**—Holt v. Bancroft, 30 Ala. 193; Warren v. Lee, 32 Ala. 440; Stetson v. Miller, 36 Ala. 642; Longmire v. Goode, 38 Ala. 577; DuBose v. Carlisle, 51 Ala. 590; Crawford v. Kirksey, 55 Ala. 282; Perry Ins. Co. v. Foster, 58 Ala. 502; Shirley v. Teal, 67 Ala. 449; Bromberg v. Heyer, 69 Ala. 22; s. c., 74 Ala. 524; Danner v. Brewer, 69 Ala. 191; Otis v. McGuire, 76 Ala. 295; Watts v. Eufaula Nat. Bank, 76 Ala. 474; Ordway v. White, 80 Ala. 244; Warten v. Matthews, 80 Ala. 429; Parsons v. Johnson, 84 Ala. 254; Collier v. Wood, 85 Ala. 91; Anniston Car-

riage Works v. Ward, 101 Ala. 670; Strickland v. Gay, 104 Ala. 375; Bell v. Goetter, 106 Ala. 462. **Statute merely annuls preferences; assignment remains valid,** enuring to benefit of all creditors.—Holt v. Bancroft, 30 Ala. 193; Price v. Mazange, 31 Ala. 701; Stetson v. Miller, 36 Ala. 642; Murphy v. Caldwell, 50 Ala. 461; DuBose v. Carlisle, 51 Ala. 590; Perry Ins. Co. v. Foster, 58 Ala. 502; Rapier v. Gulf City Paper Co., 64 Ala. 330; In re Tallassee Mfg. Co., 64 Ala. 567; Shirley v. Teal, 67 Ala. 449; Danner v. Brewer, 69 Ala. 191; Otis v. McGuire, 76 Ala. 295; Watts v. Eufaula Bank, 76 Ala. 474; Espy v. Comer, 80 Ala. 333; Rochester v. Armour, 92 Ala. 432; Sampson v. Jackson, 103 Ala. 550; Pollak Co. v. Muscogee Mfg. Co., 108 Ala. 467; Barrett v. Pollak Co., 108 Ala. 390; Anniston L. & T. Co. v. Ward, 108 Ala. 85; Gay v. Strickland, 112 Ala. 567. **Statute operates on transfers, whether general assignments in form or not.**—Holt v. Bancroft, 30 Ala. 193; Price v. Mazange, 31 Ala. 701; Warren v. Lee, 32 Ala. 440; Perry Ins. Co. v. Foster, 58 Ala. 502; Rapier v. Gulf City Paper Co., 64 Ala. 330; In re Tallassee Mfg. Co., 64 Ala. 567; Shirley v. Teal, 67 Ala. 449; Danner v. Brewer, 69 Ala. 191; Anniston Carriage Works v. Ward, 101 Ala. 670. **When mortgages, transfers, confessed judgments, collusive attachments, etc., followed or not by general assignment, are construed together and are within the statute.**—Holt v. Bancroft, 30 Ala. 193; Crawford v. Kirksey, 55 Ala. 282; Perry Ins. Co. v. Foster, 58 Ala. 502; Danner v. Brewer, 69 Ala. 191; Rochester v. Armour, 92 Ala. 432; Ellison v. Moses, 95 Ala. 221; Bell v. Goetter, 106 Ala. 462; Pollak Co. v. Muscogee Mfg. Co., 108 Ala. 467; Barrett v. Pollak Co., 108 Ala. 390; Comer v. Heidelback, 109 Ala. 220. **Corporations are governed by same rules as individuals; their property is not a trust fund** for their creditors.—O'Bear Jewelry Co. v. Volfer, 106 Ala. 205 (overruling Goodyear Rubber Co. v. Geo. D. Scott Co., 96 Ala. 439; Gibson v. Fur. Co., 96 Ala. 357; Corey v. Wadsworth, 99 Ala. 68); Pollak Co. v. Muscogee Mfg. Co., 108 Ala. 467; Barrett v. Pollak Co., 108 Ala. 390. **Trusts within the statute are peculiarly the objects of equity jurisdiction.** Anniston Carriage Works v. Ward, 101 Ala. 670; Sampson v. Jackson, 103 Ala. 550. **Lien arising from operation of law not within the statute.**—Perry Ins. Co. v. Foster, 58 Ala. 502; Bell v. Goetter, 106 Ala. 462. **Burden of proof on party attacking.**—Ordway v. White, 80 Ala. 244; Parsons v. Johnson, 84 Ala. 254. **Transferee takes and holds as trustee for all creditors.**—Holt v. Bancroft, 30 Ala. 193; Crawford v. Kirksey, 55 Ala. 282; Perry Ins. Co. v. Foster, 58 Ala. 502; Danner v. Brewer, 69 Ala. 191; Warten v. Matthews, 80 Ala. 429; Anniston Carriage Works v. Ward, 101 Ala. 670; Anniston L. & T. Co. v. Ward, 108 Ala. 85; Gay v. Strickland, 112 Ala. 567. **Assignment or transfer good inter partes.**—Rapier v. Gulf City Paper Co., 64 Ala. 330; In re Tallassee Mfg. Co., 64 Ala. 567; Anniston L. & T. Co. v. Ward, 108 Ala. 85. See also citations to section 2156 (1735).

ARTICLE 2.

CONTRACTS IN CONSIDERATION OF NOT BIDDING FOR PUBLIC LANDS.

2159 (1738) (2127) (1869) (1557). **Agreement not to bid, unlawful.**—No person must, directly or indirectly, receive any money or thing of value, in consideration of not bidding at any sale of public lands within this state.

2160 (1739) (2128) (1870) (1558). **No public land to be bid off under a contract to resell.**—No person must bid off any of the public lands within this state, under an agreement, previously made, to transfer the same, or any part thereof, or interest therein, for a premium or advance to be paid therefor.

2161 (1740) (2129) (1871) (1559). **Such contracts void; penalty for making them.**—All contracts in violation of the provisions of the two preceding sections are void; and any person violating such provisions forfeits double the amount of money or value of the thing received, or agreed to be received; one half to the use of the person suing for the same, and the other half to the state.

2162 (1741) (2130) (1873) (1561). **Improvements on such lands may be sold.**—Nothing in the preceding sections of this article must

be so construed as to prevent any person who has made improvements on public lands from selling the same, and receiving the purchase-money therefor.

ARTICLE 3.

GAMBLING AND WAGERING CONTRACTS.

2163 (1742) (2131) (1874) (1562). **Gambling contracts void, and money paid may be recovered.**—All contracts founded, in whole or in part, on a gambling consideration, are void; and any person who has paid any money, or delivered any thing of value, lost upon any game or wager may recover such money, thing, or its value, by action commenced within six months from the time of such payment or delivery.

Negotiable instruments made on a gaming consideration, are void, even in the hands of an innocent holder, unless induced by the representations of the indorser.—Manning v. Manning, 8 Ala. 138; Givens v. Rogers, 11 Ala. 543; Ivey v. Nicks, 14 Ala. 564; Hawley v. Bibb, 69 Ala. 52; Lee v. Boyd, 86 Ala. 283. **Contracts for "futures," the actual delivery of the goods not being contemplated,** are void.—Hawley v. Bibb, 69 Ala. 52; W. U. Tel. Co. v. Way, 83 Ala. 542; Lee v. Boyd, 86 Ala. 283; Perryman v. Wolffe, 93 Ala. 290; Hanna v. Ingram, 93 Ala. 482; Peet v. Hatcher, 112 Ala. 514. **Policy of insurance taken out by one on the life of another in whom he has no insurable interest,** is void.—Helmetag v. Miller, 76 Ala. 183; Sands v. Hammell, 108 Ala. 624. **If several interested in money lost, each may maintain a separate action for what he lost.**—Davis v. Orme, 36 Ala. 540. **Bailee or trustee, losing money, may recover.**—Harris v. Brooks, 56 Ala. 388; Lee v. Boyd, 86 Ala. 283. **Liability of stakeholder.**—Wood v. Duncan, 9 P. 227; Shackelford v. Ward, 3 Ala. 37; Ivey v. Phifer, 11 Ala. 535; Lewis v. Burton, 74 Ala. 317. **Revocation; recovery back; executed; in pari delicto.**—Thornhill v. O'Rear, 108 Ala. 299.

2164 (1743) (2132) (1875) (1563). **Any person may recover money so paid for the use of the wife or child of the loser.**—Any other person may also recover the amount of such money, thing, or its value, by action commenced within twelve months after the payment or delivery thereof, for the use of the wife, or if no wife, the child or children, and if no child or children, the next of kin of the loser.

Separate action for husband's share of money lost in joint wager lies, although winner was induced to believe that loser had no interest.—Davis v. Orme, 36 Ala. 540.

2165 (1744) (2133) (1876) (1564). **One judgment bars other suits for the same cause.**—A judgment under either of the two preceding sections for the amount of money paid, thing delivered, or its value, is a good defense to any action brought for such money, thing or its value, under the provisions of the other section.

2166 (1745) (2134) (1877) (1565). **The winner may be garnished by a creditor.**—Any creditor of such losing party may, at any time within two years from the payment of such money, or delivery of such thing, garnish the winner as other debtors are garnished; and if such garnishee fail to appear, judgment may be rendered against him as against other garnishees failing to answer; the

answer of the garnishee shall not be evidence against him in a criminal prosecution.*

2167 (1746) (2135) (1878) (1566). **Garnishment bars another suit.**—A judgment recovered by a creditor under the provisions of the preceding section, is a defense to any action brought by any person under the provisions of the first two sections of this article.

2168 (1747) (2136) (1879) (1567). **A prior judgment bars the garnishment.**—In like manner, a judgment recovered under the provisions of the first two sections of this article is a defense to any proceeding on any garnishment served after the recovery of such judgment; and the court may make any order staying proceedings as may be necessary to protect the rights of the defendant.

2169 (1748) (2137) (1881) (1570). **The answers of the parties do not subject them to prosecution.**—In any action brought under the provisions of this article, either party may be examined on interrogatories as in other cases; but the answer of the party cannot be used against him in any criminal prosecution.

ARTICLE 4.

CONTRACTS MADE ON SUNDAY.

2170 (1749) (2138) (1882) (1571). **Such contracts void except in case of necessity, or for works of charity.**—All contracts made on Sunday, unless for the advancement of religion, or in the execution, or for the performance of some work of charity, or in case of necessity, are void.

Promissory note made on Sunday is void and incapable of confirmation. O'Donnell v. Sweeney, 5 Ala. 467; Shippey v. Eastwood, 9 Ala. 198; Dodson v. Harris, 10 Ala. 566; Saltmarsh v. Tuthill, 13 Ala. 390; Hauerwas v. Goodloe, 101 Ala. 162. **Note or contract, dated or agreed to, on Sunday, but shown to have been made on a secular day, is valid.**—Butler v. Lee, 11 Ala. 885; Aldridge v. Bank, 17 Ala. 45; Flanagan v. Meyer, 41 Ala. 132; Burns v. Moore, 76 Ala. 339; Phœnix Ins. Co. v. Boulden, 96 Ala. 609. **But absolutely void if dated on a secular day and made on Sunday.**—Flanagan v. Meyer, 41 Ala. 132; Burns v. Moore, 76 Ala. 339; Anderson v. Bellenger, 87 Ala. 334 (distinguishing Saltmarsh v. Tuthill, 13 Ala. 390). **Gift may be made on Sunday.**—Wheeler v. Glasgow, 97 Ala. 700. **Statute of limitations cannot be extended, nor estoppel arise,** from a promise made on Sunday.—Hussey v. Roquemore, 27 Ala. 281; Bumgardner v. Taylor, 28 Ala. 627. **Money, deposited on Sunday, and afterwards converted, may be recovered.**—Tamplin v. Still, 77 Ala. 374. **Verdict may be received on Sunday;** judgment being entered afterwards.—Reid v. State, 53 Ala. 402; Chamblee v. State, 78 Ala. 466. **Contract, void because made on Sunday, may be looked to to explain possession of land.**—Rainey v. Capps, 22 Ala. 288. **What necessity will make Sunday contract valid.**—Shippey v. Eastwood, 9 Ala. 198; Hooper v. Edwards, 18 Ala. 280; s. c., 25 Ala. 528; Hammons v. State, 59 Ala. 164; Burns v. Moore, 76 Ala. 339; W. U. Tel. Co. v. Wilson, 93 Ala. 32. **Bail-bond is a work of necessity,** and execution on Sunday makes valid contract.—Hooper v. Edwards, 18 Ala. 280; s. c., 25 Ala. 528; Hammons v. State, 59 Ala. 164. **Telegram announcing death of relative** a necessity.—W. U. Tel. Co. v. Wilson, 93 Ala. 32. **But not the prevention of delay in traveling.**—Burns v. Moore, 76 Ala. 339. **When question of necessity one for the jury.**—Burns v. Moore, supra; Hooper v. Edwards, 18 Ala. 280; s. c., 25 Ala. 528.

---

*As amended by joint committee.

CHAPTER 54.

GARNISHMENTS.

ARTICLE 1.—GARNISHMENT DEFINED; WHEN AND HOW ISSUED AND DISSOLVED. 2171–2186.
2.—ANSWER OF GARNISHEE AND PROCEEDINGS THEREON. 2187–2207.
3.—GARNISHMENTS ISSUED BY JUSTICES OF THE PEACE. 2208–2212.

ARTICLE 1.

GARNISHMENT DEFINED; WHEN AND HOW ISSUED AND DISSOLVED.

2171 (2994). **Garnishment; nature of.**—A garnishment, as the word is employed in this Code, is process to reach and subject money or effects of a defendant in attachment, or in a judgment or decree, or in a pending suit commenced in the ordinary form, in the possession or under the control of a third person, or debts owing such defendant, or liabilities to him on contracts for the delivery of personal property, or on contracts for the payment of money which may be discharged by the delivery of personal property, or on contracts payable in personal property; and such third person is called the garnishee.

A legal, not an equitable remedy.—Thomas v. Hopper, 5 Ala. 442; Price v. Masterson, 35 Ala. 483; Goden v. Pierson, 42 Ala. 370; Henry v. Murphy, 54 Ala. 246; Edmondson v. DeKalb County, 51 Ala. 103; Harris v. Miller, 71 Ala. 26; Henderson v. Ala. Gold Life Ins. Co., 72 Ala. 32; Carroll v. Milner, 93 Ala. 301; Cross v. Spillman, 93 Ala. 170; Pollock v. Jones, 96 Ala. 492; First Nat. Bank v. Dunn, 102 Ala. 204; Francis-Chenoweth Hardware Co. v. Bailey, 104 Ala. 566; White v. Simpson, 107 Ala. 386. **Of statutory creation and must be exercised within statutory limits,** but remedial.—Jones v. Crews, 64 Ala. 368; Behman v. Hudman, 79 Ala. 532; s. c., 85 Ala. 135; Adams v. Creen, 100 Ala. 218; Porter & Blair Hardware Co. v. Perdue, 105 Ala. 293; White v. Simpson, 107 Ala. 386. **Writ is mere process, not pleading;** if defective, must be reached by plea in abatement or motion to quash, not by demurrer. Curry v. Woodward, 50 Ala. 258; Lady Ensley Furnace Co. v. Rogan, 95 Ala. 594. **Only such demands can be reached as lie in contract,** and which defendant could enforce in an action at law.—Harrell v. Whitman, 19 Ala. 135; Roby v. Labuzan, 21 Ala. 60; Walke v. McGehee, 11 Ala. 273; s. c., 15 Ala. 183; Cook v. Walthall, 20 Ala. 334; Self v. Kirkland, 24 Ala. 275; Lundie v. Bradford, 26 Ala. 512; Nesbitt v. Ware, 30 Ala. 68; Powell v. Sammons, 31 Ala. 552; Goden v. Pierson, 42 Ala. 370; Henry v. Murphy, 54 Ala. 246; Toomer v. Randolph, 60 Ala. 356; Jones v. Crews, 64 Ala. 368; Henderson v. Ala. Gold Life Ins. Co., 72 Ala. 32; Alexander v. Pollock, 72 Ala. 137; Levisohn v. Waganer, 76 Ala. 412; Nat. Com. Bank v. Miller, 77 Ala. 168; Teague v. LeGrand, 85 Ala. 493; Leinkauff v. Forcheimer, 87 Ala. 258; Archer v. People's Savings Bank, 88 Ala. 249; White v. Hobart, 90 Ala. 368; Mobile St. Ry. v. Turner, 91 Ala. 213; Stuckey v. McKibbon, 92 Ala. 622; Craft v. Summersell, 93 Ala. 430; Gatchell v. Foster, 94 Ala. 622; Howard I. Co. v. Tilman, 103 Ala. 121; Cunningham v. Baker, 104 Ala. 160; White v. Simpson, 107 Ala. 386. **If there is fraud or collusion garnishment may lie** although defendant cannot maintain action.—Alexander v. Pollock, 72 Ala. 137; Archer v. People's Savings Bank, 88 Ala. 249. **Lies to subject money or property deposited by debtor with an agent, with directions to pay it to a third person, if third person has not consented to receive it.**—Clark v. Cilley, 36 Ala. 652; Coleman v. Hatcher, 77 Ala. 217; Thweatt v. McCullough, 84 Ala. 517; Leinkauff v. Forcheimer, 87 Ala. 258; Sterrett v. Miles, 87 Ala. 472; Trager v. Feibleman, 95 Ala. 60. **Lies against maker for negotiable promissory note so long as defendant is the owner.**—Mills v. Stewart, 12 Ala. 90; Gatchell v. Foster, 94 Ala. 622. **Lies to subject funds of municipal corporation,** deposited in bank,

derived from the sale of property not used for municipal purposes.—Murphree v. City of Mobile, 108 Ala. 663. **And to subject bank deposit.**—Birmingham Nat. Bank v. Mayer, 104 Ala. 634. **Does not lie against corporation to subject the portion of its capital stock owned by defendant.**—P. & M. Bank v. Leavens, 4 Ala. 753. **Nor to subject taxes due municipal corporation.** Underhill v. Calhoun, 63 Ala. 216 (overruling Smoot v. Hart, 33 Ala. 69). **Nor to subject the salary of a public officer.**—Pruitt v. Armstrong, 56 Ala. 306. **Nor against county treasurer on a judgment against county.**—Edmondson v. DeKalb County, 51 Ala. 103. **Nor against municipal corporation to subject the salary of an employe.**—Craft v. Summersell, 93 Ala. 430; Porter Blair Hdw. Co. v. Perdue, 105 Ala. 293. **Nor to subject undivided interest in a promissory note.**—Martin v. Carter, 90 Ala. 96. **Nor to subject choses in action in possession of garnishee.**—Jones v. Norris, 2 Ala. 527; Marston v. Carr, 16 Ala. 325; Pearce v. Shorter, 50 Ala. 318; Jones v. Crews, 64 Ala. 368; Levisohn v. Waganer, 76 Ala. 412; Craft v. Summersell, 93 Ala. 430. **Nor to subject rents received by first mortgagee in excess of his debt** to the payment of debt due second mortgagee.—Toomer v. Randolph, 60 Ala. 356. **Nor to subject wages of employe where contract was to pay in advance and payment was so made.**—Alexander v. Pollock, 72 Ala. 137; Archer v. People's Savings Bank, 88 Ala. 249; Gray v. Perry H. Co., 111 Ala. 532; Steiner v. Bank of Montgomery, Ala. (22 So. 72). **Nor to subject money or effects taken from a prisoner when unlawfully arrested.**—Cunningham v. Baker, 104 Ala. 160. **Contract to perform labor cannot be subjected.**—Hurst v. Home Protection Ins. Co., 81 Ala. 174. **Any number may be joined as garnishees** whether indebted severally or jointly.—Curry v. Woodward, 50 Ala. 258; s. c., 53 Ala. 371; Pearce v. Shorter, 50 Ala. 318. **Mere irregularities in the original proceedings cannot be set up by garnishee;** but he may raise objection that they are void.—Smith v. Chapman, 6 P. 365; Dew v. Bank, 9 Ala. 323; Flash v. Raul, 29 Ala. 141; Matthews v. Sands, 29 Ala. 136; Hollingsworth v. Hammond, 30 Ala. 668; Gunn v. Howell, 35 Ala. 144; Curry v. Woodward, 50 Ala. 258; Security Loan Asso. v. Weems, 69 Ala. 584; Donald v. Nelson, 95 Ala. 111; White v. Simpson, 107 Ala. 386. **Garnishee cannot set off debt due him by a partnership** of which defendant a member, except by agreement to that effect.—Bradley Fer. Co. v. Pollock, 104 Ala. 402. **May show satisfaction of original judgment**—Thompson v. Wallace, 3 Ala. 132; Worley v. M. & C. R. Co., 72 Ala. 20. **Cannot question its ownership.**—Jackson v. Shipman, 28 Ala. 488. **May set up invalidity of fraudulent conveyance.**—Henry v. Murphy, 54 Ala. 246. **Payment or change or modification of existing contract, after service,** cannot prejudice plaintiff.—Skipper v. Foster, 29 Ala. 330; M. & O. R. Co. v. Whitney, 39 Ala. 468; Fowler v. Williamson, 52 Ala. 16; Archer v. People's Savings Bank, 88 Ala. 249; Mobile St. Ry. Co. v. Turner, 91 Ala. 213; Lady Ensley Furnace Co. v. Rogan, 95 Ala. 594. **Garnishee is a stakeholder and will be protected against double payment.** Duncan v. Ware, 5 S. & P. 119; Crawford v. Slade, 9 Ala. 887; Mills v. Stewart, 12 Ala. 90; Skipper v. Foster, 29 Ala. 330; Gunn v. Howell, 35 Ala. 144; Montgomery Gas L. Co. v. Merrick, 61 Ala. 535. **Practice where several writs served simultaneously.**—Warren v. Mathews, 96 Ala. 183; Guilford v. Reeves, 103 Ala. 301. **Notice not necessary before issuance of writ.**—Teague v. LeGrand, 85 Ala. 493; Birmingham Nat. Bank v. Mayer, 104 Ala. 634.

2172 (2968, 2971) (3219, 3218) (2892) (2471). **Garnishment may issue pending suit, or after judgment.**—The plaintiff in any pending suit for the recovery of money, or the plaintiff or his assignee in any judgment or decree on which execution can issue, may obtain process of garnishment as defined in the preceding section.

Must issue from the court having jurisdiction of the original proceeding. First Nat. Bank v. Dunn, 102 Ala. 204. **May issue on decree in chancery.** Jones v. Crews, 64 Ala. 368; Long v. Walker, 84 Ala. 72. **Against married women.**—Long v. Walker, 84 Ala. 72.

2173 (2968, 2973) (3219) (2892) (2471). **Affidavit required in all cases.**—To obtain such writ of garnishment, the plaintiff, his agent or attorney, must make, before an officer authorized to administer oaths, and file with the justice of the peace or clerk of the court in which the suit is pending or the judgment or decree was rendered, an affidavit stating the amount due from the defendant to the plaintiff, or his assignee, and that process of garnishment is believed to be necessary to obtain satisfaction thereof, and that the person to

be summoned as garnishee is believed to be chargeable as garnishee in the cause. It is not ground of objection that two or more persons having separate interests are mentioned as garnishees.

2174 (2968) (3219) (2892) (2471). **Bond required when garnishment issues pending suit.**—When the garnishment is in aid of a pending suit, the plaintiff, his agent or attorney, must also give bond in double the amount claimed in the suit, with sufficient surety to be approved by the officer issuing the writ, with condition that the plaintiff will prosecute the garnishment to effect, and pay the defendant all such damages as he may sustain from the wrongful or vexatious suing out of such garnishment; and such bond, as to suit thereon, is subject to the provisions of this Code relating to suits on attachment bonds.

Long v. Walker, 84 Ala. 72.

2175 (2946) (3269) (2944) (2517). **Garnishment; issue and return.**—Upon the filing of the affidavit, or the affidavit and bond, as the case may be, the officer filing the same must issue process of garnishment and a copy thereof for each garnishee to be served by the proper officer, requiring the garnishee to appear at a specified time and answer, upon oath, whether, at the time of the service of the garnishment, or at the time of making his answer, or at any time intervening the time of serving the garnishment and making the answer, he was indebted to the defendant, and whether he will not be indebted in future to him by a contract then existing, and whether by a contract then existing he is liable to him for the delivery of personal property, or for the payment of money which may be discharged by the delivery of personal property, or which is payable in personal property, and whether he has not in his possession or under his control money or effects belonging to the defendant.*

2176. Notice to defendant; when to be given.—When the defendant resides within the state, and the garnishment is issued on a judgment or decree, or in a pending suit in which an appearance has not been entered for the defendant, the officer issuing the garnishment must issue notice thereof to the defendant, which notice must be served on him at least five days before judgment against the garnishee. Dec. 9, 1886, p. 141.

2177 (2952) (3276) (2951) (2524). **Debts or demands in suit subject to garnishment.**—A debt or demand which is subject to garnishment may be reached and subjected, though suit may be pending thereon; and if the suit be not pending in the court from which the garnishment issues, the court, on proof by the garnishee of the pendency of the garnishment, must, on the rendition of judgment, stay execution until notified by the clerk of the court in which the garnishment or attachment is instituted, that final judgment has been rendered; in which case it must make the appropriate order according as the judgment is rendered for the plaintiff or defendant.

Includes judgments.—Skipper v. Foster, 29 Ala. 330; Calhoun v. Whittle, 56 Ala. 138. **When garnishee sued by defendant for same debt; stay of pro-**

*As amended by joint committee.

ceedings.—Hitt v. Lacy, 3 Ala. 104; Montgomery Gas Co. v. Merrick, 61 Ala. 534.

2178 (2948) (3271) (2946) (2519.) **Executors and administrators.** Executors and administrators may be garnished for debts due by the testator or intestate to the defendant, and may have process of garnishment in their representative character.

Lies against executor to subject money due by him officially to himself personally.—Dudley v. Falkner, 49 Ala. 148. **Administrator may be summoned within six months,** but no judgment may be rendered until the lapse of the statutory period.—Moore v. Stainton, 22 Ala. 831. **Administrator cannot question ownership** of original judgment.—Jackson v. Shipman, 28 Ala. 488.

2179 (2949) (3272) (2947) (2520). **Garnished for amounts due legatees and distributees.**—Executors and administrators may be garnished for debts due the legatees, or distributees; but no judgment can be rendered against them until a settlement of the estate, unless they assent to the legacy, or admit assets to pay the amount claimed, or some portion thereof, out of the distributive share of the debtor.

Judgment cannot go against garnishee unless he admits sufficient assets to pay amount.—Corbitt v. Pynes, 45 Ala. 258. See also citations to preceding section.

2180 (2950) (3273) (2948) (2521). **Money in hands of officers or attorneys.**—Money in the hands of an attorney at law, sheriff, or other officer may be garnished; and in the case of officers of the court, the money must be paid into court, to abide the result of the suit, unless the court otherwise direct.

Does not authorize subjection of funds held by county treasurer in his official capacity to payment of a judgment against county.—Edmondson v. DeKalb Co., 51 Ala. 103. **Nor to subject the salary of a public official** in the hands of disbursing officer; applies to funds of private individuals.—Mayor v. Rowland, 26 Ala. 498; Pruitt v. Armstrong, 56 Ala. 306. **Nor to subject taxes due municipal corporation.**—Underhill v. Calhoun, 63 Ala. 216 (overruling Smoot v. Hart, 33 Ala. 69). **Nor to subject money taken by an officer from the person** of one unlawfully arrested.—Ex parte Hurn, 92 Ala. 102; Cunningham v. Baker, 104 Ala. 160. **When served, officer must at once deliver money to the clerk,** unless court directs otherwise.—Warren v. Mathews, 96 Ala. 183. Fund when paid into court after levy **may be again attached by garnishment against clerk.**—Warren v. Mathews, 96 Ala. 183.

2181 (2951) (3275) (2950) (2523). **Money in the hands of a trustee.**—Money or effects of the defendant, in the hands of a trustee, may be garnished and held subject to the validity of the instrument creating the trust, or the excess remaining in the trustee's hands after the execution of the trust, if valid; but if the deed be held void, the trustee, if not guilty of actual fraud, may retain for a debt due himself, and must be protected so far as he has acted in good faith under the trust before the service of the garnishment.

Compensation of retiring trustee in the hands of successor may be reached. Stuckey v. McKibbon, 92 Ala. 622. When no judgment can be rendered against trustee.—Lightfoot v. Rupert, 38 Ala. 666. If trust or mortgage is accepted with knowledge of fraudulent intent of grantor, trustee cannot retain for his own debt.—Price v. Masterson, 35 Ala. 483; Hall v. Heydon, 41 Ala. 242.

Feb. 26, 1889, p. 94. Feb. 18, 1895, p. 881.

2182 (2972) (3220) (2893) (2472). **Subscription for stock in corporation may be garnished.**—Any creditor of a corporation may, by garnishment, subject the unpaid subscription of any stockholder in such corporation to the payment of its debts, without regard to

whether the corporation can maintain suit against the stockholder for such subscription or not.

Lies although corporation not then engaged in business and has no president or directors.—Curry v. Woodward, 53 Ala. 371. Lies **although subscription was in form for bonds,** with agreement that fully paid stock was also to be delivered.—Davis v. Montgomery F. & C. Co., 101 Ala. 127. Judgment may be had **although no call has been made for unpaid subscription,** if amount and time of payment is definite.—Curry v. Woodward, 44 Ala. 305; s. c., 50 Ala. 258; Teague v. LeGrand, 85 Ala. 493; Ruse v. Bromberg, 88 Ala. 627; Davis v. Montgomery F. & C. Co., 101 Ala. 127; White v. Kahn, 103 Ala. 308. **Recitals of judgment for want of answer.**—Carroll v. Milner, 93 Ala. 301 (overruling Gunn v. Howell, 27 Ala. 663).

Feb. 12, 1891, p. 590.

2183. Defendant may give bond and collect money from garnishee.—When garnishment has been issued in aid of a pending suit or upon a judgment, the defendant may make and file with the justice or clerk issuing the garnishment, bond in such sum as the justice or clerk may prescribe, not exceeding twice the amount of the plaintiff's demand, payable to the plaintiff, with sufficient surety, to be approved by such justice or clerk, conditioned to pay the amount for which the garnishee may be found indebted or liable to the defendant, and the costs of the garnishment; and thereupon the money or property in the hands of the garnishee is discharged from the garnishment and the garnishee relieved of all liability therefor to the plaintiff; but the garnishee must answer and, except as is herein otherwise provided, the cause must proceed and be determined as if such bond had not been executed. If the garnishee is found to be indebted or liable to the defendant in money or property, the amount or value thereof must be ascertained and judgment rendered for such amount or value against the defendant and the sureties on such bond, and for the costs of the garnishment. But such judgment, exclusive of the costs of the garnishment, must not exceed the amount of the judgment, interest and costs in the original suit, or the amount of the bond. If the garnishee shall fail to answer, a conditional judgment may be rendered against him and proceedings had thereon as in other cases, and if the conditional judgment is made absolute, judgment for the like amount must be rendered against the defendant and the sureties on his bond, and for the costs of the garnishment, subject to the limitations above expressed; and execution thereon may issue against the defendant and his sureties on such bond, but not against the garnishee. No judgment must be rendered against the bond until judgment has been rendered in the original suit in favor of the plaintiff against the defendant. The garnishee is not discharged from liability to the defendant until he has paid the debt or satisfied the demand the garnishment was intended to reach.

Balkum v. Reeves, 98 Ala. 460; Balkum v. Strauss, 100 Ala. 207; Guilford v. Reeves, 103 Ala. 301; Collins v. Baldwin, 109 Ala. 402.

2184. Defendant may give bond in double the plaintiff's demand and dissolve the garnishment.—The defendant may, instead of the bond mentioned in the preceding section, give bond in double the amount of the plaintiff's demand, payable to the plaintiff, with sufficient surety, to be approved by the justice or clerk, and con-

ditioned to pay such judgment as may be rendered or ascertained to exist in favor of the plaintiff and against the defendant in the cause, and costs of suit; and thereupon the garnishment is dissolved and the garnishee discharged and need not answer; and upon the trial of the cause, if judgment is rendered or ascertained to exist in favor of the plaintiff against the defendant, the court must also render judgment against the obligors in the bond for the amount of such judgment, interest thereon, and the costs of suit. The giving of the bond herein authorized operates to discharge all the garnishees in the cause, whether one or more.

2185 (2993) (3316) (2991) (2563). **Effect of judgment of condemnation as between garnishee and defendant.**—The judgment condemning the debt, or demand, or money, or effects, to the satisfaction of the plaintiff's demand, is conclusive as between the garnishee and the defendant to the extent of such judgment, unless the defendant prosecutes to effect an appeal from such judgment, which he may do in his own name; and if such judgment is superseded by bond, and the garnishee is notified of the fact, he is not permitted to discharge such judgment pending the appeal.

Garnishee may discharge judgment unless it is superseded by bond. Montgomery G. L. Co. v. Merrick, 61 Ala. 534. May discharge judgment **although it is irregular.**—Duncan v. Ware, 5 S. & P. 119; Gunn v. Howell, 35 Ala. 144. **Need not wait for issue of execution** to coerce payment.—Crawford v. State, 9 Ala. 887; Skipper v. Foster, 29 Ala. 330. **Conclusiveness.** White v. Simpson, 107 Ala. 386.

2186. Defects of form or substance amendable.—The provisions of section 564 (2998) of this Code are applicable to garnishments.

White v. Simpson, 107 Ala. 386; Buford v. Welborn, 6 Ala. 818.

ARTICLE 2.

ANSWER OF GARNISHEE AND PROCEEDINGS THEREON.

2187 (2974) (3293) (2968) (2540). **Answer of garnishee.**—The garnishee must answer under oath according to the terms of the garnishment, and may, if required by the plaintiff, be examined orally in the presence of the court.

Answer not a part of the record unless made so by bill of exceptions or recitals for judgment-entry.—Stubblefield v. Hagerty, 1 Ala. 38; Fortune v. State Bank, 4 Ala. 385; Gaines v. Bierne, 3 Ala. 114; Saunders v. Camp, 6 Ala. 73; Price v. Thomason, 11 Ala. 875; Wicks v. Bank, 12 Ala. 594; Jones v. Howell, 16 Ala. 695; Bostwick v. Beach, 18 Ala. 80; Easton v. Lowery, 29 Ala. 454; Corbitt v. Pynes, 45 Ala. 258; D. C. & N. O. Ry. Co. v. Crass, 97 Ala. 519. **Garnishee must answer as to debt or contract at time of service, and during the whole intervening time** until discharged.—Roby v. Labuzan, 21 Ala. 60; Central Plank Road Co. v. Sammons, 27 Ala. 380; N. O. M. & C. R. Co. v. Long, 50 Ala. 498; Lady Ensley F. Co. v. Rogan, 95 Ala. 594. **Answer, if not controverted, is taken as strictly true.**—Allen v. Morgan, 1 S. 9; Robinson v. Rapelye, 2 S. 86; Presnall v. Mabry, 3 P. 105; Smith v. Chapman, 6 P. 365; Stubblefield v. Hagerty, 1 Ala. 38; Mims v. Parker, 1 Ala. 421; Foster v. Walker, 2 Ala. 177; Fortune v. State Bank, 4 Ala. 385; Blair v. Rhodes, 5 Ala. 648; Price v. Thomason, 11 Ala. 875; Hurst v. Home Protection Ins. Co., 81 Ala. 174; White v. Hobart, 90 Ala. 368; White v. Kahn, 103 Ala. 308. But **denials may be overcome by attendant facts stated orally by** garnishee. White v. Kahn, 103 Ala. 308. **May be filed at any time before judgment for want of answer;** court may extend time.—Talladega Mer. Co. v. McDonald, 97 Ala. 508. **Considered as filed when filed in fact.**—Foster v. White, 9 P. 221.

May be amended, and action of court not revisable.—Buford v. Welborn, 6 Ala. 818. **If evasive may be treated as a nullity,** stricken from the file and judgment nisi rendered.—Scales v. Swan, 9 P. 163; Miles v. Parker, 1 Ala. 421; Mobile St. Ry. v. Turner, 91 Ala. 213; White v. Kahn, 103 Ala. 308. If it shows that **indebtedness will contingently arise in the future, garnishment may be continued.**—Security Loan Asso. v. Weems, 69 Ala. 584; Hurst v. Home Protection Ins. Co., 81 Ala. 174; White v. Hobart, 90 Ala. 368; Lady E. F. Co. v. Rogan, 95 Ala. 594. If it shows **that defendant has performed services under subsisting contract, the compensation not having been fixed,** garnishee cannot be discharged.—S. & N. A. R. Co. v. Faulkner, 49 Ala. 115. If written answer is unsatisfactory **garnishee may be examined orally.** Wright v. Swanson, 46 Ala. 708; Talladega Mer. Co. v. McDonald, 97 Ala. 508. **Oral examination in open court is contemplated.**—Scales v. Swan, 9 P. 163; Stubblefield v. Hagerty, 1 Ala. 38; Gaines v. Bierne, 3 Ala. 114; Leigh v. Smith, 5 Ala. 583; Bostwick v. Beach, 18 Ala. 80; Easton v. Lowery, 29 Ala. 454; Wright v. Swanson, 46 Ala. 708. **Answer as evidence.**—Pollock v. Jones, 96 Ala. 492. Judgment for want of answer cannot be rendered on third day. Randolph v. Peck, 4 Ala. 389; Case v. Moore, 21 Ala. 758. **After answer, garnishee presumed to be in court at every stage** of the case and until it is finally disposed of.—Duffy v. Buchanan, 8 Ala. 27; Bostwick v. Beach, 18 Ala. 80; Harrison v. Meadors, 41 Ala. 274; Security Loan Asso. v. Weems, 69 Ala. 584; Cross v. Spillman, 93 Ala. 170; Talladega Mer. Co. v. McDonald, 97 Ala. 508. **Answer of maker of negotiable paper** must show its character to be protected.—Gatchell v. Foster, 94 Ala. 622. See also citations to section 2196 (2981).

2188. When garnishee may pay fund into court.—When the garnishee admits indebtedness or liability to the defendant, and the defendant has not executed bond for the dissolution of the garnishment as provided in this chapter, the garnishee may, by order of the court first had and obtained, pay the amount of such indebtedness or liability, or so much thereof as the court may direct, into the hands of the clerk to be held subject to the judgment in the cause; and such payment has the effect to discharge the garnishee from liability for the amount so paid and interest subsequently accruing thereon, but does not prevent the interposition and trial of collateral issues as provided in this article.

2189. Court may order money loaned pending suit.—The court may, in its discretion, direct the clerk to lend the money at interest, for such time as may be prescribed, on note or bond payable to the clerk and secured by mortgage, with power of sale, upon unencumbered real estate in value double the amount of the loan. The court may make all necessary orders for the collection and proper application of the fund, and may, by the consent of the party found to be entitled thereto, direct the clerk to transfer or assign such note and mortgage to such party, who may exercise the power of sale and otherwise enforce collection in his own name.

2190 (2975) (3222) (2897). **Answer of corporation; by whom made.**—No person shall answer, on behalf of any corporation, any process of garnishment, unless he shall make affidavit that he is the duly authorized agent of the corporation to make such answer.

To protect garnishee and plaintiff.—Gatchell v. Foster, 94 Ala. 622. **General appearance a waiver** of defect arising from want of affidavit.—M. & C. R. Co. v. Whorley, 74 Ala. 264.

2191 (2976) (3294) (2969) (2541). **Judgment on answer; when execution suspended.**—If the garnishee answers and admits indebtedness to the defendant, judgment thereon must be rendered against him, after judgment against the defendant, for the amount so

admitted, if less than the amount of the judgment against the defendant; if more or equal thereto, for the amount thereof; and if the debt or demand is not then payable, execution must be suspended until its maturity.

When answer authorizes judgment.—Presnall v. Mabry, 3 P. 105; Smith v. Chapman, 6 P. 365; Baker v. Moody, 1 Ala. 312; Self v. Kirkland, 24 Ala. 275; Hall v. Magee, 27 Ala. 414; S. & N. R. Co. v. Faulkner, 49 Ala. 115; N. O. M. & C. R. Co. v. Long, 50 Ala. 498; Leslie v. Merrill, 58 Ala. 322; Security Loan Asso. v. Weems, 69 Ala. 584; Wooldridge v. Holmes, 78 Ala. 568; Gatchell v. Foster, 94 Ala. 622. **When it does not authorize judgment.**—King v. Murphy, 1. S. 228; Presnall v. Mabry, 3 P. 105; Smith v. Chapman, 6 P. 365; Foster v. White, 9 P. 221; Stubblefield v. Hagerty, 1 Ala. 38; Mims v. Parker, 1 Ala. 421; Foster v. Walker, 2 Ala. 177; Fortune v. State Bank, 4 Ala. 385; Buford v. Welborn, 6 Ala. 818; Price v. Thomason, 11 Ala. 875; Wicks v. Branch Bank, 12 Ala. 594; Hall v. Magee, 27 Ala. 414; Saunders v. Garrett, 33 Ala. 454; M. & O. R. Co. v. Whitney, 39 Ala. 468; Jones v. Crews, 64 Ala. 368; Alexander v. Pollock, 72 Ala. 137; Flournoy v. Owens, 74 Ala. 446; Hurst v. Home Protection Ins. Co., 81 Ala. 174; White v. Hobart, 90 Ala. 368; Lindsay v. Morris, 100 Ala. 546; White v. Kahn, 103 Ala. 308. **When record sufficient to support.** Bostwick v. Beach, 18 Ala. 80. **Judgment cannot be rendered subject to set-off** set up in answer.—Allen v. Morgan, 1 S. 9; Archer v. People's Savings Bank, 88 Ala. 249. **Set-off by garnishee must be specially pleaded** in answer. Kling v. Tunstall, 109 Ala. 608. **When judgment informal;** what informalities may be corrected.—Randolph v. Little, 62 Ala. 396; Whorley v. M. & C. R. Co., 72 Ala. 20; Gatchell v. Foster, 94 Ala. 622. **Judgment cannot be rendered until after judgment against original defendant.**—Gaines v. Bierne, 3 Ala. 114. **When may be set aside at subsequent term.**—Corbitt v. Pynes, 45 Ala. 258. **Satisfaction is a discharge of original debt.**—Gunn v. Howell, 35 Ala. 145; Woodlawn v. Purvis, 108 Ala. 511. **Effect of judgment in courts of foreign jurisdiction.**—M. & O. R. Co. v. Whitney, 39 Ala. 468; A. G. S. R. Co. v. Chumley, 92 Ala. 317. **Cannot be for greater sum than claimed in the affidavit;** nor greater than original judgment.—Carrol v. Milner, 93 Ala. 301; Howard-Harrison I. Co. v. Tillman, 103 Ala. 121. **Should recite the fact and amount of recovery against original defendant.**—Gunn v. Howell, 27 Ala. 663; Faulks v. Heard, 31 Ala. 516; Chambers v. Yarnell, 37 Ala. 400; Whorley v. M. & C. R. Co., 72 Ala. 20; Gatchell v. Foster, 94 Ala. 622; Brake v. Curd, 102 Ala. 339; Bradley Fer. Co. v. Pollock, 104 Ala. 402; Birmingham Nat. Bank v. Mayer, 104 Ala. 634. **Suspension of execution until maturity.** Gatchell v. Foster, 94 Ala. 622

2192 (2977). **Judgment on demand payable in personal property, or on contract to deliver personal property.**—If the garnishee is liable for the delivery of personal property, or for the payment of money which may be discharged by the delivery of personal property, the value of the property must be ascertained, and a judgment rendered against the garnishee that, if he do not, by a day to be fixed by the court, which must be a day after the maturity of such contract, deliver such property to the sheriff or other lawful officer, he must pay the value thereof, or the sum of money which was payable therein; and, upon the return of the sheriff, or such other officer, that such property was not delivered, or the value thereof or such sum of money was not paid to him, as required by the judgment, execution must be issued for the ascertained value of such property, or for the sum of money payable therein, if the same is less than the amount of the judgment against the defendant in the original suit; if more, or equal thereto, for the amount thereof. If such property is delivered to the sheriff, or other lawful officer, he must proceed to a sale thereof as if under execution against the defendant.

2193 (2978) (3295, 3296, 3297) (2970, 2971, 2972) (2542, 2543, 2544). **Judgment and proceedings on answer admitting possession of effects of defendant.**—If the garnishee admits the possession of

effects of the defendant, the subject of levy and sale under legal process, judgment of condemnation must be rendered, that such effects be delivered up on demand, after the rendition of judgment in favor of the plaintiff in the original suit, or so much thereof as may be necessary to satisfy the judgment, and the sheriff must make sale thereof. If the garnishee fails to deliver such effects to the sheriff on demand, he must make return thereof to the clerk, who must thereupon issue an execution against the garnishee in favor of the plaintiff for the amount of the judgment and costs. If, however, such failure is without fault or negligence on the part of the garnishee, he may tender to the plaintiff, his agent, or attorney, the value of such effects, and if such tender is refused, he may obtain relief by supersedeas.

Jones v. Crews, 64 Ala. 368; McKleroy v. Cantey, 95 Ala. 295. If goods sold after service money judgment may be had against garnishee.—McKleroy v. Cantey, 95 Ala. 295.

2194 (2979). **Judgment when garnishee admits possession of money.**—If the garnishee admits the possession of money belonging to the defendant, he must pay the same, or so much thereof as may be necessary to satisfy the plaintiff's demand and costs, into court, to await the order of the court; and if he fails to make such payment, he is liable as if he had admitted an indebtedness for the amount of such money.

McKleroy v. Cantey, 95 Ala. 295; L. E. Furnace Co. v. Rogan, 95 Ala. 594; Cunningham v. Baker, 104 Ala. 160.

2195 (2980) (3298) (2973) (2545). **Proceedings on failure to answer.**—If the garnishee fails to appear and answer, a conditional judgment must be rendered against him for the amount of the plaintiff's claim, as ascertained by his judgment, to be made absolute, unless he appears within the first three days of the next term and answers; and a notice of the judgment must be issued to him by the clerk, to be served on him, as other process, by the sheriff. If he fails to appear at the next term, after notice executed, or if two notices be returned "not found" by the sheriff of the county in which the garnishment was executed, the judgment must be made absolute.

Conditional judgment must be for a sum certain; final judgment for lack of an answer is a mere confirmation of the conditional judgment.—Dickerson v. Walker, 1 Ala. 48; Drane v. King, 21 Ala. 556; Bonner v. Martin, 37 Ala. 83. **General appearance waives lack of notice.**—D. C. & N. O. R. Co. v. Crass, 97 Ala. 519. **The two notices must be returned** one to each of the two terms.—D. C. & N. O. R. Co. v. Crass, 97 Ala. 519. **Failure to give notice of conditional judgment** an irregularity for which judgment will be set aside on seasonable application.—Tillis v. Prestwood, 107 Ala. 618. **Answer may be filed at any time before judgment is claimed; court may extend time.** Talladega Mer. Co. v. McDonald, 97 Ala. 508. **Final judgment follows proper judgment nisi** as of course.—Scales v. Swan, 9 P. 163. **What necessary to authorize final judgment for want of answer.**—Jones v. Hart, 2 Ala. 73; Blair v. Rhodes, 5 Ala. 548; Lowry v. Clements, 9 Ala. 422; Dew v. State Bank, 9 Ala. 323; Morris v. Russell, 20 Ala. 357. Wood v. Russell, 22 Ala. 645; Goode v. Holcombe, 37 Ala. 94. **Judgment for want of an answer could not be rendered** on third day.—Randolph v. Peck, 4 Ala. 389.

2196 (2981) (3299) (2974) (2546). **Contest of answer by plaintiff.**—The plaintiff, his agent, or attorney, may controvert the answer of the garnishee, by making oath, at the term the answer is

made, that he believes it to be untrue; and thereupon, an issue must be made up, under the direction of the court, in which the plaintiff must allege in what respect the answer is untrue; and if required by either party, a jury must be impaneled to try such issue.

Contest must be inaugurated during term at which answer is made; court may extend time.—Graves v. Cooper, 8 Ala. 811; Lockhart v. Johnson, 9 Ala. 223; McDaniel v. Reed, 12 Ala. 615; Marston v. Carr, 17 Ala. 325; Ex parte Opdyke, 62 Ala. 68; Cross v. Spillman, 93 Ala. 170; Lindsay v. Morris, 100 Ala. 546; Brake v. Curd, 102 Ala. 339. **Affidavit need only allege that affiant believes the answer to be untrue.**—Donald v. Nelson, 95 Ala. 111; Brake v. Curd, 102 Ala. 339. **An attorney may make the affidavit.**—Foster v. Walker, 2 Ala. 177; Faulks v. Heard, 31 Ala. 516. **What a sufficient issue; limits of issue.**—Thompson v. Allen, 4 S. & P. 184; Myatt v. Lockhart, 9 Ala. 91; Moore v. Jones, 13 Ala. 196; Harrell v. Whitman, 19 Ala. 135; s. c., 20 Ala. 519; Nesbitt v. Ware, 30 Ala. 68; Fowler v. Williamson, 52 Ala. 16; Lehman v. Hudmon, 79 Ala. 532; s. c., 85 Ala. 135; Lindsay v. Morris, 100 Ala. 546. **Issue tendered should properly be in writing,** but statute does not require it. Lehman v. Hudmon, 79 Ala. 532; s. c., 85 Ala. 135; Birmingham Nat. Bank v. Mayer, 104 Ala. 634. **If issue insufficient objection should be made by demurrer;** if frivolous, by motion to strike.—Lindsay v. Morris, 100 Ala. 546. **Joinder in issue waives previous irregularities.**—Hazard v. Franklin, 2 Ala. 349; Betts v. Brown, 5 Ala. 414; Marston v. Carr, 16 Ala. 325; Sevier v. Throckmorton, 33 Ala. 512; Birmingham Nat. Bank v. Mayer, 104 Ala. 634. **If issue is formed against garnishee, he is liable for costs.**—Thompson v. Allen, 4 S. & P. 184. **On appeal from a justice issue must be tendered anew.** Lehman v. Hudmon, 79 Ala. 532; s. c., 85 Ala. 135. **Plaintiff is the actor and onus is on him;** answer is evidence for him, but not for garnishee.—Myatt v. Lockhart, 9 Ala. 91; Price v. Mazange, 31 Ala. 701; Sevier v. Throckmorton, 33 Ala. 512; Godden v. Pierson, 42 Ala. 370; Lehman v. Hudmon, 79 Ala. 532.

2197 (2982) (3300) (2975) (2547). **Contest of answer by defendant.**—The defendant, upon the coming in of the answer, may allege that the garnishee is indebted to him in a larger sum than he has admitted, or is otherwise liable to him on a demand, the subject of garnishment, or that he holds money or effects of the defendant not admitted in his answer, which being reduced to writing, setting forth particularly in what respect the answer is deficient, and being sworn to, an issue must thereupon be made up, under the direction of the court, which must be tried by a jury, if required by either party; but such controversy shall not prevent the plaintiff from taking judgment upon the answer of the garnishee.

Jones v. Kolisenski, 11 Ala. 607; Edmondson v. DeKalb Co., 51 Ala. 103; Ex parte Opdyke, 62 Ala. 68; Cross v. Spillman, 93 Ala. 170.

2198 (2983) (3301) (2976) (2548). **Judgment when answer is not sustained.**—If such issue is found against the garnishee, judgment must be rendered against him in favor of the plaintiff, if necessary to satisfy his claim or judgment against the defendant, or in favor of the defendant, if such judgment has been satisfied.

White v. Simpson, 107 Ala. 386.

2199 (2984) (3302) (2977) (2549). **On suggestion by garnishee of claim by another, such claimant made a party.**—When the garnishee, by his answer as originally filed, or by any supplemental answer thereafter, at any time before final judgment against him, alleges that he has been notified that another person claims title to, or an interest in the debt or demand, or money, or effects, which by his answer he has admitted to be due or owing, or to be in his possession, the court must suspend proceedings against the garnishee, and cause a notice to issue to such person to appear at the

next term of the court, and contest with the plaintiff the right to such debt, demand, money, or effects.

Suggestion of claim may be made and notice issued at any time after answer and before the termination of suit.—Camp v. Hatter, 11 Ala. 151; Ex parte Opdyke, 62 Ala. 68; Donald v. Nelson, 95 Ala. 111. **If garnishee does not suggest claim** no evidence of it can be received and judgment goes for plaintiff.—Moore v. Jones, 13 Ala. 291; Fowler v. Williamson, 52 Ala. 16; Ex parte Opdyke, 62 Ala. 68; Donald v. Nelson, 95 Ala, 111; Woodlawn v. Purvis, 108 Ala. 511. **What sufficient notice to garnishee of adverse claim.**—Fowler v. Williamson, 52 Ala. 16. **One notice to several claimants sufficient.**—Blackman v. Smith, 8 Ala. 203. **Sufficient if answer of one of several joint garnishees discloses claim.**—Smoot v. Eslava, 23 Ala. 659. **Whenever any claim is disclosed, proceedings must be suspended and notice given to claimant;** until then no judgment can be rendered against garnishee.—Payne v. Mayor, 4 Ala. 333; Covington v. Kelly, 6 Ala. 680; Johnson v. Burnett, 12 Ala. 743; Moore v. Jones, 13 Ala. 296; Evans v. Norman, 14 Ala. 662; Conoley v. Cheesborough, 21 Ala. 166; Andrews v. Union Bank, 21 Ala. 576; Easton v. Lowry, 29 Ala. 454; M. & O. R. Co. v. Whitney, 39 Ala. 468; Molton v. Escott, 50 Ala. 77; Boyd v. Cobbs, 50 Ala. 82; Simmons v. Guyon, 57 Ala. 111; Ex parte Opdyke, 62 Ala. 68; Saller v. Ins. Co., 62 Ala. 221; Nat. Com. Bank v. Miller, 77 Ala. 168; Donald v. Nelson, 95 Ala. 111. If **bond to dissolve garnishment** has been given proceedings against obligees suspended.—Guilford v. Reeves, 103 Ala. 301. **Notice need not issue nor proceedings be suspended on suggestion that other creditors have garnished.**—Brooks v. Hildreth, 22 Ala. 469; Security Loan Asso. v. Weems, 69 Ala. 584; Guilford v. Reeves, 103 Ala. 301. **Plaintiff must be diligent to bring in claimant.**—Mock v. King, 15 Ala. 66. **Claimant must appear at term to which he is cited; court may extend time.**—Ex parte Opdyke, 62 Ala. 68. **Garnishee pays, after notice, at his peril.**—Saller v. Ins. Co., 62 Ala. 221. **Where fund belonged to woman's statutory separate estate.**—Saunders v. Garrett, 33 Ala. 454; Flournoy v. Owens, 74 Ala. 446.

2200 (2985) (3303) (2978) (2550). **Proceedings to try such claim.**—If he appears, he must be required to propound his claim in writing, and make oath thereto, upon which the plaintiff must take issue in law, or in fact, and the issue in fact must be tried by a jury, if required by either party. If the issue be found for the plaintiff, judgment must be rendered against the garnishee on his answer; if for the contestant, the garnishee must be discharged.

If claimant fails to appear after notice he is estopped from setting up claim against garnishee.—Smoot v. Eslava, 23 Ala. 659; Saller v. Ins. Co., 62 Ala. 221. **Sufficiency and mode of forming issue.**—Goodwin v. Brooks, 6 Ala. 836; Moore v. Jones, 13 Ala. 296. **Issue is between plaintiff and claimant;** not between rival claimants.—Brooks v. Hildreth, 22 Ala. 469; Winslow v. Bracken, 57 Ala. 368; Ex parte Opdyke, 62 Ala. 68; Security Loan Asso. v. Weems, 69 Ala. 584. **Fact and bona fides of a transfer is alone in issue.** Rowland v. Plummer, 50 Ala. 182; McMullen v. Lockhard, 64 Ala. 56. **Optional with claimant whether he will contest;** court cannot make up issue itself, mero motu.—Evans v. Norman, 14 Ala. 662; Ex parte Opdyke, 62 Ala. 68; Donald v. Nelson, 95 Ala. 111. **Plaintiff is the actor** and opens and concludes; when onus on plaintiff.—Goodwin v. Brooks, 6 Ala. 836; Grady v. Hammond, 21 Ala. 427; Rowland v. Plummer, 50 Ala. 182. **Burden on claimant** to show consideration of claim, and that it arose before service of garnishment.—Camp v. Hatter, 11 Ala. 151; Scott v. Stattsworth, 12 Ala. 25; Winslow v. Bracken, 57 Ala. 368; Ex parte Opdyke, 62 Ala. 68; Clark v. Few, 62 Ala. 243. **Facts tending to show a transfer** before service are admissible. Brooks v. Hildreth, 22 Ala. 469. **Claimant liable for costs if unsuccessful.** Blackman v. Smith, 8 Ala. 203; Camp v. Hatter, 11 Ala. 151; Seals v. Holloway, 77 Ala. 344. **Claimant cannot take advantage of irregularities** in garnishment suit; may show that garnishment void.—Winslow v. Bracken, 57 Ala. 368; Clark v. Few, 62 Ala. 243; Reynolds v. Collins, 78 Ala. 94. **If claimant prevails garnishee must be discharged.**—Evitt v. Lowery Banking Co., 96 Ala. 381.

2201 (2986) (3304) (2979) (2551). **When a contestant is a non-resident.**—If the contestant be a non-resident, the contest must be stayed six months, and the same proceedings had as in the case of a non-resident defendant.

Sheppard v. Buford, 7 Ala. 90 (correcting Fortune v. State Bank, 4 Ala. 385).

2202 (2987) (3305) (2980) (2552). **If resident contestant be not found, judgment against the garnishee.**—If two notices to the resident contestant be returned "not found," judgment must be rendered against the garnishee on his answer.

Simmons v. Guyon, 57 Ala. 111; Donald v. Nelson, 95 Ala. 111; Guilford v. Reeves, 103 Ala. 301.

2203 (2988) (3306) (2981) (2553). **Such issues do not change the jurisdiction.**—The interposition of these collateral issues does not affect the jurisdiction of the court obtained by levy of the attachment or service of garnishment.

2204 (2989) (3307) (2982) (2554). **Bills of exceptions in such cases.**—Upon the trial of these collateral issues, either party may reserve any question by bill of exceptions for revision; and judgment for costs must be rendered against the unsuccessful party.

2205 (2990) (3308) (2983) (2555). **Appeals.**—An appeal lies to the supreme court at the instance of the plaintiff, the defendant, the garnishee, the contestant, or claimant.

2206 (2991) (3309) (2984) (2556). **Garnishee recovers his costs on a discharge.**—When the answer of the garnishee is not controverted, or, if controverted, is found for him, he is allowed the pay of a juror during his attendance, for which execution may issue; if there be no effects, then from the plaintiff, for which he may have judgment and execution.

2207 (2992) (3310) (2985) (2557). **Proceedings on death of garnishee or contestant.**—If the garnishee die after he has been summoned as garnishee, and pending the litigation, the proceedings may be revived against his legal representatives; so, if the contestant die, after notice to appear and contest with the plaintiff.

Linn v. Taylor, 42 Ala. 303.

ARTICLE 3.

GARNISHMENTS ISSUED BY JUSTICES OF THE PEACE.

2208. What provisions applicable.—The provisions of this Code relating to garnishments and proceedings therein, not contrary to the provisions of this article and so far as applicable, shall apply to and govern in like cases triable before justices of the peace.

2209 (3340) (3688) (3291) (2844). **Answer of garnishee; evidence on appeal.**—The garnishee must answer on oath in writing, or his statement must be reduced to writing by the justice; and if an appeal is taken, the answer made before the justice is evidence against the garnishee in the circuit court.

Proceedings on appeal by garnishee.—Lehman v. Hudmon, 79 Ala. 532; s. c., 85 Ala. 135. **When defendant appeals from judgment against himself** and plaintiff recovers judgment in appellate court, the justice's judgment against the garnishee may be then enforced by procedendo to the justice.—Edwards v. Nordholm, Ala. (22 So. 549).

2210 (3342) (3690) (3293) (2846). **Contest of garnishee's an-**

swer and collateral issues tried without jury.—When the answer of a garnishee is contested, or when any collateral issue arises from a contest between a transferee or claimant of the debt attached and the plaintiff, the question must be decided by the justice, without the intervention of a jury.

2211 (3343) (3691) (3294) (2847). **Execution for balance of judgment unsatisfied.**—When the property in the hands of the garnishee is not sufficient to satisfy the judgment, execution may issue for the residue, and be levied on any other property of the defendant subject to levy and sale.

2212 (3344) (3641). **Sale of land when garnishee answers indebtedness for purchase-money.**—If the garnishee answers an indebtedness to the defendant on account of the purchase-money of land, and the same is condemned in his hands to the payment of the plaintiff's judgment against the defendant, and execution against the garnishee is returned "no property found," or is not fully satisfied, the plaintiff may move in the circuit court of the county for an order for the sale of such land, in the same manner as lands levied on by a constable are sold, and in the same manner such order and sale shall also be granted and conducted; and in such case the justice of the peace shall send up to the circuit court the papers in the cause, as in other cases of levy on lands by a constable.

Plaintiff may file bill in equity to enforce vendor's lien.—White v. Simpson, 107 Ala. 386.

CHAPTER 55.

GENERAL ASSEMBLY. 2213–2240.

2213 (24) (24) (27) (26). **House of representatives.**—The house of representatives of the general assembly consists of one hundred members distributed among the several counties as follows: The counties of Autauga, Baldwin, Bibb, Blount, Butler, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Walker, Washington and Winston shall each elect one representative. The counties of Barbour, Bullock, Calhoun, Chambers, Clarke, Hale, Henry, Jackson, Lee, Lauderdale, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three representatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect six representatives.

As amended Feb. 4, 1891, p. 388.

As amended Feb. 4, 1891, p. 337.

2214 (28) (28) (30) (27). **Senatorial districts.**—The senate of the general assembly shall consist of thirty-three members, and the state is divided into thirty-three senatorial districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Winston, Blount and Cullman; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun and Cleburne; eighth, Talladega and Clay; ninth, Randolph and Chambers; tenth, Tallapoosa and Coosa; eleventh, Tuscaloosa; twelfth, Lamar, Fayette and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Chilton, Shelby and Elmore; sixteenth, Autauga and Lowndes; seventeenth, Butler, Conecuh and Covington; eighteenth, Perry and Bibb; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Monroe, Escambia and Baldwin; twenty-second, Wilcox; twenty-third, Henry, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Pike, Coffee and Crenshaw; twenty-sixth, Macon and Bullock; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, DeKalb and Cherokee; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile.

2215 (31) (31) (37) (32). **Biennial sessions and length; place of meeting.**—The general assembly shall meet biennially, at the capitol, in the senate chamber, and in the hall of the house of representatives (except in cases of the destruction of the capitol, or epidemic, when the governor may convene them at such place as he may deem best), on the day prescribed by law, and shall not remain in session longer than fifty days.

2216 (32) (32) (38). **Time of meeting.**—The general assembly shall meet on Tuesday after the second Monday in November, 1898, and biennially thereafter on the same day.

2217 (33) (33) (39) (33). **Election by general assembly; how conducted.**—All elections by the general assembly are to be conducted as follows:

1. On the day and hour appointed for the election, the members of both houses must assemble in the hall of the house of representatives.

2. The names of the members of each house are to be called by their respective clerks, each member voting viva voce as his name is called.

3. The result must then be ascertained by the president of the senate and the speaker of the house, and announced by the last-named officer.

4. The votes are to be given for but one election at the same time and a majority of the whole number of votes given is necessary to a choice.

2218 (34) (34) (40) (34). **Committee appointed to examine offices of auditor and treasurer.**—During the first week of each regular session of the general assembly, the presiding officers must appoint

a committee of three members of each house, jointly to examine the offices of auditor and treasurer.

2219 (35) (35) (41) (35). **Duty of examining committee.**—It is the duty of such committee to examine the accounts and vouchers of such officers as to all moneys received into, and paid out from the treasury during the two preceding fiscal years; to compare the warrants drawn by the auditor during that period, with the several laws by authority of which they purport to be drawn; to examine into the other accounts and books of such offices, and to count the money on hand at the time of the examination.

2220 (36, 37) (36, 37) (42, 43) (36, 37). **What the committee must report.**—Such committee must report to their respective houses during the session of the general assembly the amount of money received into and paid out of the treasury during the two preceding fiscal years, on warrants drawn by the auditor, if such auditor was authorized by law to draw such warrants; specifying such as, in their opinion, were drawn without authority, and their reasons therefor; the time when the treasurer in office entered upon his duties, and the amount of money received by him up to the time of such examination; the balance in the treasury on the first day of November preceding, and at the time of such examination; the condition of such offices, and the correctness of all books and accounts required by law to be kept therein.

2221 (38) (38) (44) (38). **Papers of general assembly, deposit of.**—At the close of each session, the secretary of the senate, and the clerk of the house of representatives, and secretary of state must select all the papers belonging to the general assembly, except such as relate to unfinished business, and deposit them in the office of the secretary of state.

2222 (39) (39) (45) (39). **Engrossed copies of laws, etc., to be preserved.**—The engrossed copies of all laws and joint resolutions passed by the general assembly must be preserved by the chairman of the enrolling committee, and deposited in the office of the secretary of state.

2223 (40) (40) (46) (40). **Papers and documents, how filed and arranged.**—The secretary of the senate, and the clerk of the house of representatives must, within ten days after the adjournment of each session, assort all the papers and documents of their respective houses, relating to the unfinished business of the session, and arrange them in files, as follows:

1. All petitions, with the accompanying documents, to be arranged and filed in alphabetical order, tied up in convenient packages, with a label on each, showing the character of the documents, and the session to which they relate.

2. All bills rejected on the first reading must be arranged, filed and labeled in like order; and so of bills rejected on the second and third reading; the labels in each case showing on what reading the bills were rejected.

3. All communications from the governor, auditor, treasurer, or

other officer or person, which have been received during the session, and not entered at length on the journals, must be arranged, filed and labeled in separate packages, showing from what department, officer, or person the same were received.

4. Reports from standing and select committees must be arranged, filed and labeled in like manner.

5. Any other papers or documents, not included under either of the foregoing heads, must be arranged, filed and labeled as miscellaneous papers; the labels showing the session to which they belong, and, as near as practicable, the character of the papers; and in every instance, to which branch of the general assembly they belong.

2224 (41) (41) (47) (41). **Secretary of state to receipt for papers.**—The records, papers and documents, thus arranged, filed and labeled, must be delivered to the secretary of state, who, upon receipt of the same, must certify that such secretary and clerk have respectively complied with the requirements of the preceding section; and no warrant must be drawn by the auditor, and no money paid by the treasurer, for such services, without the production of such certificate, which must be kept by the treasurer as a voucher.

2225 (42) (42) (48) (42). **Oath of office; by whom administered.**—The oath of office may be administered to the members of the general assembly by any judge of the supreme, circuit or probate court, or justice of the peace, or the president of the senate, or the speaker of the house of representatives; and the president of the senate and the speaker of the house of representatives may be sworn in by any member of their respective houses.

2226 (43) (43) (49) (43). **Pay and mileage of officers and members.**—The president of the senate and speaker of the house of representatives shall each receive six dollars for each day's attendance, and each member of the general assembly shall receive four dollars for each day's attendance; the president of the senate and speaker of the house and each member of the general assembly shall be allowed ten cents for every mile's travel in going to and returning from the seat of government, according to the distance herein specified, to wit: Autauga, thirty miles; Baldwin, one hundred and ninety-five miles; Barbour, one hundred miles; Bibb, one hundred and five miles; Blount, one hundred and fifty miles; Bullock, forty-five miles; Butler, forty-five miles; Calhoun, one hundred and fifty miles; Chambers, eighty-three miles; Chilton, forty miles; Cleburne, one hundred and sixty miles; Cherokee, one hundred and eighty-three miles; Choctaw, two hundred and twenty-three miles; Clarke, two hundred and twenty-three miles; Clay, one hundred and thirty-five miles; Coffee, one hundred and two miles; Conecuh, eighty-two miles; Colbert, two hundred and twenty-six miles; Coosa, one hundred and twenty-six miles; Covington, one hundred and fifteen miles; Crenshaw, sixty-seven miles; Cullman, one hundred and fifty miles; Dale, one hundred and four miles; Dallas, fifty miles; DeKalb, one hundred and eighty-six miles; Elmore, twenty miles; Escambia, one hundred and fourteen miles; Etowah, one hundred

Feb. 28, 1889, p. 94.

and sixty miles; Fayette, one hundred and ninety-one miles; Franklin, two hundred and forty-four miles; Geneva, one hundred and twenty miles; Greene, one hundred and eighty-seven miles; Hale, one hundred and two miles; Henry, one hundred and ten miles; Jackson, two hundred and fifty miles; Jefferson, ninety-six miles; Lauderdale, two hundred and thirty-one miles; Lamar, two hundred and fifty miles; Lawrence, two hundred and eighteen miles; Lee, sixty-six miles; Limestone, two hundred and fourteen miles; Lowndes, twenty-five miles; Macon, forty-five miles; Madison, two hundred and fifteen miles; Marengo, one hundred and five miles; Marion, two hundred and fifty miles; Marshall, two hundred and forty-two miles; Mobile, one hundred and eighty-five miles; Monroe, one hundred and nine miles; Montgomery, ——; Morgan, one hundred and eighty-three miles; Perry, eighty miles; Pickens, one hundred and eighty miles; Pike, seventy-six miles; Randolph, one hundred and twenty miles; Russell, seventy-four miles; Shelby, seventy-five miles; St. Clair, one hundred and forty miles; Sumter, one hundred and thirty-five miles; Talladega, one hundred and ten miles; Tuscaloosa, one hundred and fifty-two miles; Tallapoosa, ninety-seven miles; Walker, one hundred and fifty-three miles; Washington, two hundred and fifty miles; Wilcox, one hundred and ten miles; Winston, one hundred and eighty-eight miles.

2227 (44) (44) (50) (44). **Pay in case of sickness.**—If, in consequence of sickness, any member is detained, after leaving home, in going to the seat of government, or is unable to attend the house, or senate, after he arrives there, he is entitled to the same pay as an attending member.

2228 (45). **Pay of committees sitting during recess, and of their clerks.**—Members of the general assembly, who may be required by a joint resolution or a resolution of either house to serve on a committee during any recess of the general assembly, and all clerks whom said committee may be authorized to employ, shall each receive four dollars per day while engaged on the work assigned such committee; and the members of said committee shall also receive the same mileage they receive for attending the general assembly. The chairman of such committee shall certify to the auditor what amount is due such member or clerk, who must draw his warrant therefor on the state treasurer.

2229 (46) (45) (51). **Mileage when intervals between sessions are not more than four days.**—When the interval between a regular and called session, or between a called and regular session, is not more than four days, no mileage shall be allowed.

2230 (47) (46) (52) (45). **Amount of pay due, how certified.** The compensation due to the officers and members of the general assembly must be certified by the president and speaker, respectively, to the auditor, who must issue his warrant therefor on the state treasurer.

2231 (48) (47). **Notice of local law.**—The notice required in article four, section 24, of the constitution, shall be given in some

newspaper printed in the county where the passage of the local or special law is desired, or by posting such notice at three public places in the county or locality where the matter or things to be affected by the proposed legislation may be situated. If the notice be given through a newspaper, it must be given at least three times, commencing at least twenty days before the introduction of the bill; and a copy of the notice, specifying the time when the same was made and how made, and verified by the affidavit of a responsible person taken before a justice of the peace or notary public, shall accompany the bill on its introduction into either house of the general assembly.

2232 (49) (48) (53) (46). **Oaths to subordinate officers, by whom administered.**—The president of the senate and speaker of the house are to administer the oaths required to the subordinate officers of their respective houses.

2233 (50) (49). **Subordinate officers; election; term of office, and removal.**—The subordinate officers of the general assembly shall consist of a secretary, an assistant secretary, an enrolling and engrossing clerk, a doorkeeper, and an assistant doorkeeper, for the senate; and a clerk, an assistant clerk, an engrossing-clerk, an enrolling-clerk, a doorkeeper, and an assistant doorkeeper, for the house of representatives; which officers shall be elected by each house, respectively, at the beginning of each session of the general assembly, or at such other time as may be necessary, who shall hold their offices until the close of the session, except the secretary and doorkeeper of the senate, and the clerk and doorkeeper of the house, who shall hold their offices until their successors are qualified; and may be removed for cause by each house respectively.

2234 (51) (50). **Compensation of secretary and clerk and assistants; additional duties of assistants.**—The secretary of the senate, and the clerk of the house of representatives shall each receive six dollars per day. The assistant secretary of the senate and the assistant clerk of the house of representatives shall each receive six dollars per day; and, in addition to their regular duties, shall keep a register of all the bills, resolutions and memorials that may be introduced by the members of their respective houses, showing the title of each bill, resolution and memorial, the time when, and by whom introduced, the date of their several readings, and, if referred, to what committee, and the final disposition thereof.

2235 (52) (51). **Compensation of enrolling and engrossing clerks, doorkeepers and assistants; sergeant-at-arms.**—The enrolling and engrossing clerk of the senate, the engrossing-clerk of the house, and the enrolling-clerk of the house shall each receive five dollars per day; the doorkeeper and assistant doorkeeper of each house shall each receive four dollars and a half per day. The doorkeeper of each house shall be charged with the duties of a sergeant-at-arms, and shall keep order in the lobby and galleries.

2236 (53) (52). **Pages and their compensation; messenger of the house and his compensation.**—The president of the senate shall

appoint two pages for the senate, and the speaker of the house of representatives shall appoint three pages and one messenger for the house. The pages and messenger shall each receive two dollars and a half per day.

2237 (55) (54). **Committee clerks, and additional clerical assistance; compensation.**—Each house may, by resolution, provide for the employment of committee clerks, when necessary, whose compensation shall not exceed four dollars per day; and also for the employment of additional clerical assistance, when the business of either house shall require it; and the clerks so employed shall each receive four dollars per day for the time actually employed, to be certified as other officers.

2238 (54) (53). **Servants employed by doorkeepers; compensation.**—The doorkeeper of the senate may employ one servant for the senate, and the doorkeeper of the house of representatives may employ not more than two servants for the house, who shall each receive two dollars and a half per day.

2239 (56) (55). **Pay of subordinate officers; how certified and paid.**—The compensation due to the officers and employes hereinbefore named shall be certified by the president of the senate and the speaker of the house of representatives respectively, to the auditor, who shall issue his warrant therefor.

2240. **Secretary of senate and clerk of house to file papers and furnish copy of journal.**—Within forty days after the adjournment of any session of the general assembly, the secretary of the senate and the clerk of the house of representatives must file and arrange the papers of their respective houses in the office of the secretary of state and copy and deliver to the public printer the journals of their respective houses, with proper indexes thereto; and for such services, when performed, they shall receive respectively, the sum of four hundred dollars.

CHAPTER 56.

GEOLOGICAL SURVEY. 2241-2246.

2241. **State geologist.**—The professor of mineralogy and geology in the University of Alabama is ex officio state geologist. Jan. 4, 1848, p. 453. April 18, 1873, p. 89.

2242. **His duties.**—It shall be the duty of the state geologist to devote such portion of his time as may not be required for the discharge of his duties as a professor in the University of Alabama, to making exploration and examination of the mineral, agricultural and other natural resources of the state so as to determine accurately the quality and character of its soils and their adaptation to agricultural purposes, and especially the occurrence and quality of phosphates, marls, gypsum, and other natural fertilizers; its mineral resources and their location, character and capacity for development; Feb. 19, 1883, p. 57. Ib. Feb. 3, 1854, p. 41. Feb. 6, 1891, p. 427.

its water-powers and their capacities; its forest trees and their utilities and distribution; and it shall be the duty of him and his assistants, whenever they discover any valuable deposits of iron or other ore, coal, phosphates, marls, or other substances of value, to notify immediately the owners of the land upon which such deposits occur. He shall make to the general assembly biennially a report of his explorations and examination, together with analyses of soils, ores, minerals and mineral waters, with maps, charts, and drawings; which report shall be printed and shall be the exclusive property of the state. He shall also make collections of specimens and illustrations of the geological and agricultural resources of the state, one of which shall be deposited in the cabinet of the University of Alabama, a second in the cabinet of the Agricultural and Mechanical College, and a third in the office of the commissioner of agriculture in the capitol at Montgomery.

Feb. 19, 1883, p. 57.

2243. Assistants.—The state geologist shall have power to appoint, with the approval of the governor, such assistants, including a competent chemist, and for such periods and with such compensation as he may deem necessary to the best interests of the survey.

Feb. 6, 1891, p. 427, §2.

2244. Annual appropriation.—There is appropriated, out of any funds in the treasury not otherwise appropriated, for the geological and agricultural survey provided for in this chapter, annually, the sum of seven thousand and five hundred dollars. Upon the requisition of the state geologist, when approved by the governor, the auditor shall draw his warrant on the treasurer for the amount appropriated, in such sums as may be needed from time to time for the purposes of the survey herein provided for; and for all expenditures made under the provisions of this chapter, except for the payment of the salary of the state geologist, the approval of the governor must be obtained, and the vouchers of the state geologist for all such expenditures must be filed with the auditor and a statement of his receipts and expenditures shall accompany each biennial report of the state geologist.

Ib.

2245. Salary.—The state geologist shall receive out of such appropriation a salary of fifty dollars a month as state geologist during the time he shall be engaged in performing his duties as professor of mineralogy and geology in, and is paid a salary by, the University of Alabama; and when not so employed and paid by the said university, he shall receive a salary of two hundred dollars a month.

Ib.

2246. Expenses of survey.—The balance of the annual appropriation herein provided for, shall be devoted, so far as may be necessary to execute the purposes of this chapter, to the discharge of the expenses of the survey, including the compensation of all temporary and permanent assistants; traveling expenses of the geological corps; purchase of apparatus and material for making chemical analyses; other necessary expenditures for outfit; expenses incurred in providing for the transportation, arrangement and proper exhibition of the geological and other collections made under authority of this chapter, and the engraving of maps and sections to illustrate the biennial reports.

CHAPTER 57.

GUARDIAN AND WARD.

ARTICLE 1.—APPOINTMENT OF GUARDIANS OF MINORS. 2247–2254.
2.—APPOINTMENT OF GUARDIANS OF PERSONS OF UNSOUND MIND. 2255–2271.
3.—BONDS OF GUARDIANS; RIGHTS OF SURETIES. 2272–2284.
4.—DUTY AND AUTHORITY OF GUARDIANS; LEASE AND SALE OF PROPERTY; MAINTENANCE; REINVESTMENT. 2285–2337.
5.—SETTLEMENTS OF GUARDIANS. 2338–2351.
6.—COMPELLING SETTLEMENTS OF GUARDIANS. 2352–2361.
7.—RESIGNATION AND REMOVAL OF GUARDIANS. 2362–2367.
8.—REMOVAL OF PERSON OR PROPERTY OF WARD FROM ONE COUNTY TO ANOTHER. 2368–2373.
9.—REMOVAL OF PERSON OR PROPERTY OF WARD TO ANOTHER STATE. 2374–2386.
10.—JUDGE OF PROBATE, CUSTODIAN OF FUNDS OF MINOR OR PERSON OF UNSOUND MIND, NOT EXCEEDING ONE HUNDRED DOLLARS; DISBURSEMENT OF SAME. 2387–2391.

ARTICLE 1.

APPOINTMENT OF GUARDIANS OF MINORS.

2247 (2370) (2748) (2408) (2012). **Guardians of minors; appointment.**—Guardians must be appointed for minors under the age of twenty-one years, by the court of probate of the county in which such minor resides.

Domicil of infant.—Carlisle v. Tuttle, 30 Ala. 613; Johnson v. Copeland, 35 Ala. 521; Daniel v. Hill, 52 Ala. 430; Metcalf v. Lowther, 56 Ala. 312; Desribes v. Wilmer, 69 Ala. 25; Moses v. Faber, 81 Ala. 445; Allgood v. Williams, 92 Ala. 551; Merrill v. Morrissett, 76 Ala. 433. **Appointment of guardians during late civil war.**—Troy v. Ellerbe, 48 Ala. 624; Corbitt v. Carroll, 50 Ala. 315; Parks v. Coffey, 52 Ala. 32; Nelson v. Boynton, 54 Ala. 368. **What considerations should control court** in making appointment.—Lee v. Lee, 67 Ala. 406; Desribes v. Wilmer, 69 Ala. 25. **Appointment of non-resident not void,** but voidable.—Martin v. Talley, 72 Ala. 23; Broughton v. Bradley, 30 Ala. 679; Brock v. Frank, 51 Ala. 85. **Effect of marriage of female guardian.**—Carlisle v. Tuttle, 39 Ala. 613; Pistole v. Street, 5 Porter, 64; Cavanaugh v. Thompson, 16 Ala. 817; Williamson v. Hill, 6 Port. 184; McGinty v. Mabry, 23 Ala. 672; Calloway v. Gilmer, 36 Ala. 354; Martin v. Foster, 38 Ala. 688; Gravett v. Malone, 54 Ala. 19. **Validity of appointment cannot be collaterally assailed.** Speight v. Knight, 11 Ala. 461. See same subject in "Executors and Administrators." **When stranger preferred to father.**—Huie v. Nixon, 6 Port. 77. When guardian estopped from denying validity of appointment.—Harbin v. Bell, 54 Ala. 389. **Trustees in invitum, when.**—Corbitt v. Carroll, 50 Ala. 315; Lee v. Lee, 67 Ala. 406. **Jurisdiction of chancery court not affected.**—Lee v. Lee, 55 Ala. 590; Fulgham v. Herstein, 77 Ala. 496.

2248 (2371) (2749) (2409) (2013). **Minor over fourteen may nominate guardian.**—When the minor is over fourteen years of age, he may nominate a suitable person as his guardian in person, or such nomination may be certified to the court of probate by a justice of the peace or other officer authorized to take acknowledgments to conveyances.

Selection of guardian by minor.—Kelly v. Smith, 15 Ala. 687; Moses v. Faber, 81 Ala. 445.

2249 (2372) (2750) (2410) (2014). **Father entitled to preference; guardian's control of ward.**—When a minor has a father living, and

has an estate in his own right, a guardian must be appointed for him; and his father, if a suitable and proper person, and willing to give bond and qualify as guardian, is entitled to a preference. No such guardian can exercise any control over the person of his ward during the life of the father, or during the life of the mother, if the ward is a female, or a male under the age of fourteen years.

Removal of parent from custody of minor.—Striplin v. Ware, 36 Ala. 87. **Custody of children on divorce or separation.**—Anonymous, 55 Ala. 428; Lee v. Lee, 55 Ala. 590; Hansford v. Hansford, 10 Ala. 561; Bryan v. Bryan, 34 Ala. 516.

2250 (2373) (2751) (2411) (2015). **Testamentary guardian.** Guardians may be appointed by the last will and testament of the father, if the right is claimed within six months after the will is admitted to probate; but the mother is entitled to the custody of the person of the ward until it is fourteen years of age.

Appointment of administrator with will annexed, confers no authority to act as testamentary guardian.—Dunham v. Hatcher, 31 Ala. 483; Desribes v. Wilmer, 69 Ala. 25.

2251 (2374) (2752) (2412). **Non-resident minors.**—The court of probate of the county in which the property, or a part of the property of a minor, not residing in the state, may be, has authority to appoint a guardian of the property within this state of such minor, but only one such appointment shall exist at the same time.

2252 (2375) (2756) (2452). **Selection of guardian.**—If there be two or more applicants for the guardianship of a minor, the judge of probate must prefer that person who is of nearest relationship, and will, in the opinion of the judge, best manage the estate of the ward.

2253 (2376) (2765) (2423). **General guardian of county.**—The judge of probate may appoint a general guardian for the county, who must be appointed and act as guardian when no other fit person applies for appointment and qualifies; the term of office of such general guardian continues during the term of the judge by whom he is appointed, unless he is reappointed; and if reappointed, his bond, if deemed sufficient, shall remain as a continuing security, or he may be required to execute a new bond.

2254 (2377) (2767) (2416) (2017). **Sheriff may be appointed guardian.**—If no fit person is appointed and qualifies as guardian of a minor, and there be no general guardian for the county, the sheriff must be appointed guardian, and the guardianship attaches to the office of sheriff.

ARTICLE 2.

APPOINTMENT OF GUARDIANS OF PERSONS OF UNSOUND MIND.

2255 (2390) (2753, 2754) (2414, 3193) (2016, 2754). **Appointment.**—The court of probate has authority, and it is a duty to appoint guardians for persons of unsound mind residing in the county, having an estate, real or personal, and of persons of unsound mind residing without the state, having within the county property

requiring the care of a guardian, under the limitations, and in the mode hereinafter prescribed.

2256 (2391). **Guardian not appointed until after inquisition.**—A guardian for a person alleged to be of unsound mind, residing in the county, must not be appointed until an inquisition has been had and taken as hereinafter directed.

2257 (2392) (2757) (3189) (2750). **Inquisition; proceedings.** Upon the petition of any of the relatives or friends of any person alleged to be of unsound mind, setting forth the facts and name, sex, age and residence of such person, accompanied by an affidavit that the petitioner believes the facts therein stated to be true, the court of probate of the county in which such person alleged to be of unsound mind resides, must appoint a day, not more than ten days from the presentment of such petition, for the hearing thereof.

2258 (2393) (2758) (3190) (2751). **Jury summoned; writ of arrest.**—The judge of probate must issue a writ directed to the sheriff, commanding him to summon twelve disinterested persons of the neighborhood for the trial thereof, and also issue subpœnas for witnesses, as the parties may require, returnable to the time of trial; he must also issue a writ directed to the sheriff to take the person alleged to be of unsound mind, and, if consistent with his health or safety, have him present at the place of trial.

2259 (2394) (2759) (3191) (2752). **Oath of jurors; vacancies filled.**—At the time set for the trial, if good cause be not shown for continuance, the jury must be impaneled and sworn well and truly to make inquisition of the facts alleged in the petition, and a true verdict render according to the evidence. If any of the jurors are excused from serving, fail to attend, or are set aside for any cause, their places may be supplied from the bystanders.

2260 (2395) (2760) (3192) (2753). **On verdict of insanity, papers filed, and guardian appointed.**—If the jury find by their verdict that the facts alleged in the petition are true, and that such person is of unsound mind, the court must cause the petition, and all the proceedings thereon to be recorded, and appoint a suitable guardian of such person.

Inquisition without notice invalid.—McCurry v. Hooper, 12 Ala. 823; Eslava v. Lepretre, 21 Ala. 504; Molton v. Henderson, 62 Ala. 426. **Service of writ of arrest sufficient.**—Fore v. Fore, 44 Ala. 478. **Appointment without inquisition void.**—Eslava v. Lepretre, 21 Ala. 504; Moody v. Bibb, 50 Ala. 245; Molton v. Henderson, 62 Ala. 426. **If inquisition had before sheriff, void.**—Laughinghouse v. Laughinghouse, 38 Ala. 257. **Substantial compliance with statute sufficient.**—Fore v. Fore, 44 Ala. 478. **Non compos mentis defined.**—In re Carmichael, 36 Ala. 514; Rawdon v. Rawdon, 28 Ala. 565; Stubbs v. Houston, 33 Ala. 555; White v. Farley, 81 Ala. 563.

2261 (2396) (2761). **Proceedings when person of unsound mind is confined in asylum.**—If the person alleged to be of unsound mind is a resident of the county, and is at the time of the application confined in an hospital or asylum within or without the state, the inquisition may be had and taken without notice to him; but on the filing of the application, the court must appoint a guardian ad litem to represent and defend for him; it is the duty of such guardian by

answer to put in issue the facts stated in the application, and to employ counsel at the expense of such person of unsound mind to appear and defend.

2262 (2397) (2804) (3197) (2758). **Application for revocation of guardianship.**—At any time after the inquisition, the person ascertained to be of unsound mind, by himself, or by next friend, may apply in writing to the court of probate for a revocation of the proceedings against him, and of the letters of guardianship; the application to be accompanied by the certificate in writing of two physicians, or of two other competent persons, stating that after examination of such person, they believe him to be of sound mind.

2263 (2398) (2804) (3197) (2758). **Proceedings on application.** On the filing of such application, the court must appoint a day for the hearing thereof, not more than ten days thereafter, and the guardian and the person at whose instance the inquisition was had and taken, must be cited to appear and show cause against it.

2264 (2399) (2805, 2806) (3198, 3199) (2759, 2760). **Contest of application.**—If the guardian, or the person at whose instance the inquisition was had and taken, appear and in writing deny the allegations of the application, the court must appoint a day for the trial of such contest, not more than ten days thereafter, and must cause a jury to be summoned for the trial thereof, and the like proceedings must be had as upon the original inquisition; or if there be no contest of the allegations of the application, and the court is satisfied of the truth thereof, a decree must be entered revoking the proceedings on the inquisition and the guardianship, and declaring that the ward must be restored to the custody and management of his estate.

2265 (2400) (2807) (3200) (2761). **Judgment on contest; costs thereof.**—If, on the trial of the contest, the jury find the facts stated in the application to be true, the court must enter a decree revoking the proceedings on the inquisition and the guardianship, and declaring that the ward must be restored to the custody and management of his estate; and must adjudge the costs as is just and equitable; but if the verdict of the jury negatives the facts stated in the application, a judgment of dismissal, at the costs of the applicant, or of the next friend, must be entered.

2266 (2401) (2803) (3196) (2757). **Revocation on application of guardian.**—If, at any time after his appointment, the guardian becomes satisfied that the ward has been restored to sanity, and is capable of managing his estate, and the judge of probate is of opinion, from the proof and the facts stated, that such representation is correct, he must make an order that the guardian be discharged, and that the estate of the ward be restored to him.

2267 (2402) (2755) (2415). **Non-resident persons of unsound mind.**—The court of probate of a county in which a person of unsound mind residing without the state may have property, real or personal, requiring the care of a guardian, may appoint a guardian for the property of such person which may be within this state, if

such person has been declared of unsound mind by a court having jurisdiction in the state of his residence.

2268 (2403) (2755) (2415). **Application for appointment of guardian for such non-resident; proceedings.**—The application for the appointment of a guardian for such person, must be in writing, must be verified by affidavit, and must state the name, sex, age and residence of such person, the court by which he was declared of unsound mind, and the property requiring the care of a guardian. On the filing of such application, the court must appoint a day for the hearing thereof, of which notice must be given for three successive weeks by publication in some newspaper published in the county, or if there be no such paper published in the county, by publication in a paper published in an adjoining county, and a copy of such paper must by the judge of probate be mailed to such person at the post-office nearest his residence; and the court must appoint a guardian ad litem to represent and defend for such person, and it is the duty of such guardian to put in issue the facts stated in the application; if on the hearing the application is not granted, the court must render a decree against the applicant for all the costs of the proceedings, including the reasonable compensation of the guardian ad litem.

2269 (2404) (2756) (2452). **Selection of guardian.**—If there are two or more applicants for the guardianship of a person of unsound mind, the court must prefer that person who is of nearest relationship, and will, in the judgment of the court, best manage the estate of the ward.

2270 (2405) (2765, 2767) (2423, 2416) (2017). **General guardian; sheriff may be appointed.**—The general guardian of the county must be appointed guardian of a person of unsound mind, if no other suitable person applies for appointment and qualifies; and if there be no general guardian, the sheriff must be appointed.

2271 (2410). **Meaning of term "person of unsound mind."**—The term "person of unsound mind," as employed in this chapter, includes idiots, lunatics, or the insane.

See citations to section 2260.

ARTICLE 3.

BONDS OF GUARDIANS; RIGHTS OF SURETIES.

2272 (2378, 2406). **Bond of guardian.**—Before the issue of letters of guardianship, other than letters to the general guardian, or to the sheriff, the judge of probate must require the guardian appointed to enter into bond with sufficient sureties, payable to the judge of probate, in a penalty prescribed by him, which must be a sum not less than double the estimated value of the personal property, and double the rental value of the real estate of the ward for a term of three years, or, at the discretion of the judge, may be a sum equal to double the estimated value of the estate of the ward, real and

personal, with condition for the faithful performance of all the duties which are, or may be required of him by law.

What is valid bond.—Brunson v. Brooks, 68 Ala. 248; Evans v. Daughtry, 84 Ala. 68; Wright v. Lang, 66 Ala. 389; Smith v. Kirkland, 81 Ala. 345; Marks v. Bank, 79 Ala. 550; Alston v. Alston, 34 Ala. 15. **Signatures to bond, when sufficient.**—Hall v. Hall, 43 Ala. 488. **When condition does not limit guardianship to person of infant.**—Alston v. Alston, 34 Ala. 15. **No action can be maintained while relation of guardian and ward exists.**—Eiland v. Chandler, 8 Ala. 781. **Reformation of bond in equity.**—Hall v. Hall, 43 Ala. 488; Whitehead v. Brown, 18 Ala. 682; Bailey v. Timberlake, 74 Ala. 221; Robertson v. Walker, 51 Ala. 484. **Liability on bond.**—Moore v. Wallis, 18 Ala. 458; Williams v. Harrison, 19 Ala. 277; Alston v. Alston, 34 Ala. 15; Tyson v. Sanderson, 45 Ala. 364; Corbitt v. Carroll, 50 Ala. 315; Anderson v. Thomas, 54 Ala. 104; Lee v. Lee, 67 Ala. 406; s. c., 55 Ala. 590; Stephens v. Taylor, 62 Ala. 269; Chancy v. Thweatt, 91 Ala. 329; Jones v. Beverly, 45 Ala. 161; Owens v. Grimsley, 44 Ala. 359. **When action at law cannot be maintained.**—Hailey v. Boyd, 64 Ala. 399.

2273 (2383, 2407). **Bond of guardian obtaining order to sell lands.**—A guardian, other than the general guardian of the county, or the sheriff, or a testamentary guardian relieved from giving bond with sureties, who has not given bond in double the estimated value of the property or estate, real and personal, of the ward, must not obtain an order for the sale of lands of the ward and must not make sale of any lands of the ward, until he has given bond with sufficient sureties, in a penalty equal to double the estimated value of such lands, payable to the judge of probate, and with condition that he will faithfully account for the proceeds of such sale.

2274 (2379) (2762) (2417) (2018). **Testamentary guardian may be relieved from giving bond.**—A father may by his last will relieve the guardian of his appointment for his minor child or children from giving bond and sureties for the faithful performance of his duties as guardian; but the authority of such guardian shall not extend to any other property or estate of such minor child or children, than such as is derived by gift, devise, descent, or distribution from the father, unless he give bond, with sufficient sureties, as is required of other guardians.

2275 (2380) (2762) (2417) (2018). **Bond may be required of testamentary guardian.**—Before the issue of letters of guardianship to a testamentary guardian, relieved from giving bond and sureties, or at any time thereafter, if the judge of probate deems it necessary for the safety of such minor child or children, he may require of such guardian bond with sufficient sureties; or, on the application of such minor child or children, by next friend, and for good cause shown, may require of such guardian bond with sufficient sureties; in either case, if such guardian fails, for ten days after the requisition of such bond, to give the same, the judge of probate must withhold from him letters of guardianship, or if letters have issued, must remove him, and recall and revoke such letters.

2276 (2381) (2766) (2424). **Bond of general guardian.**—The general guardian of the county must give bond with at least two good and sufficient sureties, in a penalty to be prescribed by the judge of probate and payable to him, with condition to faithfully

perform all the duties which are, or may be required of him by law during the time he acts as such guardian.

2277 (2382) (2767) (2416) (2017). **Additional bond of sheriff as guardian.**—If the sheriff is appointed guardian of a minor, or of a person of unsound mind, and when the appointment is made, or at any time subsequent during the continuance of the guardianship, the judge of probate is of the opinion the official bond of such sheriff is not sufficient security for the protection of the ward, he may require of him an additional official bond, in such penalty as he may prescribe; and if such sheriff, for ten days after notice that such additional bond is required, fails to give the same, he vacates his office, and the judge of probate must certify the vacancy to the appointing power.

2278 (2384, 2408) (2764) (2418) (2019). **New or additional bond may be required.**—The judge of probate has authority, and it is his duty, whenever he deems it necessary for the safety of the ward, to require the guardian to give a new or additional bond, and, if on notice of such requisition such guardian fails for ten days to give such new or additional bond, to remove him and revoke his letters.

Sureties not liable after discharge.—Hamner v. Mason, 24 Ala. 480; Lee v. Lee, 55 Ala. 590; s. c., 67 Ala. 406.

2279 (2385, 2409) (2764) (2418) (2019). **Discharge of surety; new bond.**—Upon the application in writing of any surety or sureties upon the bond of a guardian, requesting to be discharged from future liability as such surety or sureties, or upon the application in writing of the personal representative, or of an heir or devisee of a deceased surety upon such bond, requesting that the estate of such deceased surety be discharged from future liability by reason of such suretyship, it shall be the duty of the court to give to such guardian notice of such application and to require him, within fifteen days after the service of the notice, to make a new bond; and upon the failure to make such bond, such guardian shall be removed and his letters revoked; and upon such removal he shall make settlement of his guardianship. Any number of persons having the right to make application under this section may join in the application.

2280. Effect of new bond.—When a new bond is given under the preceding section, the surety on whose application, or the estate of the deceased surety on whose behalf the application was made, as the case may be, is discharged as to all breaches subsequent to the execution and approval of the new bond.

2281 (2387). **Informal or irregular bond.**—The bond of the general guardian of the county, or of the guardian of a minor, or of a person of unsound mind, is valid and operative as a statutory bond, and is of the same obligation, force and effect as a statutory bond, though it may not be approved, or in the penalty, or payable, or with the condition required by law.

2282 (2388). **Conditional execution or delivery of bond.**—A surety on the bond of the general guardian of the county, or on the bond of the guardian of a minor, or person of unsound mind, cannot

avoid liability thereon, on the ground that he signed or delivered it on condition that it should not be delivered to the judge of probate, or should not become perfect, unless it was executed by some other person who does not execute it.

2283 (2389). **Judge liable for neglect or omission in taking bond.**—The judge of probate, and the sureties on his official bond are liable to any person injured for any neglect or omission of the judge in not taking from a guardian a good and sufficient bond, or for taking thereon insufficient surety; or for the neglect or omission to require the execution of a new, or of an additional bond, in the cases in which such bond is required by law, if he knows, or has good cause to believe that the case exists in which such new or additional bond should be required.

2284 (2386) (2763) (2419) (2020). **Approving, filing and record of bonds.**—All bonds given by guardians must be approved by the judge of probate issuing the letters of guardianship, and must be filed and recorded in his office.

ARTICLE 4.

DUTY AND AUTHORITY OF GUARDIANS; LEASE AND SALE OF PROPERTY; MAINTENANCE; REINVESTMENT.

2285 (2411) (2770) (2420) (2021). **Guardians to return an inventory.**—Within three months after the appointment, the guardian must make and subscribe, upon oath, an inventory of all the estate, real and personal, of the ward, and subsequently, as additional property may be received, which must be filed and recorded.

2286 (2412) (2773) (2426) (2024). **Management of ward's estate, and loan of his money.**—It is the duty of the guardian to manage the estate of his ward frugally, and to improve it to the best of his skill and ability. He must, if practicable, lend out all surplus money of the ward on bond and mortgage, or on good personal security, and, if the bond is not renewed annually, require the interest to be paid at the end of each year.

No loans made when security doubtful.—McLean v. Hosea, 14 Ala. 194; Hall v. Hall, 43 Ala. 488; Ashley v. Martin, 50 Ala. 537; Lee v. Lee, 55 Ala. 590; s. c., 67 Ala. 406. **Guardian not responsible when good security taken.** Newman v. Reed, 50 Ala. 297; Gould v. Hayes, 19 Ala. 438; Henderson v. Simmons, 33 Ala. 291; Ivey v. Coleman, 42 Ala. 409; Stewart v. Stewart, 31 Ala. 207; Ashley v. Martin, 50 Ala. 537. **When guardian liable for interest on moneys not loaned.**—Thompson v. Thompson, 92 Ala. 545; Brand v. Abbott, 42 Ala. 499; Bryant v. Craig, 12 Ala. 354; Owen v. Peebles, 42 Ala. 338; Brewer v. Ernest, 81 Ala. 435. **Mortgage securing ward's money,** being accounted for by guardian, becomes his property.—Wright v. Robinson, 94 Ala. 479. **Want of diligence.**—Mason v. Buchanan, 62 Ala. 110; Ferguson v. Lowery, 54 Ala. 510; Harbin v. Bell, 54 Ala. 389; Ashley v. Martin, 50 Ala. 537; Brewer v. Ernest, 81 Ala. 435; Stewart v. McMurry, 82 Ala. 269.

2287 (2413) (2774) (2427). **Debtors to guardians to pay compound interest.**—All contracts made with guardians, verbal or written, for the payment of money, bear compound interest after maturity, if not otherwise expressed; and judgments rendered thereon also bear compound interest.

See citations to section 2348.

2288. Jurisdiction of court of probate as to real estate of the ward.—The court of probate from which the appointment of a guardian of a person of unsound mind, or of a minor, is derived, has jurisdiction of the real estate of the ward situated in any county in the state.

Matthews v. Matthews, 104 Ala. 303, overruling Turnipseed v. Fitzpatrick, 75 Ala. 297.

2289 (2414). **Lease of lands.**—The guardian may, publicly or privately, lease the lands of the ward for a term not exceeding one year, making a report thereof to the court of probate.

2290 (2415) (2775). **Lease for longer term than one year.**—The court of probate, on the application in writing of the guardian, showing that it would be to the interest of the ward, may authorize the guardian to lease the lands of the ward, publicly or privately, for a term not exceeding ten years, reserving rent payable annually; such lease being subject to ratification or disaffirmance by the ward, if a minor, upon attaining majority, or if of unsound mind, upon restoration to sanity. The application must not be heard until after the appointment of a guardian ad litem to represent the ward, and until proof is made that the lease would be advantageous to the ward.

2291 (2416). **Report of leasing.**—If the application is granted, the guardian must, within thirty days after making the lease, report the same in writing, under oath, to the court of probate, accompanied with a duplicate of the lease; and if upon examination the court is satisfied that the terms of the order of the court have been complied with, and that the payment of the annual rent is properly secured, an order of confirmation must be made and entered of record. Until such order of confirmation, the lease is not valid and operative. If the court is not satisfied that there has been compliance with the terms of the order, or that the payment of the annual rent is secure, an order must be entered rejecting the report; and the guardian may proceed to a subsequent leasing, subject to rejection or confirmation by the court.

2292 (2417). **Lease of mineral lands.**—On the application in writing of a guardian, verified by affidavit, showing that it would be to the interest of the ward that mines or quarries should be opened on lands of the ward possessing, or supposed to possess minerals, ores, clay, stone, slate, or valuable deposits, or that mines, or quarries which have been opened should be worked, the court of probate may, by order, authorize the guardian to lease, publicly or privately, such lands for a term not exceeding ten years. Such order must not be made until after the appointment of a guardian ad litem to represent the ward, and until by proof the court is satisfied that it would be to the interest of the ward to lease the lands for the purpose of opening and working mines or quarries thereon, or for the working of mines or quarries which have been opened.

2293 (2418). **Rent or royalty.**—The court may authorize the guardian to lease such lands for a rent payable in money at such

time as the court may appoint, or for a royalty or galiage rent, or for a footage rent, as to the court may seem most advantageous to the ward.

2294 (2419). **Report of leasing.**—The guardian must, within thirty days after making such lease, report the same in writing, under oath, to the court of probate, accompanied with a duplicate of the lease; and if upon examination the court is satisfied that the terms of the order have been complied with, and that the payment of the rent or royalty reserved is properly secured, an order of confirmation must be made and entered. Until such order of confirmation, the lease is not valid and operative. If the court is not satisfied that there has been compliance with the terms of the order, or that the payment of the rent or royalty reserved is properly secured, an order rejecting the report must be entered; and the guardian may proceed to a subsequent leasing, subject to rejection or confirmation by the court.

2295 (2420). **Land held in common with adults.**—Such lease must not be made of lands held in common with persons who are of full age, without their consent in writing, or unless they join in the execution thereof.

2296 (2421) (2778) (2429). **Improvements or repairs on real estate.**—It is the duty of the guardian to keep in tenantable repair and condition the real estate of the ward, and he has authority to make all such improvements and repairs thereon as are necessary and proper for that purpose; but if such improvements or repairs cannot be made without an expenditure from the principal of the funds of the ward, such expenditure must not be made without an order of the court of probate; and such order must not be made without proof, by two disinterested witnesses, of facts which show that it would be advantageous to the ward.

2297 (2422) (2777) (2428) (2025). **Estate of ward may be kept together.**—If the estate of the ward consists of a farm or plantation, of stock, farming implements and provisions, the court of probate, on the application of the guardian, verified by affidavit, showing that it would be to the interest of the ward, may order such estate to be kept together, and the farm or plantation cultivated for such period, not exceeding ten years, as the court may prescribe.

2298 (2423). **Powers of guardian in such case.**—A guardian, having authority under the preceding section to keep together the estate of the ward, has authority to purchase such stock, farming implements and provisions, and to employ such laborers as may be necessary for the proper and profitable cultivation of such farm or plantation.

2299 (2424). **Guardian, in such case, must make annual settlements.**—A guardian, keeping together the estate and cultivating the lands of the ward, must make a settlement annually; and if on such settlement it appears that the estate of the ward is being diminished in value by reason of the keeping of the estate together, and the cul-

tivation of the lands, the court must revoke the order authorizing the same.

2300 (2425) (2777) (2428) (2025). **Estate held in common or jointly.**—If several minors, having a farm or plantation, stock, farming implements and provisions in common or jointly, have a common guardian, he may obtain authority and keep the estate together, subject to the provisions of the two preceding sections.

2301 (2426). **Compromise of debts due ward.**—The court of probate may authorize a guardian to compromise any claim or debt due the ward, which is doubtful of collection, and has not become so by reason of the negligence of the guardian.

2302 (2427). **Proceedings to obtain order of compromise.**—An order of compromise must not be granted otherwise than on the application in writing of the guardian, verified by affidavit, describing the claim or debt, stating the terms on which a compromise can be effected, and the facts relied on as showing that the compromise would be of advantage to the ward; the court, on the filing of the application, must appoint a day for the hearing thereof, not less than five, nor more than ten days thereafter, and must appoint a guardian ad litem to represent the ward, who must put in issue the facts stated in the application, and require proof thereof.

2303 (2428). **Order of compromise.**—If, on the hearing, the court is satisfied the claim or debt has not become of doubtful collection by reason of the negligence of the guardian, and that a compromise thereof on the terms proposed would be of advantage to the ward, an order must be entered authorizing the guardian to make the compromise on the terms proposed, and to make report thereof. On the filing of the report, if the court is satisfied that the order has been complied with, an order of confirmation must be entered; otherwise, the report must be set aside.

2304 (2429). **Real estate may be taken in compromise.**—The court may authorize the guardian to take real estate in compromise of the debt or claim, if satisfied that it is of advantage to the ward, the title to such real estate being conveyed to the ward, and the conveyance thereof filed with the report of compromise; and the report must not be confirmed until the court is satisfied that the title conveyed to the ward is good and sufficient.

2305 (2441) (2788) (2437). **Guardians may invest in real estate.** Guardians may invest the money of their wards in real estate situated in any part of the state; and the guardians, acting in good faith, shall not be individually responsible for a depreciation in value of the land purchased with the funds of the ward, when such depreciation may result from causes which cannot be prevented by the guardian.

2306 (2442) (2789) (2438). **Title, how made.**—The real estate purchased by the guardian, with the funds of the ward, must be conveyed to the ward, but must be managed and controlled by the guardian for the benefit of the ward, and the guardian must render

annual accounts of the rents and profits of the lands to the court having jurisdiction of the guardianship.

2307 (2443) (2790) (2439). **Liability of guardian.**—The guardian is liable to the ward for any loss sustained by the ward by the failure or defect of title to the land purchased by the guardian for the ward.

2308 (2430). **Sale of debts or other choses in action of ward.** The court of probate may authorize the guardian to make sale of debts or other choses in action of the ward, which are of doubtful collection or recovery, and have not become so by reason of the negligence of the guardian.

Power of guardian over choses in action belonging to ward. Mason v. Buchanan, 62 Ala. 110; Woodward v. Donally, 27 Ala. 198.

2309 (2431). **Proceedings to obtain order of sale.**—An order to sell such debts or choses in action must not be made otherwise than upon the application in writing of the guardian, verified by affidavit describing the debts or choses in action, or exhibiting a descriptive list thereof, and stating the facts relied on as showing that a sale thereof would be of advantage to the ward; the court, on the filing of the application, must appoint a day for the hearing thereof, not less than five, nor more than ten days thereafter, and must appoint a guardian ad litem to represent the ward, who must put in issue the facts stated in the application, and require proof thereof.

Sale cannot be collaterally impeached. Daughtry v. Thweatt, 105 Ala. 615.

2310 (2432). **Hearing; order of sale.**—If on the hearing, the court is satisfied from the evidence that the facts stated in the application are true, and that such debts or choses in action are of doubtful collection or recovery in consequence of no negligence of the guardian, an order of sale must be made and entered, and the terms and place of sale must be prescribed by the court.

2311 (2432). **Debtor cannot purchase his own debt.**—The debtor or other person against whom such debt or chose in action may exist, cannot, directly or indirectly, purchase at such sale, a debt or chose in action existing against him; and if at any time it shall be discovered that the purchase was in violation of this provision, the guardian or his successor in interest may sue for and recover upon such debt or chose in action in all respects as if no sale had been made; but the amount bid at the sale shall be held and treated as a payment, at that date, upon the debt or chose in action.

2312 (2433). **Report of sale.**—The title of the ward to such debts or choses in action will not vest in the purchaser until the sale has been reported to, and confirmed by the court; within thirty days after making such sale, the guardian must make report thereof to the court, and if the court is satisfied that the terms of sale have been complied with, an order of confirmation must be entered, and the guardian must be ordered to transfer in writing to the purchaser or purchasers such debts or choses in action.

2313 (2444) (2783) (3194) (2755). **Maintenance of family of person of unsound mind.**—The court of probate, on the application of the guardian of a person of unsound mind, must direct what portion

of the income, or of the principal of the estate of such person, may be appropriated by the guardian to the support of the family, including the education of the minor children of such person.

When lands of infant, not chargeable.—St. Joseph v. Augustini, 55 Ala. 493. **What probate court has jurisdiction.**—Matthews v. Matthews, 104 Ala. 303 (overruling Turnipseed v. Fitzpatrick, 75 Ala. 297). **When petition without equity.**—Creagh v. Tunstall, 98 Ala. 249.

2314 (2445) (2779, 2780) (2453, 2433, 2434) (2027, 2028). **Maintenance and education of minors.**—If the income of the estate of a minor be insufficient for his maintenance and education in a manner suitable to his prospects and condition in life, the court of probate, on the application of the guardian in writing, may order him to appropriate so much, or such part of the principal of the estate of the minor as may be necessary for his maintenance and education.

2315 (2446) (2779, 2780) (2453, 2433, 2434) (2027, 2028). **Contents of application.**—The application under either of the two preceding sections must be verified by the affidavit of the guardian, and must state the facts which show the necessity for the appropriation.

2316 (2447) (2779, 2780) (2453, 2433, 2434) (2027, 2028). **Hearing; guardian ad litem; evidence; order.**—On the filing of the application the court must appoint a day, not less than twenty nor more than thirty days thereafter, for the hearing, and must appoint a proper person as guardian ad litem to represent the ward who must put in issue the facts stated in the application and require proof thereof; and if, on the hearing, the court is satisfied from the evidence that the facts stated in the application are true, an order must be made and entered directing what sum or portion of the income or of the principal of the estate of the ward, if he be a person of unsound mind, may be appropriated by the guardian to the support of the family of such person and the education of his minor children, or what portion of the principal of the estate of the ward, if he be a minor, may be appropriated to his maintenance and education.

2317 (2434) (2782) (2430). **Sale to pay debts, etc., of person of unsound mind.**—The court of probate may authorize the guardian of a person of unsound mind to sell any property of such person, real or personal, when necessary for the payment of debts or liabilities of such person, incurred before the inquisition against him, or before the appointment of a guardian, or incurred after such inquisition and the appointment of a guardian for the maintenance of such person or for the maintenance of his family, or for the education of his minor children; or for the maintenance, in future, of the ward or of his family, or the education of his minor children.

Unauthorized sale of lands by guardian; remedy of ward.—Shorter v. Frazer, 64 Ala. 74.

2318 (2435). **Application for order; contents.**—To obtain such order of sale the guardian must make application in writing, verified by affidavit, stating the facts showing a necessity for the sale, and describing the property of which sale is to be made; and when the application is for the sale of property to pay debts or liabilities of the person of unsound mind, incurred before the appointment of a

guardian, it must further state the amount and character of each such debt or liability, and the name of the creditor.

2319 (2448) (2780) (2433, 2434) (2027, 2028). **Sale for maintenance and education of minor.**—If the income of a minor is insufficient for his maintenance and education, in a manner suitable to his prospects and condition in life, and such maintenance and education cannot be furnished him otherwise than by a sale of his estate, real or personal, the court of probate may, on the application in writing of the guardian, order a sale of the property of the minor, real or personal, or so much thereof as may be necessary, for his maintenance and education.

When probate court has authority to order sale of land.—Mahon v. Tatum, 69 Ala. 466; Hudson v. Helmes, 23 Ala. 585; Matthews v. Matthews, 104 Ala. 303. Sale for reimbursement of guardian, when.—Bellamy v. Thornton, 103 Ala. 404.

2320 (2449) (2780) (2433, 2434) (2027, 2028). **Application for order; contents.**—To obtain such order of sale the guardian must make application in writing, verified by affidavit, stating the facts showing a necessity for the sale, and describing the property of which sale is to be made.

2321 (2439) (2785) (2436) (2029). **Sale for reinvestment.**—The court of probate may authorize the guardian to sell any property of the ward and direct the investment of the proceeds in bonds, notes, or bills of exchange at interest on mortgage security, or in other property or securities, in the name of the ward.

2322. Contents of application for order of sale for reinvestment. To obtain such order of sale the guardian must make application in writing, verified by affidavit, describing the property sought to be sold and stating the facts showing that the interest of the ward would be promoted by the proposed sale and reinvestment.

2323. Day fixed for hearing; guardian ad litem; notice.—On the filing of an application for the sale of property of the ward, other than debts and choses in action, whether for the payment of debts and maintenance of a person of unsound mind, or for the maintenance and education of a minor, or for reinvestment, the court must appoint a day for the hearing, not less than twenty nor more than thirty days thereafter, and must appoint a suitable and competent person, not of kin or of counsel to the petitioner, as guardian ad litem to represent the ward, who must put in issue the facts stated in the application and require proof thereof; and if the application be for the sale of real estate, the judge of probate must give notice of the filing and nature thereof and of the day appointed for the hearing, by advertisement for three successive weeks in some newspaper published in the county, or, if there be no such paper, by posting notice at the court-house door and at three other public places in the county; and if the ward be a minor and reside in this state, and the application be for the sale of real estate, in addition to the notice by publication, notice must be given by citation, to be personally served on the minor if he be above the age of fourteen years, or, if he be under that age and the father or mother be not the guardian, such notice

must be given the father if living and residing in the state, or if he be dead, or insane, or a non-resident, or imprisoned under a sentence for crime, or has not the custody of the child, such notice must be given the mother if living and residing in the state.

2324. Testimony; how taken and preserved.—On the hearing of an application by a guardian to sell property of the ward, for any purpose for which a sale may be authorized, the court may receive any competent legal evidence, whether by deposition or record, or oral testimony of witnesses in open court; but such oral testimony must be reduced to writing and subscribed by the witness; and all such testimony must be filed and carefully preserved, but not recorded, and, for all the purposes of an appeal, shall be considered part of the record.

2325 (2436, 2439, 2451). **Hearing; order of sale; place and terms.**—If, on the hearing, the court is satisfied from the evidence that the facts stated in the application are true, and that it is necessary, or will be to the interest of the ward to sell the property or any part thereof for the purposes stated in the application, a decree must be made and entered authorizing the guardian to sell the property, or any part thereof, at public outcry, upon such terms and at such place as the court may prescribe, the order of sale describing the property to be sold; but lands must be sold in the county where they lie, and if they lie in one body, but in more than one county, they may be sold in either of the counties, as the court may direct.

2326. Notice of sale.—The guardian must give notice of the day, place and terms of sale, and a description of the property to be sold, by advertisement for three successive weeks in some newspaper published in the county where the sale is to take place; and in case of a sale of lands lying in one body, but in more than one county, such notice must be given in each of the counties. If there be no such paper published in the county, or in any county in which notice is required to be given, then, as to the county having no such paper, the notice must be given by posting at the court-house door and at three other public places in the county. But when the property is perishable, or the expense of keeping it is very great, the sale may be made after five days' notice, which may be given by one insertion in a newspaper published in the county where the sale is to take place, or, if there be no such paper, by posting at the court-house door and at three other public places in the county. And in addition to the notice herein prescribed, the court may direct the giving of notice by printed handbills, or posters, to be distributed and posted in the manner best calculated to give extended notice of the sale.

2327. Hours of sale.—A sale by a guardian must not commence before the hour of eleven in the morning, nor continue longer than four in the afternoon; and, if not completed within those hours, it may be continued from day to day.

2328. Guardian may reject inadequate bid.—If the highest amount bid for the property, or any part thereof, is, in the opinion

of the guardian, greatly less than its fair value, he may withdraw the property and postpone the sale thereof.

2329. Failure of purchaser to comply; resale; deficiency.—If the purchaser fails to comply with the terms of the sale, the guardian may again proceed to advertise and sell the property; and if, at another and a completed sale, the property sells for a sum less than the amount bid at the former sale, the purchaser so in default is liable to the guardian for the deficiency, and also the expense of the resale.

2330 (2437, 2452). **Report of sale.**—Within thirty days after the sale, the guardian must make report thereof, in writing, verified by affidavit, to the court of probate, and the court must examine the same, and may also examine witnesses in relation thereto.

2331. When sale set aside.—If, on such examination, the court is satisfied that the sale was not fairly conducted, or that the amount for which the land, or any portion of the same sold, is not equal to its fair value, or that the terms of sale, as prescribed by the court, have not been complied with, the court may vacate such sale, either in whole or in part.

2332. When sale vacated, another sale to be made.—When a sale is vacated the guardian may again proceed to advertise and sell the property as authorized by the order of sale; but the court may, on vacating a sale, modify or change the order as to the place and terms of sale, one or both, and may correct any misdescription of the property therein.

2333. Sale not to be confirmed until ten days after report filed. An order confirming a sale of lands must not be made until after the expiration of ten days from the time the report of sale is filed.

2334 (2438). **Confirmation of sale.**—If the court is satisfied that the sale of the lands, or any interest therein, has been fairly conducted, and that, at such sale, the sum bid is equal to the fair value of the lands, and that the terms of sale, as prescribed by the court, have been complied with, and that the purchase-money has been paid, or if the sale is on credit, that the payment of the purchase-money is properly secured, an order of confirmation must be entered; but the title of the ward is not divested until the purchase-money is fully paid, the fact of payment reported to the court, and an order made directing a conveyance to be executed.

2335. Report of payment of purchase-money.—When lands have been sold on credit, and when the whole of the purchase-money has been paid, the guardian must, within thirty days after such complete payment has been made, report the fact of such payment to the court of probate; and if he fail to do so within the time herein specified, such report may be compelled of him, in the manner provided by sections 180 (2125) and 181 (2126) of this Code.

2336. Conveyance; when, by whom and to whom made.—After such confirmation, and when the whole of the purchase-money has been paid by the purchaser, or his heirs or any other person holding under him, directly or derivatively, on the application of such

purchaser, or his heirs, or such other person holding under him, or of the guardian, the court must order a conveyance to be made to such purchaser, or to his heirs, or such other person holding under him, as the case may be, by the guardian, or such other person as the court may appoint, conveying all the right, title and interest which the ward had at the time of the sale, in such lands; and such order shall operate to vest the right, title and interest of the ward in such purchaser, or his heirs, or such other person holding under him.

2337. Compelling report of sale; correcting mistake in description of lands.—The provisions of sections 180 (2125), 181 (2126), 184 (2129), 185 (2130) and 186 (2131) of this Code are applicable to sales of lands by guardians.

ARTICLE 5.

SETTLEMENTS OF GUARDIANS.

2338 (2453). **Jurisdiction of court of probate.**—The court of probate from which the appointment of a guardian of a person of unsound mind, or of a minor, is derived, has jurisdiction of the settlement, partial or final, of the accounts of the guardian.

Probate and chancery courts have concurrent jurisdiction.—Hailey v. Boyd, 64 Ala. 399; Owens v. Grimsley, 44 Ala. 359; Lee v. Lee, 55 Ala. 590.

2339 (2454) (2771) (2421) (2022). **Partial settlements.**—If not otherwise directed, the guardian must, at least once in three years, file in the court of probate an account of his guardianship, accompanied with the vouchers, showing his receipts and disbursements, which must be verified by affidavit; and on the filing of such account and vouchers the court must appoint a guardian ad litem to represent the ward.

2340 (2455). **Notice of settlement.**—The court must also appoint a day for the settlement, of which notice must be given, as the court may direct, either by advertisement for three successive weeks in a newspaper published in the county, or for the same length of time by posting notices at the court-house door and at three other public places in the county.

2341 (2456). **Auditing and stating account.**—On the day appointed, or on any other day to which the settlement may be continued, the court must proceed to examine the vouchers, and to audit and state the account, requiring evidence in support of all such vouchers or items of the account as may be contested, or as may not, on examination, appear to the court to be just and proper, such evidence to be taken by affidavit, or by any other legal mode; and if any voucher or item be rejected, all costs accruing on the contest or examination thereof must be taxed against the guardian personally.

Allowance to father or guardian out of ward's estate.—Waldrom v. Waldrom, 76 Ala. 285; Calhoun v. Calhoun, 41 Ala. 369.

2342 (2457). **Decree on account.**—After the examination of the

vouchers, and the audit and statement of the account, the court must render a decree passing the same, and declaring the amount of the charges against the guardian, and of the credits allowed him, which must be entered of record; and the account and vouchers must be recorded.

Allowance for money paid.—Brewer v. Ernest, 81 Ala. 435.

2343 (2458). **Partial settlement presumed correct.**—Upon the final settlement, a partial settlement must be taken and presumed as correct; but any item of the account may be re-examined, and if on re-examination it is found incorrect, the item must be disallowed, or allowed only so far as its correctness may appear.

Conclusiveness of annual settlements.—Ashley v. Martin, 50 Ala. 537; May v. Duke, 61 Ala. 53; Radford v. Morris, 66 Ala. 283; Bentley v. Dailey, 87 Ala. 406; Thompson v. Thompson, 92 Ala. 545; Turrentine v. Daly, 82 Ala. 205. **Conclusiveness of final settlement.**—Lewis v. Allred, 57 Ala. 628; Stabler v. Cook, 57 Ala. 22; Boswell v. Townsend, 57 Ala. 308; Bowden v. Perdue, 59 409.

2344 (2459). **Final settlement.**—On the death, resignation, or removal of the guardian, or on the expiration of his authority otherwise, or on the arrival of the ward at full age, or on his restoration to sanity, or on his death, or on the marriage of the ward, if a woman, and her husband is of age, a final settlement of the guardianship must be made; such settlement, in the event of the death of the guardian, to be made by his personal representative.

Jurisdiction statutory and limited.—Lewis v. Allred, 57 Ala. 628; Glass v. Glass, 80 Ala. 241. **When void for want of jurisdiction.**—Cox. v. Johnson, 80 Ala. 22. Settlement, burden of proof.—Jackson v. Harris, 66 Ala. 565. **On marriage, female ward** may require settlement.—Wise v. Norton, 48 Ala. 214. **Ratification; equitable relief against settlement.**—Jackson v. Harris, 66 Ala. 565; Caldwell v. Gillis, 2 Port. 526; Myer v. Rives, 11 Ala. 760; Ferguson v. Lowery, 54 Ala. 510; Malone v. Kelley, 54 Ala. 532; Voltz v. Voltz, 75 Ala. 555. **Settlement during minority and before resignation, void.**—Lee v. Lee, 67 Ala. 406; Lewis v. Allred, 57 Ala. 628; Glass v. Glass, 76 Ala. 368; see also Spencer v. Spencer, 50 Ala. 445. **Annual settlements presumed correct.** Bentley v. Dailey, 87 Ala. 406; Ashley v. Martin, 50 Ala. 537; Radford v. Morris, 66 Ala. 283. **Necessary parties when guardian a married woman.**—McGinty v. Mabry, 23 Ala. 672; Whitten v. Graves, 40 Ala. 578. **Jurisdiction of chancery court.**—Bruce v. Strickland, 47 Ala. 192; Hays v. Cockrell, 41 Ala. 75; Carswell v. Spencer, 44 Ala. 204; Lee v. Lee, 55 Ala. 590; Striplin v. Ware, 36 Ala. 87; Lee v. Lee, 67 Ala. 406; Cox v. Johnson, 80 Ala. 22; Hailey v. Boyd, 64 Ala. 399; Fulgham v. Herstein, 77 Ala. 496; Snedicor v. Carnes, 8 Ala. 655. **Settlement when guardian becomes non compos mentis.**—Modawell v. Holmes, 40 Ala. 391; Walker v. Clay, 21 Ala. 797; Ex parte Northington, 37 Ala. 496; McLeod v. Mason, 5 Port. 223. **Judgment against infant without guardian ad litem,** erroneous, not void.—Levystein v. O'Brien, 106 Ala. 352. **Need not appear that successor was made a party.**—McLeod v. Mason, 5 Port. 223.

2345 (2460). **Proceedings for final settlement.**—The guardian, or his personal representative, must file in the court of probate a full account of the guardianship, accompanied by the vouchers, and verified by affidavit; and on the filing of such account and vouchers, the court must appoint a guardian ad litem to represent the ward, if he be a minor or of unsound mind.

Guardian ad litem; decree not invalid because it shows that the minor was represented on settlement by the succeeding guardian, instead of guardian ad litem.—Jones v. Fellows, 58 Ala. 343. Settlement without acceptance of appointment by guardian ad litem, void.—Laird v. Reese, 43 Ala. 148; Smith v. Smith, 21 Ala. 761. What not an acceptance.—Ib. Statute does not require that minor over fourteen years of age should have opportunity of choosing guardian ad litem.—Stabler v. Cook, 57 Ala. 22. Settlement made with infant properly

represented by guardian ad litem, as binding on infant as a similar settlement made with an adult.—Stabler v. Cook, 57 Ala. 22. Appointment without notice an irregularity merely.—Frierson v. Travis, 39 Ala. 150. But to sustain decree, the record must affirmatively show that the guardian ad litem accepted the appointment.—Ib. Neither guardian nor sureties can avoid settlement because ward was not represented by guardian ad litem, but the ward may.—May v. Duke, 61 Ala. 53; Hutton v. Williams, 60 Ala. 107; Lewis v. Allred, 57 Ala. 628.

2346 (2461). **Notice of settlement.**—The court must appoint a day for the settlement, of which ten days' notice must be given to the succeeding guardian, if there be such guardian, or to the personal representative of the ward, if the ward be dead, or to the ward if he be a resident of the state, and has arrived at full age, or has been restored to sanity, by the service of citation; and notice must also be given, as the court may direct, either by advertisement for three successive weeks in some newspaper published in the county, or for the same length of time by posting notice at the court-house door, and three other public places in the county.

Notice by publication sufficient.—Stabler v. Cook, 57 Ala. 22. **What not a compliance with statute.**—Frierson v. Travis, 39 Ala. 150; Preston v. Dunn, 25 Ala. 507. When presumed on collateral attack.—Stabler v. Cook, 57 Ala. 22. When guardian cannot object to want of notice.—Treadwell v. Burden, 8 Ala. 660; McLeod v. Mason, 5 Port. 223.

2347 (2462). **Auditing and stating account.**—On the day appointed, or on any other day to which the settlement may be continued, the court must proceed to examine the vouchers, and to audit and state the account, requiring evidence in support of all such vouchers or items of the account as may be contested, or as may not on examination appear to the court to be just and proper; such evidence to be taken by affidavit, or in any other legal mode; and if any voucher or item be rejected, all costs accruing on the contest or examination thereof must be taxed against the guardian, or his personal representative, and not against the ward or his estate.

To what credits guardian entitled.—May v. Duke, 61 Ala. 53; Hutton v. Williams, 60 Ala. 107; Cunningham v. Pool, 9 Ala. 615; Newman v. Reed, 50 Ala. 297.

2348 (2463). **Decree on account.**—After the examination of the vouchers, and the audit and statement of the account, the court must render a decree passing the same, and declaring the amount due the ward, if there be any amount due him, which must be entered of record, and the account and vouchers must be recorded.

Conclusiveness of decree.—Chilton v. Parks, 15 Ala. 671; Lewis v. Allred, 57 Ala. 628; Foust v. Chamblee, 51 Ala. 75; Hutton v. Williams, 60 Ala. 107. **Force and effect of decree.**—Treadwell v. Burden, 8 Ala. 660; Waldrom v. Waldrom, 76 Ala. 285. **Decree against sureties not authorized.**—Ib. **When, though void, an admission of indebtedness.**—Hutton v. Williams, 60 Ala. 107; Hughes v. Mitchell, 19 Ala. 268. **Interest; compound interest; liability of guardian for.**—Bryant v. Craig, 12 Ala. 354; Calhoun v. Calhoun, 41 Ala. 369; Brand v. Abbott, 42 Ala. 499; Tyson v. Sanderson, 45 Ala. 364; Vaughan v. Bibb, 46 Ala. 153; Starling v. Balkum, 47 Ala. 314; Childress v. Childress, 49 Ala. 237; Ashley v. Martin, 50 Ala. 537. **Personal decree against ward not authorized.**—Duval v. Chaudron, 10 Ala. 391. **When guardian not entitled to notice of time of rendition of decree.**—Allman v. Owen, 31 Ala. 167. **Binding on sureties.**—Gravett v. Malone, 54 Ala. 19. **When void.**—Ib. **When will not be reversed** for failure to set out names of all the wards.—Newman v. Reed, 50 Ala. 297.

2349 (2464). **Enforcement of decrees against guardians, or**

their representatives, and sureties.—The court of probate may, by attachment, compel a guardian to obey its orders or decrees; and all final decrees rendered against a guardian, or against the personal representative of the guardian, on a final settlement, have the force and effect of a judgment at law, on which execution may issue against the guardian, or his personal representative, and against the sureties of the guardian, whether such settlement is voluntary or involuntary, and whether such settlement is made by the guardian while living, or by his personal representative after his death; and upon such decrees, process of garnishment may issue from the court of probate in like cases and manner as it may issue on judgments in courts of law, and may, in like manner, be prosecuted to judgment against the garnishee.

Final decree should be against guardian, not against sureties, also.—Smith v. Jackson, 56 Ala. 25. Decrees on final settlement, have force and effect of judgment at law, and execution may issue.—Treadwell v. Burden, 8 Ala. 660.

2350 (2465). **Compensation of guardian.**—A guardian is entitled for his services to commissions of two and one-half per cent. on his disbursements, and two and one-half per cent. on his receipts, and on final settlement an allowance must be made of actual expenses necessarily incurred by him; and for special or extraordinary services rendered, such compensation must be allowed as is just; but no allowance of actual expenses, or for special or extraordinary services must be made, except upon an itemized account of such expenses, or of such special or extraordinary services, verified by affidavit; and in its decree the court must state each item of such services for which compensation is allowed.

Guardian not entitled to commissions on amount of decree against him. Allen v. Martin, 34 Ala. 442. **Nor to compensation for lending out funds.** Allen v. Martin, 36 Ala. 330. **Failure to make annual settlement does not deprive guardian of right to compensation.**—Neilson v. Cook, 40 Ala. 498; Powell v. Powell, 10 Ala. 900; Craig v. McGehee, 16 Ala. 41. **Allowance of counsel fees.**—Modawell v. Holmes, 40 Ala. 391.

2351 (2466). **Commissions on money, etc., paid or delivered to ward or successor.**—Upon the final settlement of a guardianship, the guardian, if he has not been guilty of fraud or gross negligence, must be allowed reasonable commissions, not exceeding two and one-half per cent., on the value of all personal property surrendered to the ward, or to his personal representative, or on the amount of money paid or decreed to be paid to the ward, or to his personal representative, or to a succeeding guardian; but if the value of such personal property and of such money exceeds twenty thousand dollars, the commissions on the excess must not be more than one per cent.

ARTICLE 6.

COMPELLING SETTLEMENTS OF GUARDIANS.

2352 (2467). **Compelling partial settlement.**—The court of probate may, at any time it is deemed necessary for the safety of the

ward, require a guardian to make partial settlement of his guardianship; of the requisition the guardian must have notice for ten days by the service of citation, and may appear and show, if he can, that such settlement is not necessary.

2353 (2468). **Partial settlement may be compelled.**—On the application of the ward by next friend, showing satisfactory cause, the court may issue a citation to the guardian, requiring him to appear and show cause why he should not make a partial settlement of his guardianship, of which citation there must be service for ten days before the day appointed for the appearance of the guardian; and if on the hearing it should appear that there is no satisfactory cause for ordering such settlement, the application must be dismissed at the costs of the next friend.

2354 (2469). **Neglect to make partial settlement.**—If a guardian fails to make a partial settlement as often as such settlement is required of him, the court must issue to him a citation, requiring him to make such settlement; and all the costs thereof, and of the citation, must be taxed against him personally, and must not be charged against the ward or his estate, unless he appears in answer to the citation and shows a satisfactory excuse for his failure, and file his accounts and vouchers for such settlement.

2355 (2470). **Compelling final settlement.**—On the termination of a guardianship by the arrival of the ward at full age, or by his restoration to sanity, or by the death of the ward, or by the resignation or removal of the guardian, or on the expiration of his authority otherwise, the court of probate may issue a citation, requiring the guardian to appear at any time within ten days after the service thereof, on a day therein named, and file his accounts and vouchers for a final settlement; or if the guardian resides without the state, may appoint a day for him to appear and file his accounts and vouchers for a final settlement, of which notice must be given for three successive weeks by advertisement in some newspaper published in the county, or if there be no such paper published in the county, by posting notice at the court-house door and three other public places in the county.

Citation to guardian and proceedings preliminary to settlement.—Childress v. Childress, 49 Ala. 237; Waldrom v. Waldrom, 76 Ala. 285; Thompson v. Hartline, 84 Ala. 65. **Relief against probate decree**; opening case.—Waldrom v. Waldrom, 76 Ala. 285; Morrow v. Allison, 39 Ala. 70; Cowan v. Jones, 27 Ala. 317; Gamble v. Jordan, 54 Ala. 432; Hall v. Pegram, 85 Ala. 522; Croft v. Ferrell, 21 Ala. 351. **Conclusiveness of final settlement.**—Moore v. Baker, 39 Ala. 704; Duke v. Duke, 26 Ala. 673; Bogia v. Darden, 45 Ala. 269; Croft v. Ferrell, 21 Ala. 351.

2356 (2471). **Representative of deceased guardian required to make final settlement.**—On the death of a guardian, at any time after the expiration of six months from the qualification of his personal representative, such representative may be required, on ten days' notice, by the service of citation, to appear and make settlement of the guardianship of his testator or intestate.

2357 (2472). **Guardian failing to obey citation.**—If a guardian fails to obey a citation requiring him to appear and file his accounts

and vouchers for a final or partial settlement, the court of probate may, by attachment, compel his appearance, and may, if on appearance he refuses to file such accounts and vouchers, or to show good cause for his omission, imprison him for a period not exceeding six months.

2358 (2473). **Court may state account against guardian or his representative.**—If a guardian, after notice, fails to file his accounts and vouchers for a final or partial settlement, or, if the personal representative of a guardian, after notice, fails to file the accounts and vouchers of his testator or intestate for final settlement, the court of probate has authority to state an account against the guardian, or against his personal representative, from the materials on file or of record in the court, and from such evidence as may be adduced, charging such guardian with all wherewith he is by law chargeable, and crediting him with all wherewith by law he ought to be credited.

2359 (2474). **Notice of statement of account, and of day appointed for passing same.**—After the statement of such account, the court must appoint a day for passing the same, of which notice must be given by advertisement, for three successive weeks, in some newspaper published in the county, or, if there be no such paper, by posting notice at the court-house door and three other public places in the county.

2360 (2475). **Appearance of guardian or of his representative.** If, on or before the day so appointed, the guardian, or the personal representative of the guardian, if the account is stated against such representative, appears and files his accounts and vouchers for settlement, and pays such costs as have accrued under the proceedings, the court must set aside such proceedings and proceed to settlement in the manner prescribed by law, on the accounts and vouchers so filed.

2361 (2476). **Failure of guardian or representative to appear.** But, if such guardian or personal representative fails to appear and file his accounts and vouchers for settlement, any person having an interest may appear and contest such account, and the court must hear and determine such contest, and, whether such contest be made or not, must render a decree on such account, which has the force and effect of a decree rendered on a voluntary settlement by such guardian or personal representative.

ARTICLE 7.

RESIGNATION AND REMOVAL OF GUARDIANS.

2362 (2477) (2768). **Resignation.**—A guardian may resign by writing subscribed by him, or his duly authorized agent, filed in the court of probate, and on the filing of such resignation, the fact thereof must be entered of record, and an order made revoking his letters of guardianship; but such resignation does not affect the liability of the guardian or his sureties.

2363 (2478) (2769) (2447) (2037). **Removal of guardian.**—A guardian may be removed and his letters of guardianship revoked for any of the following causes:

1. For his removal from the state.

2. For a willful failure to file in the time prescribed an inventory of the estate of the ward.

3. For a willful disobedience to an order of the court, requiring him to make a partial settlement of his guardianship.

4. For continued or habitual inebriety, or imbecility of mind, or continued sickness rendering him incapable of the discharge of his duties.

5. Because of a conviction of felony, for which he is sentenced to imprisonment in the penitentiary, or to hard labor.

6. For the waste of the ward's property, or neglect of his affairs, or for any other good and sufficient cause.

Removal from state and non-residence.—Dupree v. Perry, 18 Ala. 34; Eiland v. Chandler, 8 Ala. 781; Speight v. Night, 11 Ala. 461; Huie v. Nixon, 6 Port. 77; Cockrell v. Cockrell, 36 Ala. 673. **Other cases on removal.**—Lee v. Lee, 55 Ala. 590; Striplin v. Ware, 36 Ala. 87; Repitoe v. Hall, 1 Stew. 166; Desribes v. Wilmer, 69 Ala. 25; Thompson v. Hartline, 84 Ala. 65; Boynton v. Nelson, 46 Ala. 501; Childress v. Childress, 49 Ala. 237.

2364 (2479). **Application for removal; notice.**—An application for the removal of a guardian may be made by the ward, by next friend, which application must be in writing, verified by affidavit, and must specify the grounds of removal; on the filing of the application, the court must appoint a day for the hearing, of which notice must be given the guardian for at least five days by the service of citation, if he resides in the state, and if he resides without the state, by advertisement in some newspaper published in the county for at least three successive weeks, or if there be no paper published in the county, by posting notice at the court-house door and three other public places in the county.

2365 (2480). **Hearing.**—On the day appointed, or on any other day to which the hearing may be continued, the court may proceed to hear the evidence and pass upon the application; but if the cause of removal alleged is continued or habitual inebriety, or imbecility of mind, or continued sickness, or for the waste of the property of the ward, or neglect of his affairs, either party, on request, is entitled to a trial of the issues of fact by a jury.

2366 (2481). **Costs.**—If the application is determined against the ward, the next friend must be taxed with the costs; if determined against the guardian, he must be taxed with the costs.

2367 (2482). **Removal by court.**—The court of probate may, without an application by the ward, remove a guardian for any of the causes specified, first giving him notice as is required on the filing of an application for removal, and must appoint a guardian ad litem to represent the ward in any proceeding taken by it for the removal.

ARTICLE 8.

REMOVAL OF PERSON OR PROPERTY OF WARD FROM ONE COUNTY TO ANOTHER.

2368 (2483) (2802) (2445) (2035). **Removal of person or property from one county to another.**—The court of probate from which letters of guardianship have issued, has authority to order the removal to another county of the person and property of a ward, if it be shown that such removal will advance the interests of the ward.

2369 (2484) (2796, 2802) (2441, 2445) (2031, 2035). **Mode of obtaining authority for removal.**—Authority for such removal may be obtained on the application in writing, verified by affidavit, of the guardian, or of the ward by next friend, stating the facts which show that the removal will advance the interests of the ward; and if it be made by the ward by next friend, a day must be appointed for the hearing, of which ten days' notice must be given the guardian by the service of citation; if it be made by the guardian, a day, not less than ten days after the filing of the application, must be appointed for the hearing, and a guardian ad litem appointed to represent the ward, who must put in issue the facts stated in the application, and require proof thereof.

2370 (2485) (2796) (2441) (2031). **Order of removal.**—If, on the hearing, the court is satisfied that the removal will advance the interests of the ward, an order authorizing it must be made and entered; otherwise, the application must be dismissed, and the guardian, or the next friend, as the application may be made by the one or the other, must be taxed with the costs.

2371 (2486). **Grant of guardianship in county to which removal is authorized.**—If the removal authorized is of the person and property of the ward, a transcript of the record of the proceedings must be made and certified, and filed in the court of probate of the county to which the removal is to be made; and on the filing of such transcript, such court has jurisdiction to grant guardianship of the person and property of the ward; and on such grant being made, and a transcript thereof, duly certified, being filed in the court of probate authorizing the removal, such removal may be made; the guardian so appointed has full authority to demand, recover and receive the property of the ward from and after the making of the removal.

2372 (2487). **Settlement of former guardian.**—On the filing of such transcript, the court must require the guardian of its appointment to make a final settlement of his guardianship; and when such settlement is made, must certify a transcript thereof to the court of probate of the county to which the removal was authorized.

2373 (2488). **Removal of property only.**—If the removal authorized is of the property only of the ward, the jurisdiction of the court authorizing the removal is not affected, and it must retain jurisdiction of the guardianship, as if such removal had not been authorized.

ARTICLE 9.

REMOVAL OF PERSON OR PROPERTY OF WARD TO ANOTHER STATE.

2374 (2489) (2800). **Removal of property of minor residing without the state.**—When the parent having the legal custody of a minor child, whether the father or mother, resides without the state, or removes with such child from the state, becoming a resident of another state, the court of probate, or the court of chancery, having jurisdiction of the estate of the minor, has authority to order the removal of the property of the minor to the state of the residence of the parent.

2375 (2490). **Mode of obtaining authority for removal.**—The application for the order of removal must be made by the parent, must be in writing, verified by affidavit, accompanied by a transcript duly certified, of the appointment of a guardian for such minor by a court of competent jurisdiction in the state of the residence of the parent, and of the bond of such guardian, with sureties approved by such court, and in a penalty equal to double the value of the property which is to be removed.

2376 (2491). **Order of removal.**—The court, if satisfied of the truth of the application, and that the transcript of the appointment of the guardian in the state of the residence of the parent is in due form, and properly certified, and that the court making the appointment had jurisdiction, must make an order authorizing the removal of the property of the minor, and authorizing such guardian to receive the same.

2377 (2492) (2801). **Guardian in this state to make settlement.** If such minor have a guardian in this state, of the appointment of the court, or subject to the jurisdiction of the court, an order must be made and entered, requiring such guardian to make a final settlement of his guardianship.

2378 (2494) (2797) (2442) (2032). **Removal of property when guardian and ward are non-residents.**—When the guardian and ward are both non-residents, and the ward is entitled to any property in this state, or is, or will be entitled to any money from any estate, the administration of which is pending in this state, whether such estate shall or shall not have been finally settled, and the money or property may be removed to another state without conflict with any restriction or limitation thereupon, and without impairing the right of the ward thereto, such money and property may be received and removed to the state of the residence of the ward, upon application of the guardian to the judge of probate of the county in which the property of the ward, or the principal part thereof, may be, or in which such administration may be pending, in the manner following.

What constitutes non-residence.—Carlisle v. Tuttle, 30 Ala. 613. Cause for removal.—Lary v. Craig, 30 Ala. 631.

2379 (2493) (2796) (2441) (2031). **Removal of ward and his estate to another state, when permitted.**—The guardian may remove the person and estate of his ward to another state, by making

a full settlement, with the judge of the probate court where his letters were granted, of his guardian accounts, and procuring a transcript of the record of a court of competent jurisdiction of such other state, certified according to the act of congress, showing the appointment of such person as guardian of the ward, the execution of bond with surety for the performance of the trust, in twice the value of the estate of the ward, and adducing testimony that the sureties to such bond are sufficient. Thereupon, the judge of probate must make an order authorizing such removal.

Removal, when permitted.—Cook v. Wimberly, 24 Ala. 486; Metcalf v. Lowther, 56 Ala. 312; Carlisle v. Tuttle, 30 Ala. 613; Johnson v. Copeland, 35 Ala. 521.

2380 (2495) (2798) (2443) (2033). **Notice and evidence in such proceeding.**—The guardian must produce a transcript from the records of a court of competent jurisdiction, certified according to the act of congress, showing that he has been appointed guardian of the minor in the state in which he and the ward reside, and has duly qualified as such according to the laws thereof, and given bond, with surety, for the performance of his trust; and must also give ten days' notice to the resident executor, administrator, or guardian, if there be such, of the intended application; thereupon, if good cause be not shown to the contrary, and the judge of probate shall be satisfied, upon proof being made, that it will be for the interest of the minor, such judge of probate must make an order granting such guardian leave to remove the property of his ward to the state or place of his residence, which is an authority to him to sue for and recover the same, in his own name for the use of his ward.

2381 (2496) (2799) (2444) (2034). **When representative discharged.**—Such order is a discharge of the executor, administrator, or other person, in whose possession such property may be at the time of the order made.

Feb. 26, 1889, pp. 49, 52.

2382. Sale of property to effect removal.—When the property of a minor is ordered to be removed from the state, under any provision contained in this article, the court making the order may, on the application of the person by whom such order of removal was obtained, order the sale of any property, real or personal, of such minor, as may be necessary to effect such removal.

2383. Contents of application.—The application for such order of sale must be in writing, verified by affidavit, must describe the property sought to be sold, and must state the facts showing that the interest of the minor would be promoted by the proposed sale.

2384. Proceedings.—The proceedings under such application must in all respects conform to and be governed by the provisions of article 4 of this chapter relating to the sale of the property of a minor for reinvestment. But the court, in the order of sale, must appoint a suitable person commissioner to make the sale; and, except as hereinafter provided, the authority and duty of such commissioner is the same as that of a guardian authorized to sell property of his ward for reinvestment. If the commissioner so appointed

fails to act, or to complete the sale, another may be appointed at any time, by an order of the court.

2385. Proceeds of sale to be paid into court.—The commissioner must, as soon as practicable after the receipt of the purchase-money for the property sold by him, pay the same to the judge of probate, or register in chancery, as the case may be, of the court ordering the sale; and such money must be retained and safely kept by such judge or register, until the sale has been duly confirmed or vacated. If the sale be vacated, the purchase-money must be, by such judge or register, returned to the purchaser; if the sale be confirmed, such money must be, by such officer, paid over to the foreign guardian entitled to receive the same, after deducting therefrom, the costs and expenses attending the sale, including compensation to the commissioner in the amount of two and one-half per cent. upon the proceeds of such sale, but in no case more than one hundred dollars.

2386. Duplicate receipts to be taken and copy transmitted. When a foreign guardian receives any money or property to be removed to another state, under any of the provisions of this article, he shall execute and deliver to the person or officer from whom he receives such money or property, receipts therefor, in duplicate, one of which must be, by such person or officer, duly forwarded by mail to the presiding officer of the court from which such guardian received his appointment.

ARTICLE 10.

JUDGE OF PROBATE CUSTODIAN OF FUNDS OF MINOR, OR OF PERSON OF UNSOUND MIND, NOT EXCEEDING ONE HUNDRED DOLLARS; DISBURSEMENT OF SAME.

2387 (2497) (2756) (2452). **Judge of probate must not act as guardian.**—The judge of probate is incompetent, during his term of office, to act as guardian of any minor, or person of unsound mind, residing in his county, but may be custodian of the funds of a minor, or of a person of unsound mind, not having a guardian, as is authorized in this article.

2388 (2498) (2809). **Funds of which judge of probate is custodian.**—The funds of a minor, or of a person of unsound mind, not having a general guardian, not exceeding in amount one hundred dollars, accruing on a settlement made by an executor or administrator, or guardian, in the court of probate, or from sales of property made under the decree or order of the court by commissioners, to effect partition or division, or in the hands of a predecessor in office, must be paid to the judge of probate.*

When demand dispensed with.—Bradley v. Harden, 73 Ala. 70.

2389 (2499) (2810). **Duty and authority of judge.**—It is the duty of the judge to keep such money safely, and he has authority to expend the same in the maintenance and support of the minor or Feb. 20, 1889, p. 40.

*The words "residing in this state" stricken out by joint committee.

person of unsound mind, or his wife and minor children; and for receiving and keeping such money he is entitled to a commission of one and one-half per cent. But when the minor is of the age of eighteen years, or is a married woman, and is of sound mind, the judge of probate may pay such money to such minor, whose receipt therefor is a discharge of the judge of probate.

2390 (2500) (2811). **Judge must make settlements with clerk of circuit court.**—At the expiration of his term of office, or on the appointment of a guardian for such minor or person of unsound mind, or on the death of either, or on the arrival at the age of eighteen years of such minor, or if a female, on her marriage, or on the expenditure of such money, the judge must make with the clerk of the circuit court a final settlement of his accounts and vouchers; of the day appointed for such settlement, the clerk must give notice for three consecutive weeks, by posting notices at the court-house door and three other public places in the county; and he must carefully examine such accounts and vouchers, allowing only such vouchers as are shown to be just and proper; and must charge such judge interest on the money received, unless he makes and files an affidavit that he has not used such money, or allowed its use by others; and if a balance is found due on such settlement from such judge, the clerk must state the amount thereof. For his services in making such settlement, the clerk is entitled to a fee of one dollar and a half.

2391 (2501) (2813). **Balance recoverable by motion.**—If such judge fails, for three days after demand made by the party entitled to any such balance, to pay such balance, the same with interest is recoverable of him and the sureties on his official bond, or either of them, on two days' notice, by motion in the circuit court, or before a justice of the peace, having jurisdiction, with twenty per cent. damages on the principal of such balance.

CHAPTER 58.

HEALTH AND QUARANTINE. 2392-2442.

2392 (1260) (1504) (1207) (956). **Municipal and county authorities may establish hospitals.**—The corporate authorities of any town or city and the court of county commissioners may establish within the town or city, or within the county, hospitals, temporary or permanent, for the reception of the sick or infirm, or of persons suspected to have infectious or contagious diseases, and may make all needful rules and regulations for the control and management thereof. The corporate authorities and the court of county commissioners may unite in the establishment of such hospitals, if deemed expedient, making them common for the use of the town or

city and of the county, and in the making of rules and regulations for the control and management thereof.

2393 (1261) (1505) (1208) (957). **Nuisances to health; strangers with contagious diseases.**—When a health officer makes complaint, on oath, that there is good cause of suspicion or belief that there is on any lot, or in any house or vessel within the town, city, or county any cause of disease or infection, necessary to be destroyed or removed, or one or more persons, not in his own place of residence, infected with a dangerous contagious disease, and that he has been refused admittance into such house, lot, or vessel, the mayor or intendant, or a justice of the peace of the county in which such lot, house, or vessel is, may issue his warrant, directed to the sheriff, marshal, constable, or other lawful officer, requiring him to enter such house, lot, or vessel, and, under the direction of such health officer, to remove such infected person, or to remove or destroy the source of such infection or disease.

2394 (1262) (1506) (1209) (958). **Warrant, how executed; pay for nursing, etc.**—To execute such warrant, any outer or inner door may be forced in the daytime; and all expenses incurred in the execution thereof, and for maintaining, nursing and curing any person removed therefrom, must be paid by such person, or by the owner of the house, lot, or vessel; or if such person or owner is a married woman, by her husband; if a minor, by his parents or guardian; and if not so paid, then by the town, or city, or county by which they were incurred; the person by whom such expenses should have been paid being liable to such town, city, or county for the amount thereof.

2395. General quarantine; duty of governor.—The governor, on recommendation of the state board of health, or whenever he deems it necessary for the protection of the health of the people of this state or any portion thereof, may proclaim, declare, establish and conduct through the state board of health, and enforce such quarantine measures, not inconsistent with the constitution of the United States and the laws thereof, as to him may seem expedient, but not such as to prevent the establishment and enforcement by county and municipal authorities of local quarantines, as provided by law. And the state board of health, under the direction and control of the governor, may take such preliminary steps and make such investigation as may be deemed necessary to guard the health of the people. Feb. 26, 1887, p. 105, §§1, 2.

2396. Expenses of general quarantine.—The sum of five thousand dollars, or so much thereof as may be necessary, is annually appropriated to defray the expenses that may arise under the operation of the preceding section, to be paid by the state auditor on the order of the presiding officer of the state board of health, approved by the governor, and which shall be annually accounted for by the state board of health in a report to the governor, showing by items all expenditures from this fund. Ib. §3.

2397. Quarantine officers authorized to administer oaths and make arrests.—The quarantine officers charged with the enforce-

ment of quarantine must take an oath to faithfully discharge their duties; and such officers are authorized to administer oaths and examine persons under oath, and to make arrests touching violations of the quarantine.

2398 (1263) (1507) (1210) (959). **Quarantine-ground; assent of county commissioners requisite, if without town limits.**—Any town or city may establish a quarantine-ground therefor; but if the place fixed upon for the purpose is without the limits of such town or city, the assent of the court of county commissioners of the county in which such place is, must first be obtained.

2399 (1264) (1508) (1211) (960). **Regulations.**—The corporate authorities of a town or city may, from time to time, prescribe the quarantine to be observed by all vessels arriving within the harbor or vicinity thereof, and regulations therefor, not contrary to law.

2400 (1265) (1509) (1212) (961). **Regulations extend to persons and goods arriving in, and going on board vessel.**—Such regulations may extend to all persons, goods and effects arriving in such vessel, and to all persons going on board of the same.

2401 (1266) (1510) (1214) (963). **Vessels quarantined.**—The health officer of a town, city, or county may, under the direction of the corporate authorities, or of the court of county commissioners, cause any vessel arriving therein, or in the vicinity, if the vessel or cargo is, in his opinion, so foul or infected as to endanger the public health, to be removed to the quarantine-ground, or other proper place, to be purified.

2402 (1267) (1511) (1217) (966). **Escapes from quarantine.**—If any person ordered to remain in quarantine escapes, any justice of the peace, on complaint thereof, on oath, must issue his warrant to the sheriff, or to a constable, or other lawful officer, to arrest and deliver such person to the custody of the officers of the quarantine; and any such person attempting to escape may be forcibly detained at the place of quarantine by such officers.

2403 (1268) (1512) (1218) (967). **Quarantine of travelers.**—Any person coming into a town, city, or county by land, from a place infected with a contagious disease, may be compelled to perform quarantine by a health officer, and restrained from traveling until discharged.

2404 (1269) (1513) (1219) (968). **Expenses of quarantine.**—All expenses incurred by any town, or city, or county, on account of any person, vessel, or goods, under quarantine regulations, must be reimbursed by such person; or, in case of a vessel, or goods, by the owner thereof; and the vessel or goods may be detained until such expenses are paid.

2405 (1270). **Bringing into, or removal of within county, persons laboring under disease.**—Persons laboring under a pestilential or infectious disease must not be taken into a county, or, being within the county, must not be removed from place to place therein, except under such regulations as may be prescribed by the county board of health.

2406 (1271). **Bringing into, or removal of within county, body of deceased person.**—The body of a person who has died from a pestilential or infectious disease, must not be brought into a county, or, being within the county, must not be removed from place to place therein, except under such regulations as may be prescribed by the county board of health.

2407 (1272) (1515) (1222). **Authority of court of county commissioners.**—The court of county commissioners is invested with the authority conferred upon towns as to quarantine, and the establishment of hospitals for persons infected with contagious diseases; and may make such rules and regulations as are necessary to prevent the introduction or spread of contagious or infectious diseases, and, to effect that purpose, may appoint such guards and superintendents as may be deemed necessary.

2408 (1273). **Authority of judge of probate.**—The judge of probate, if he deem it necessary, and is supported in his opinion by the certificate of three respectable citizens of the county, one of whom is a licensed physician, has authority to appoint guards and superintendents, and to establish hospitals to prevent the introduction or spread of contagious diseases; and, if he exercises the authority, must, as soon as practicable thereafter, convene the court of county commissioners, and such court may ratify, change, or disaffirm his acts.

2409. **Quarantine board of Mobile bay.**—The president of the board of revenue and road commissioners of Mobile county, the mayor of the city of Mobile, the health officer of the city of Mobile, the president of the chamber of commerce of Mobile, the president of the medical association of Mobile, the probate judge of Baldwin county, and the person selected by the county commissioners of Baldwin county, as health officer of that county, and their successors in office shall, virtute officii, constitute a quarantine and health board to be known and designated as the "Quarantine Board of Mobile Bay," no member of which shall receive any compensation for his personal service, except that the members of such board from Baldwin county shall be, in a sworn statement, paid for all actual expenses incurred in attendance on the meetings of the board; and that the board may from time to time, inspect the quarantine plant, and may hire a tug or other suitable boat for the purpose, and pay the expenses of the trips made for the purpose of such inspections. But such board shall not have the power or authority to take away from the Mobile board of health any of the powers or duties not in conflict with this chapter in regard to the actual administration of quarantine devolved upon such board of health by the existing health and quarantine laws. Feb. 16, 1891, p. 862, §§1, 12, 14.

2410. **Organization of board.**—The persons named in the preceding section shall assemble in the city of Mobile, which shall be the headquarters of such board, and organize by the election of a president, vice-president, secretary and health officer of the board, and, from time to time, such officers as may be necessary for carry- Ib. §2.

ing out the purposes of their organization. The president and vice-president shall, and any of the other officers may, be members of the board, and a majority of the board shall be a quorum for the purpose of organization or transaction of business. But the failure of the board to organize promptly shall not prevent the subsequent organization thereof.

Ib. §3. **2411. Site for quarantine plant; condemnation; appeal.**—It shall be the duty of the board to select a site for the erection of a modern and approved quarantine plant at some suitable place at or near the entrance to Mobile bay, either on the shore or in the waters of such bay, which shall be approved in writing by the governor of this state before the location of the plant thereat. In case the site selected be the property of private persons or corporations the board, by proceedings in its name, may condemn such site, or the use or easement therein as may be needed, to the uses and purposes of such quarantine plant, just compensation being first paid the owner thereof, to be determined in manner and form as provided by law for the condemnation of private property for public use. And in case an appeal is taken from the preliminary assessment of damages, upon tender to the owner, or payment of the award of damages into court, the board shall have the right to take possession of such site, and proceed with the erection of such plant, pending the appeal.

Ib. §4. **2412. Erection of plant.**—The board, with the means at hand, and with such other pecuniary aid and material and labor as may be donated by private parties, or by the county commissioners of the counties of Baldwin and Mobile, who are hereby authorized to give such aid from the county funds, or by the city of Mobile, must erect the most substantial, modern and approved quarantine plant available for the purpose of disinfecting and fumigating vessels in the most perfect manner and with the least delay, with such piers, docks, wharves, storehouses, hospitals and other structures as may be deemed necessary or proper to be constructed for the discharge and fumigation of cargo, and for the care of sick or well persons detained in quarantine.*

Ib. §5. **2413. Regulations for quarantine; authority of board.**—The board may, from time to time, prescribe the observance of quarantine by all vessels arriving in the bay or harbor of Mobile, or the vicinity thereof, and make regulations therefor which may be necessary or desirable to insure the preservation of the public health, such regulations to extend to all persons, goods and effects arriving in such vessels, and to all persons going on board of the same, as well as to the vessels themselves; and may require such vessels to be unladen, and the same to be cleansed, and the vessel, cargo and ballast, and the clothing and effects of all passengers and crew to be thoroughly fumigated and disinfected, or destroyed, where necessary.

Ib. §6. **2414. Same; vessels to come to anchor; rules for masters.**—All vessels entering Mobile bay shall heave to, or come to anchor, as soon as a safe berth can be reached, as close to the quarantine as

*As amended by joint committee.

practicable, or as may be required by the regulations of the board, and display a signal for the quarantine officer, and shall not leave such berth until the quarantine officer has duly boarded and inspected such vessels, their passengers and crew, and has licensed the vessel to go on her way, or has directed her to quarantine-station; and if such vessel, under the rules and regulations and proclamations in existence, be required to go into, or observe quarantine, it shall be the duty of the master, or other person in charge of the vessel, and the passengers and crew thereof, to promptly conform to the orders and direction of such quarantine officer, and when in quarantine to strictly observe all the rules and regulations in force in reference thereto. And it shall be the duty of the board to supply the lower-bar pilots and the masters of all tugboats with a sufficient number of copies of directions printed in English, Spanish, French and German, of the rules required to be observed by the masters of such vessels in coming to anchor, displaying signal, and awaiting and submitting to the inspection of the boarding quarantine officer, and as to the duty of such master or person in charge of such vessel in answering all questions that may be propounded to him by such officer, and of the penalties for failing to fully and truly make answer thereto; and it shall be the duty of lower-bar pilots and masters of tugs engaged in towing vessels across the lower bar, to furnish the masters of such vessels with such printed directions, and conduct such vessels to the places designated for anchorage, prior to boarding, and to explain to or otherwise instruct the masters of such vessels as to the nature and kind of quarantine signal to be displayed by them.

2415. Same; rules for masters and pilots of tugs.—The board has authority, and it is its duty, to adopt such rules and regulations for the conduct of the master and crew of tugs and pilots, who shall be required to, or who shall perform any service for any vessel entering the bay of Mobile, and is authorized to require any such person coming in contact with any such vessel, cargo, or person infected or supposed to be infected, to observe such reasonable quarantine as may, in the judgment of the board, be necessary under the circumstances. Ib. §7.

2416. Inspection fees; payment; lien on vessel.—The board may establish and collect fees for the inspection of all steamships and other vessels coming into the bay of Mobile, not exceeding the following sums respectively: For steamships, twenty-five dollars; sailing-ships, twenty dollars; barks and four-masted schooners, fifteen dollars; brigs and three-masted schooners, ten dollars; tugs and two-masted schooners, seven and one-half dollars; other vessels, three dollars. But the board may relieve fishing, oyster, pleasure, pilot and other small boats and tugs regularly engaged in towing across the bar of Mobile bay, and small craft regularly plying in Mobile bay, and all vessels under five tons from inspection or the payment of the inspection fee, requiring such vessels, in its discretion, from time to time, to be inspected and to pay the fees above Ib. §9.

provided. The fees herein provided to be paid are payable on demand by the master or other person in charge of such boat or vessel, and are a lien on such boat or vessel.

Ib. §10. **2417. Value of services and material to be paid by vessel; quarantine fee.**—In addition to the inspection fees, the board is authorized to charge and collect from the officers in charge of each vessel the actual or estimated cost for all services performed, including material furnished for the vessel in cleaning and fumigating the same, cargo or ballast, and unloading and loading the same, and in addition may charge a quarantine fee for the maintenance and operation of the plant of not exceeding seventy-five dollars in any one case; they shall also be authorized to charge for medicines, board and hospital attendance furnished to passengers and crew an amount fixed by the board to cover the actual expenses and cost of such medicines, board and hospital attendance; all of which charges must be settled on demand by the master of such vessel, and shall be a lien on such vessel. And the board, in the charging of any such fees and expenses, may discriminate in favor of vessels which are, by themselves or with other vessels, running regular lines, or which have to observe quarantine more than once during the same year.

Ib. §11. Feb. 21, 1893, p. 1062, §2. **2418. Quarantine fund; auditing accounts.**—All fees and dues collected by the board, its officers or agents, shall be covered into the treasury of Mobile county, and shall there be kept by the treasurer thereof as a special fund, designated "the quarantine fund." It shall be the duty of the board to audit monthly the accounts, receipts, and expenditures of the officers of the board, and to direct the payment of the balance on hand into the treasury of Mobile county, and no expenditure of such fund shall be made except on warrant drawn upon the treasurer of such county by the president, and countersigned by the secretary, of the board. But a fund not exceeding two hundred dollars, may be kept in the hands of the officer in charge of the quarantine plant, with which to purchase fish, vegetables, fruits, etc., or to meet other expenses, concerning the disbursement of which he shall render monthly accounts to the board.

Ib. §§11, 12. **2419. Salaries and wages of officers and employes.**—It shall be the duty of the board to fix the salaries and wages of all employes, and no officer or employe of the board shall be paid or allowed to collect or receive for any services rendered by him in connection with such quarantine, any fee or compensation, other than the regular salary fixed by the board.

Ib. §13. **2420. Removing vessel from quarantine without permission; escape from quarantine.**—It shall be a misdemeanor for any master or person in charge of any vessel to remove or take such vessel from quarantine before she is given pratique, or to procure or aid such vessel to be so removed; and every person ordered to remain in quarantine who shall escape or depart before being discharged therefrom, shall be guilty of a misdemeanor; and any justice of the peace or mayor of any city, on complaint, may issue his warrant to a

sheriff or constable, or any lawful officer to arrest and deliver any such person to the custody of the officers of quarantine; and any person so attempting to escape may be forcibly detained or placed in quarantine by such officers.

2421. Examinations under oath.—Any master of a vessel, or other person therein, or who is suspected of having come into contact therewith, may be sworn by the inspecting, boarding or health officer, touching his previous history, or that of his ship, cargo, ballast, crew or passengers, for such length of time, and in reference to such matters as may be necessary to enable the officers to determine whether or not it is proper for such vessel, passengers or crew to observe quarantine. Ib. §14.

2422. Expenses of "The Quarantine Board of Mobile Bay."—The amount necessary for the full construction, completion and equipment of this quarantine plant, and the authorized wharves, piers, docks, and other structures, over and above the sum of twenty-five thousand dollars, shall be borne by the county of Mobile; and the entire expense of maintaining such quarantine, including all repairs, additions and improvements that may be made by the board, over and above the amount received for fees and dues collected by such board, shall be borne by the county of Mobile and the city of Mobile, equally, each paying one-half of the same; and it shall be the duty of the board of revenue and road commissioners and of the mayor and general council of the city of Mobile to make proper provisions therefor. Ib §8. Feb. 21, 1893, p. 1062, §1.

2423 (1278) (1536). **State board of health.**—The Medical Association of the State of Alabama, organized in accordance with the provisions of the constitution adopted at the annual meeting of the association, held at Tuscaloosa in March, 1873, and confirmed by an act of the general assembly approved February 6, 1893, is constituted the state board of health.

2424. Clerk of the state board of health.—The state board of health is authorized to employ a clerk whose salary shall be four hundred dollars per annum, which shall be paid him by the auditor, in monthly installments, on the order of the presiding officer of the state board of health. Feb. 12, 1893, p. 705.

2425 (1279) (1537). **Duties of state board of health.**—The state board of health must exercise a general superintendence and control over the county boards of health; must prescribe rules and regulations for the conduct of such boards, and must declare their duties; and must place themselves in communication with the hospitals, asylums and other like public institutions in the state; and must take cognizance of the interest of health and life among the people generally; must investigate the causes, and means of prevention of endemic and epidemic diseases; must investigate the influences of localities and employments upon the public health; and must act as an advisory board to the state in all hygienic and medical matters.

2426 (1280) (1538). **Report annually to the governor.**—The

state board of health must, annually, make to the governor a report of their investigations and transactions during the preceding year, and the governor must cause such number of copies of such reports to be printed for distribution as he may deem necessary; in such report or reports, the board must make such suggestions as to legislative action as they deem advisable.

Feb. 28, 1889, p. 72.

2427. Duty of state health officer in case of quarantine.—The state health officer, under the direction and control, and under the rules and regulations of the state board of health, shall have the power, and it shall be his duty, by and with the consent and concurrence of the municipal authorities and the county health officer, to modify the restrictions of all quarantines established by county and municipal authorities in this state; to make them more stringent, whenever they are in his judgment not sufficient for the protection of the people; and to lessen the stringency whenever in his judgment they interfere with travel and traffic to an extent beyond what is necessary for such protection.

2428 (1281) (1539). **County boards of health.**—The county medical societies in affiliation with the Medical Association of the State of Alabama, and organized in accordance with the provisions of its constitution, are constituted boards of health for their respective counties, and are under the general superintendence and control of the state board of health.

2429 (1282). **Duties of county board of health.**—It is the duty of the county board of health—

1. To supervise the administration of the health laws of the state in the county, and especially the regulations made for the protection of the public health, and for the collection of vital statistics.

2. To examine, as far as practicable, into all cases of malignant, pestilential, infectious, epidemic and endemic diseases occurring in the county, and the causes thereof, and to take such steps as may be necessary for their abatement and prevention.

3. To examine into all such nuisances as tend to endanger public health, and to take such steps as may be necessary for their abatement and prevention.

4. To exercise a general superintendence over the sanitary regulations of the public institutions situate in the county, including hospitals, asylums, workhouses, prisons, markets and public schools.

5. To supervise and regulate all matters pertaining to quarantine, quarantine physicians, the examination, detention and disinfection of vessels, railroad-cars and other vehicles employed in the transportation of persons or freight; and for the examination and detention of all persons coming into the county, infected or suspected of being infected with contagious or infectious diseases, and of all persons, vessels, railroad-cars, or other vehicles, or freights coming from places against which quarantine has been proclaimed.

6. To appoint a health officer for the county, and to do and perform such other duties as are, or may be required of them by law.

2430 (1283). **Report of county board.**—The county board of

health must make to the court of county commissioners, or the board of revenue, and to the state board of health, during the month of January of each year, a full and complete annual report of all the sanitary work done in the county, during the preceding year, by them or under their orders, which must contain all the vital and sanitary statistics of the county, together with such other information, suggestions and recommendations in regard to the public health as they may deem advisable, or may be, from time to time, required by the court of county commissioners, or board of revenue, or by the state board of health.

2431 (1284) (1541). **County, city, or town may invest county board of health with powers.**—The court of county commissioners, or the proper corporate authorities of any city or town, may, jointly or separately, invest the county board of health with such executive powers and duties as may be deemed necessary for the preservation and promotion of the public health, and for the prevention of the introduction or spread of contagious or infectious diseases; such powers to be exercised, and such duties to be performed under such rules and regulations as may be determined upon between such board and such court, or corporate authorities.

2432 (1285) (1542). **Sanitary regulations; expenses.**—In the exercise of such powers and performance of such duties, in the administration of all sanitary regulations, the appointment of officers or servants is reserved exclusively to the board of health; but the matter of expenditures is reserved exclusively to the court of county commissioners, or to the proper corporate authorities of the town or city.

2433 (1286) (1543). **No other local boards than county boards of health to be established.**—No local board of health, or executive medical body of any name or kind, for the exercise of public health functions, other than the county board of health, must be established in any county, town, or city.

2434 (1287). **Health officer of county.**—The county board of health must elect a health officer of the county, and fix the term of his office; such officer to be removable at the pleasure of the board.

2435 (1288). **Bond; salary of health officer.**—The health officer must enter into bond with sufficient sureties, payable to the judge of probate of the county, in a sum equal to twice the amount of his annual salary, with condition for the faithful performance of all such duties as are, or may be required of him by law; his salary shall be fixed by the court of county commissioners, or board of revenue, and must be paid annually from the county treasury, on the warrant of the judge of probate, or clerk, or secretary of the board of revenue.

2436 (1289). **Duties of health officer.**—It is the duty of the health officer—

1. To keep, under such regulations as may be prescribed by the county board of health, a book to be styled "register of births," in which he must register all births occurring in the county, reported to him, specifying, so far as reported, the sex and color of the child,

the date of birth, the name or names of the parent or parents, with such other details as he may be required to enter; also a book to be styled "register of deaths," in which he must register all deaths occurring in the county reported to him, specifying the date, cause and place of death, the name, age, sex and color of the deceased person, with such other details as he may be required to enter; also a book to be styled "register of infectious diseases," in which he must register all cases of pestilential or infectious diseases occurring in the county reported to him, with such other details as he may be required to enter.

2. Under the direction and control of the county board of health, and in accordance with the health laws of the state, to exercise a general supervision over the sanitary interests of the county, and if discovering any cause of disease, or the existence of anything detrimental to the public health, to compel the removal thereof, so far as he is authorized by law; and if he have not authority of law to compel such removal, to make report to the county board of health of the particular facts, with such suggestions as to special action as he may deem advisable.

3. To make diligent inquiry into all cases of pestilential or infectious disease occurring in the county, coming to his knowledge, or of which he is informed, reporting the facts thereof to the county board of health, and employing all such means as he has authority to employ to prevent the spread of such disease.

4. To obtain, from time to time, at the expense of the county, necessary supplies of reliable vaccine matter, which, without charge, he must, on application, furnish to the practicing physicians of the county, and, when prepared, to vaccinate without charge, all indigent persons of the county applying at his office.

5. To discharge such other executive health functions as are, or may be required of him by the county board of health.

6. To make to the county board of health such reports of his official transactions as they may require.

2437 (1290). **Assistant health officers.**—The county board of health shall also appoint such assistant health officers, and in such numbers, and distributed in such way through the county, as to them the public convenience may seem to require. These assistant health officers shall keep, severally, registers of births, registers of deaths, and registers of infectious diseases of the same character as those required to be kept by the county health officers. Physicians, midwives, and other citizens may report births, deaths, and cases of pestilential or infectious diseases to an assistant health officer, instead of to the county health officer, whenever they find it more convenient to do so. The same regulations that may apply, from time to time, to reports made to the county health officers, shall also apply to reports made to an assistant health officer. An assistant health officer must make such reports of the births, the deaths, and the cases of pestilential or infectious diseases, registered by him, as the county board of health may, from time to time, prescribe; and

must serve, without compensation, and may be at any time summarily removed by the county board of health.

2438 (1291). **Report of births.**—It is the duty of a physician, midwife, or other person, attending any case of midwifery, or childbirth, within such time as may be fixed by the county board of health, to make to the county health officer a full report of such case, specifying, so far as known, the name or names of the parent or parents, their race and place of birth, the date of the birth, the sex and color of the child, with such other details as may be prescribed by the county board of health.

2439 (1292). **Report of infectious diseases.**—It is the duty of every physician, attending or treating any case of pestilential or infectious disease, within such time as may be prescribed by the county board of health, to make a full report thereof to the county health officer specifying the name of the patient, the locality within which such patient was or may be found, the character of the disease, and such other details as are, or may be prescribed by the county board of health. If a case of pestilential or infectious disease, not attended or treated by a physician, should occur, it is the duty of the head of the family in which it occurs, or of the person on whose premises it occurs, to make a like report thereof to the county health officer.

2440 (1293). **Certificate of death.**—The county health officer must supervise all certificates of death, requiring them to conform to the rules of the county board of health; and must make such certificate, if otherwise a proper certificate cannot be obtained, notifying the coroner of all cases in which his intervention is necessary.

2441 (1294). **Report of death.**—It is the duty of a physician, or midwife, or other person, having, at the time of death, charge of a sick person, to make to the county health officer, within such time as may be fixed by the county board of health, a full report of such death, specifying the name, age, sex, color, date, place, and cause of death, with such details as may be prescribed by the county board of health.

2442. (1295). **Annual appropriation to State Medical Association.**—For the purpose of carrying into execution the health laws, there is appropriated to "The Medical Association of the State of Alabama," annually, the sum of three thousand dollars, to be expended under its direction, and to be paid on the warrants of the auditor on the treasurer, on the requisition of the president of the association; and the association must render to the governor, annually, an itemized account of the expenditures of such appropriation.

CHAPTER 59.

HIGHWAYS.

ARTICLE 1.—PUBLIC ROADS. 2443-2495.
2.—PRIVATE ROADS. 2496, 2497.
3.—BRIDGES, CAUSEWAYS AND FERRIES. 2498-2514.
4.—WATERCOURSES. 2515-2519.

ARTICLE 1.

PUBLIC ROADS.

2443 (1387) (1619) (1310) (1129). **Superintendence of roads by county commissioners.**—The court of county commissioners of the several counties is invested with a general superintendence of the public roads within their respective counties, and may establish new, and change and discontinue old roads, in the manner hereinafter provided.

The power herein exercised is quasi legislative and other courts will not revise except in so far as it interferes with property rights.—Commissioners v. Hearne, 59 Ala. 37; Hill v. Bridges, 6 Port. 197; Moore v. Hancock, 11 Ala. 245; Parnell v. Commissioners, 34 Ala. 278; Commissioners v. Bowie, Ib. 461; Creswell v. Commissioners, 24 Ala. 282. **What is a public road.**—Mills v. State, 20 Ala. 88; McDade v. State, 95 Ala. 28. **Certiorari.**—Commissioners v. Hearne, 59 Ala. 371.

2444 (1388) (1620) (1311) (1130). **Grades for public roads.**—Public roads are of three grades—the first, thirty feet wide, with bridges and causeways fifteen feet wide; the second, twenty feet wide, with bridges and causeways fifteen feet wide; and the third, fifteen feet wide, with bridges and causeways ten feet wide—all grades to be cleared of trees and other obstructions, the stumps and roots to be cut out entirely; and lanes through plantations of such width as may be prescribed by the court, not exceeding thirty feet.*

2445 (1389) (1621) (1312) (1131). **New road, or change of road.** No public road can be established, changed, or discontinued, except on application to the court of county commissioners.

Dedication.—McDade v. State, 95 Ala. 28; Western Ry. v. Grand Trunk Ry., 96 Ala. 272; Harper v. State, 109 Ala. 66.

2446 (1390) (1622) (1313) (1132). **Petition; notice.**—Such application must be by petition; and at least thirty days' notice of the intended application must be given by advertisement at the court-house door, and at three other public places in the county, two of which shall be in the immediate neighborhood of the road to be established, changed, or discontinued.

On certiorari record must show everything necessary to jurisdiction.—Commissioners v. Hearne, 59 Ala. 371.

2447 (1391) (1623) (1314) (1133). **Viewers appointed to mark out road and assess damages.**—When a new road is to be established,

*As amended by joint committee.

or an old road changed, the court must issue an order to seven disinterested householders of the county, to view and mark out the best route for such proposed road, and to assess the value of the land of each landowner that will be taken, if the road is opened over the route marked out.

Commissioners v. Street, Ala. (22 So. 629).

2448 (1392) (1624) (1315) (1134). **Viewer's oath, return, etc.** The viewers, before acting, must take an oath to view and mark out the road described in the order, to the greatest advantage to the public, and with as little prejudice to individuals as possible, and without partiality or favor; and to justly assess the value of the land of each landowner, which will be taken for said road; and must, after viewing and marking out the route and making the assessment of compensation that each landowner will be justly entitled to, if his lands are taken for said road, return the same to the court; whereupon the court must cause a notice to be served on the owner or owners of each tract or parcel of land, over which the road has been marked out, showing the route marked out, the quantity of land that will be taken from said owner, if the road is opened, and the amount of compensation that the viewers report should be paid to said owner; and appointing a day on which the court will hear any objections to said report, or to any valuation therein shown.

Commissioners v. Street, Ala. (22 So. 629).

2449 (1393) (1625) (1316) (1135). **Hearing of objections to report and valuation; accepting route; opening road, etc.**—On the day appointed, the court must hear any objection made to the route marked out, or to the amount of compensation which the viewers have reported should be paid any landowner for the land which will be taken up by said road, if opened; and may increase said compensation to such an amount as they deem just; and may accept the route and confirm the report, or may reject the route and set aside the report. If the court accept the route, and confirm the report, and no appeal is taken from that order and judgment, within the time hereinafter prescribed, the court must cause the compensation adjudged to the landowner to be paid or tendered to him; and must thereupon make an order for the opening of such road; but a road must not be opened between the first day of March and the tenth day of July in any one year, nor over any land while a crop is growing thereon, unless the crop was planted after the order was made, nor during the pendency of an appeal provided for herein.

Commissioners v. Street, Ala. (22 So. 629).

2450 (1394). **Appeal by owner of land.**—The owner of the lands, if dissatisfied with the assessment of damages made by the viewers, is entitled, as of right, to an appeal from the judgment of the court of county commissioners confirming the same to the circuit court of the county, and on such appeal to a trial de novo by jury; such appeal to be taken within ten days from such judgment by giving security for the costs thereof to be approved by the judge of probate

or the clerk of the court of county commissioners; and on the giving of such security, the judge of probate or the clerk of the court of county commissioners must file in the office of the clerk of the circuit court a full and complete transcript of all proceedings had in the court of county commissioners, including the certified assessment of damages.

Commissioners v. Street, Ala. (22 So. 629).

2451 (1395) (1629) (1320) (1139). **Who liable to do road duty.** All persons are liable to work on the public roads, except those exempted by the following section.

Non-residents or mere sojourners not liable.—Spann v. State, 14 Ala. 588.

As amended Feb. 28, 1889, p. 67.

2452 (1396) (1630) (1321) (1140). **Persons exempt.**—All females, and all male persons under the age of eighteen, and over the age of forty-five, years; all persons who have lost an arm or a leg; and all persons who by nature or disease are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the county board of health, are exempt from working on public roads; but where there is no county board of health, the certificate of such incapacity from two reputable practicing physicians shall be sufficient.

2453 (1397) (1631) (1322) (1141). **Extent of liability to work.** No person or hand is liable to work any public road, every part of which is distant more than six miles from his residence; or to work more than ten days in any one year, not counting the days engaged in opening new roads.

As amended Feb. 21, 1893, p. 780.

2454 (1398) (1632) (1323) (1142). **Road precincts apportioned; overseers.**—For the purpose of keeping roads in repair, the court of county commissioners or board of revenue, at its last regular term in every fourth year, must divide the county into a convenient number of road precincts, and must, at the same court, appoint three apportioners for each election precinct, which apportioners shall forthwith proceed to appoint an overseer to each road precinct; such overseer must be between the ages of twenty-one and fifty years; and the apportioners must return a list of overseers appointed by them to the probate judge of their county, within thirty days after their appointment, who shall issue commissions as prescribed by law.*

Allison v. State, 60 Ala. 54.

As amended Dec. 10, 1892, p. 71.

2455 (1399) (1633) (1324) (1143). **Term of apportioners and overseers.**—Apportioners and overseers must not serve longer than four years from the day of appointment, and if said term of four years is served out, they shall be entitled to a certificate of exemption for the next two years, and if any person be appointed to serve out the unexpired term of any apportioner or overseer, such person shall, at the expiration of the term for which he has been appointed, be entitled to a certificate of exemption from road service for one-half the length of time next after such term expires that he has served.*

*As amended by joint committee.

2456 (1400) (1634) (1325) (1144). **Vacancy in office of apportioner.**—On failure of the court to act, or in case of vacancy, the judge of probate appoints apportioners, who hold for the unexpired terms.

2457 (1401) (1635) (1326). **Apportioners fill vacancies in office of overseer.**—The apportioners must fill all vacancies in the office of overseer in their respective precincts.

2458 (1402) (1636) (1327) (1145). **Oath of apportioners.**—Apportioners, before entering on their duties, must take an oath faithfully to discharge all their duties, to the best of their skill and judgment, without partiality or favor.

2459 (1403) (1637) (1328) (1146). **When new roads established.** When a new road is established, such road must be divided into precincts; overseers appointed for each precinct, who hold until the term fixed for the appointment of overseers for the county; and an order directed to such overseers, issued by the judge of probate, directing the opening of the road through their precinct, which must be served by the sheriff and returned, as hereinafter provided for the service and return of copies of appointment on overseers.

2460 (1404) (1638) (1329) (1147). **Copy of order of appointment to be furnished to sheriff.**—The judge of probate must, within ten days after the appointment of overseers and apportioners, furnish the sheriff with a copy of the order of appointment.

2461 (1405) (1639) (1330) (1148). **Statement to be attached to copy for apportioners.**—The copy of the order appointing apportioners must be accompanied with a statement, signed by the judge of probate, of the overseers on any road precinct within their election precinct; a description of such road precinct, with the names and grades of the road assigned to such overseer.

2462 (1406) (1640) (1331) (1149). **What the order for overseers must show.**—The copy of the order appointing overseers must contain a description of his precinct and grade of the road, and be accompanied by a statement of the names of the apportioners of the election precinct or precincts through which any part of the road assigned to him passes.

2463 (1407) (1641) (1333) (1151). **Notice to overseers and apportioners; when and how served.**—The sheriff must, within thirty days after the delivery to him of such copies and statements, deliver a copy of each to the apportioners and overseers, if practicable, and if not, leave the same at their residence and return the original, with his indorsement of service, to the judge of probate.

2464 (1408) (1642) (1334) (1152). **Valid from time of service.** A service of the copy of such appointments and statements, although not made within the time prescribed, is valid from the time of service.

2465 (1409) (1643) (1335) (1153). **Excuse or resignation.**—Any person appointed apportioner, or overseer, may send his excuse for not accepting, or after he has accepted, may resign his appointment, to the judge of probate.

---

*As amended by joint committee.

2466 (1410) (1644) (1336) (1154). **What the excuse or resignation must show.**—Such excuse or resignation must be in writing, the causes for not accepting, or the reasons for resigning stated, and must be sworn to.

Statute points out only mode in which responsibilities of office may be escaped.—Allison v. State, 60 Ala. 54.

2467 (1411) (1645) (1337) (1155). **Excuse or resignation, how passed on.**—The judge of probate, with the concurrence of the court of county commissioners, may pass upon the sufficiency of such excuse or resignation of any person for not accepting the appointment of overseer, or of any person who may resign his commission as overseer of any road in their respective counties.

2468 (1412) (1646) (1338) (1156). **Duties of apportioners.**—It is the duty of the apportioners—

1. To make a list of all persons and hands within their precincts, subject to work on public roads, within fifteen days after being served with a copy of their appointment, and to correct such list from time to time as may be necessary during their term.

2. Within twenty days after such service, to apportion such persons and hands among the overseers, any portion of whose road is within their precinct, impartially according to the portion of such road within their precinct, the grade of the same, and its importance to the public; and to change such apportionment from time to time as a due regard to the public interest may require.

3. To provide each overseer in the precinct, within five days after any apportionment, with a correct list of the persons and hands apportioned to him.

4. To inspect, from time to time, the public roads within their precinct, notice the character of the repairs, and observe if such road is regularly posted, and direction-boards put up as required by law.

5. To appoint one of their number to attend court, and report to the grand jury any overseer who has, in any particular, failed to discharge his duty upon any road or portion of road within his precinct.

Williams v. State, 45 Ala. 55.

6. To see that all defaulters are prosecuted for not working.

7. To discharge the same duties in reference to bridges built under contract with the court of county commissioners, and in reference to persons violating section 5386 (4120) of this Code, which are mentioned in the three subdivisions next preceding.

2469 (1413) (1647) (1339) (1157). **Hands to be apportioned on nearest road.**—The apportioners must apportion all persons and hands to work on the road nearest them, if it can be done with a due regard to the public interest.

2470 (1414) (1649) (1341) (1159). **Duties of overseer.**—It is the duty of overseers of public roads—

1. On the apportioners failing to furnish a list of persons and hands, within the time prescribed, to apply for, and, if possible, obtain the same.

2. To call out the persons and hands subject to work on their road

precinct, at their discretion, and to work with the same ten days in the year, if such number of days' work is necessary to keep their precinct in good repair.

3. To measure, within three months after being notified of their appointment, their respective precincts in continuation, and to set up, at the end of each mile, neat and permanent mile-posts, marked with the number of miles to the court-house, or other noted place to which the road leads.

4. Where the road in their precinct forks or turns out, or crosses another public road, to erect within the same index-boards, with proper directions, pointing towards the place to which such turnout, fork, or cross-road leads.

Pullum v. State, 88 Ala. 190.

5. To build bridges and causeways whenever the same are necessary, unless the court of county commissioners deem it expedient to have the same built by contract.

6. Where a space is left on the continuation of the same road between two precincts in the same county, or on the county line in different counties, to unite with the overseer on the other side of such space, and his hands, either in working such intermediate space, or in building the bridges and causeways necessary to bring the two precincts together.

7. To report to the grand jury any apportioner in any election precinct in which his road, or any portion of the same, is situated, who fails to discharge any of his duties.

8. To prosecute all defaulters for not working on roads, as hereinafter provided.

9. To keep the ford of the stream in order, if deemed practicable by the apportioners of the precinct, when any bridge has fallen down or become dangerous.

10. When toll-bridges on public roads are constructed across watercourses, to keep open and in good condition the existing fords at such crossings, and the land entrance thereto on either side of the same.

11. To perform such other duties as are, or may be required of them by law.

McCullough v. State, 63 Ala. 75.

2471 (1415) (1650) (1342). **Fences not to be joined to bridges without an order.**—No person must join a fence to a bridge on a public road without the authority of an order from the commissioners' court, which may be obtained upon petition to such court, showing that the water over which the bridge passes is not necessary to the traveling public, or to the stock of the neighborhood.

2472 (1416) (1651) (1344) (1160). **Apportionment valid until new one made.**—In case no regular apportionment of hands is made, the overseer must act under the last apportionment; and in such case, all persons and hands living within two miles of any portion of the precinct, and not apportioned elsewhere, are liable to work, on being warned by the overseer, as hereinafter provided.

2473 (1417) (1652) (1345) (1161). **When none has been made.** If no apportionment whatever has been made, or the overseer cannot, on diligent inquiry, ascertain the same, all persons and hands living less than three miles from any portion of his precinct, and not apportioned elsewhere, are liable to work, on being warned, as hereinafter provided.

2474 (1418) (1653) (1346) (1162). **Contract for mile-posts and sign-boards.**—The overseers may make contracts for making and painting mile-posts and direction-boards, the account for which, being verified by affidavit and certified by the overseer, must be paid out of the county treasury.

2475 (1419) (1654) (1347) (1163). **Contracts for timber; value of timber; how assessed.**—The overseers may also make contracts with the owners of land for timber to build bridges and causeways, and if they cannot agree, each must appoint a disinterested person; and in case of refusal so to do by such owner, the overseer must appoint two persons, who, after being sworn to act impartially, must value such timber; and if they cannot agree, must call in an umpire, whose decision is final; and the valuation so made, and reduced to writing, on the production of the same, with the certificate of the overseer, must be allowed by the court of county commissioners, and paid out of the county treasury, unless the charges are excessive, in which case such court may allow the reasonable value.

2476 (1420) (1655) (1348) (1164). **Tools other than farming tools; how obtained.**—If any other instruments than ordinary farming tools are necessary to keep the road in repair, the overseer may receive them in exchange for the labor of hands, or he may apply to the court of county commissioners, which court may authorize him to contract for such, and to such an amount as, in its discretion, it thinks proper, and pay for the same out of the county treasury.

2477 (1421) (1656) (1349) (1165). **Who to aid in opening new roads.**—On the opening of new roads, all persons not exempt, living within three miles thereof, are liable to work thereon; and the overseers opening such roads must warn all such persons within that distance, and must proceed against any of them failing to attend and work, as against other defaulters.

2478 (1422) (1657) (1350) (1166). **Mode of warning hands.**—The mode of warning hands is for the overseer, or some other person appointed by him, to give two days' notice, in person or in writing, to be left at the residence, to all persons liable to work, to meet at such time and place as the overseer of the road may appoint, and with such tools as he may direct.

2479 (1423) (1658) (1351) (1167). **Persons giving warning exempt.**—The person serving the notice may be excused from work, at the discretion of the overseer, for all or any number of days that the hands may work on such warning.

2480 (1424) (1659) (1352) (1168). **If warned on two roads.**—If any person has been warned to work on two roads at the same time, he must work on the one on which he was first warned, if residing

within six miles of any portion of such precinct, and not apportioned to any other.

2481 (1425) (1660) (1353) (1169). **Penalty for default.**—If any person warned fails to attend, or send a substitute, with the proper tools, agreeable to the notice, or fails faithfully to perform his duty, such person must pay for each day's default not less than one nor more than three dollars, to be recovered before any justice of the election precinct in which such road is, in the name of the county.

Brown v. State, 63 Ala. 97; Ward v. State, 88 Ala. 202; Geneva Co. v. Hall, 93 Ala. 488.

2482 (1426) (1661) (1354) (1170). **The overseer may excuse defaulters; return list of defaulters; no security for costs required.**—The overseer may excuse defaulters, on showing a good excuse on oath, which may be administered by the overseer, within five days after the default; and he must, at the expiration of that time, return on oath a list of defaulters, who are not excused, to any justice of the precinct through which such road, or any portion of the same, passes, who may hear excuses at the trial; and no security for costs in the proceedings for such defaults shall be required.

2483 (1427) (1662) (1355) (1171). **List is evidence of default.** Such list is presumptive evidence of the default against the person named therein, and should the county fail, the costs must be paid as in state cases.

2484 (1428) (1663) (1556). **Process.**—The overseers of public roads are authorized and empowered and in precincts where there is no constable or sheriff shall be required to serve all process that may be issued from the magistrate's court in the election precinct, against defaulters, to work on such overseer's road; and such overseer shall receive the same fees for such service as are allowed by law to constables for the same; but such overseer must only serve process where there is no constable in the precinct in which such process is issued by the justice of the peace. As amended Feb. 28, 1889, p. 81.

2485 (1429) (1664) (1357) (1172). **Proceedings and penalty for failure to prosecute defaulters.**—If any overseer fails to prosecute all defaulters as herein required, any justice of the precinct in which such overseer's road, or any portion of the same, is, must on application of an apportioner of such precinct, or any person liable to work thereon, issue a summons to such overseer, requiring him, on a day named therein, to show cause why such defaulters were not prosecuted; and if the overseer, on such summons being personally served, fails to show cause, the justice must give judgment against him for as much as the fines against the defaulters would have amounted to, at two dollars a day for each defaulter, not exceeding the amount of fifty dollars, to be paid, when collected, into the county treasury by the officer collecting the same.

2486 (1430) (1665) (1358) (1173). **No property is exempt from execution.**—No property owned by any defaulter in not working a public road is exempt from execution issued on a judgment found on such default.

2487 (1431) (1666) (1359) (1174). **Road-books.**—The judges of

probate must keep road-books, containing a complete list of all the public roads in their counties, their names, grades, and the road precincts, so that an easy reference may at all times be had.

2488 (1432) (1668) (1362). **Telegraph-wires falling on roads.** Every telegraph company must, at each and every point where the wire of any line of telegraph may cross any private or public road, erect substantial, durable and permanent posts or piers, to prevent the falling of the wires so as to obstruct or interfere with the travel on such road; and upon failing to erect posts or piers, as herein prescribed, and upon the falling of any telegraph-wires so as to obstruct or interfere with the travel along any private or public road, it is the duty of any justice in the county, upon complaint that the wires of any telegraph-line have fallen across or along any road, private or public, to issue notice to any officer or agent of such company to be found within the county, to appear before him at such time, not short of ten days' notice, as he may appoint; and upon proof that the wires are down, or have been down for one day, he shall enter a fine of not less than ten nor more than fifty dollars, for every day the wires are permitted to remain down.

2489 (1433) (1669) (1363). **Notice in absence of officer or agent; fine, how enforced.**—If no officer or agent of the company is found in the county, then, and in that case, notice posted at two or more places near the line of telegraph, in the neighborhood of the place where the wires have fallen, citing the company for five days to appear before a justice of the peace, shall be deemed and held sufficient notice; and if the company shall not defend, by some agent or officer, fine may entered by default; and if the company shall fail or refuse, for the space of sixty days, to pay any fine imposed under this article, such telegraph-line shall be deemed a public nuisance, and upon due notice the same shall be subject to be abated as such, by proceedings before the circuit court of the county in which such wires shall be permitted to continue down, in the same manner as other nuisances are abated.

As amended Nov. 29, 1890, p. 6.

2490 (1434) (1670) (1364). **Right of way for telegraph and telephone lines.**—The right of way is granted to any person or corporation having the right to construct telegraph or telephone lines within this state to construct them along the margin of public highways.

2491 (1435) (1671) (1365) (1177). **Gates.**—The courts of county commissioners, in their respective counties, may authorize gates to be erected across a public road at such places, and under such conditions and restrictions as will produce the least possible injury to the public.

2492 (1436) (1672) (1375). **Other roads may be established.** Other public roads, besides those in this article above provided for, may be established by the courts of county commissioners of the several counties in this state, under the following regulations: Any person desiring the establishment of a public road under the provisions of this section, may file a petition in the court of county commissioners of the county in which the road is proposed to be

established, specifying the length, width, points and directions of the desired road, and the names of the owners of the lands over which it is to pass, and setting forth that such road is for the public benefit. Upon the filing of such petition, the court of county commissioners must set a day for acting thereon, and must cause a written notice thereof to be served upon the owners of the lands over which the desired road is to pass, at least twenty days before the time set for the hearing of such petition. If, upon the hearing of such petition, it shall be made to appear to the court that the road applied for is necessary for the good of the state, the county, or neighborhood in which it is to be established, the court may order it to be laid off and established in the same manner, and under the same regulations as other public roads are required by law to be laid off and established; but no road shall be established, under this section, exceeding twenty feet in width, or in such manner as to run through any person's orchard, garden, or curtilage, without his written consent, filed in such court.

Commissioners' Court v. Street, Ala. (22 So. 629).

2493 (1437) (1673) (1376). **Damages.**—The person applying for the establishment of a road under the preceding section shall, when the damages are assessed to the owner of the lands over which it is to pass, in the manner provided by law, and before the road shall be cut out or opened, pay such damage to the owner or person entitled thereto, unless the court shall order such damages to be paid as now provided in other cases; and, in assessing such damages, the jury shall take into consideration the expense of erecting fences along the line of such road, and the annual expense of keeping up such fences.

Commissioners' Court v. Street, Ala. (22 So. 629).

2494 (1438) (1674) (1377). **Costs.**—When any road shall be established under the provisions of section 2492 (1436), the person petitioning therefor shall pay all the costs of the proceedings, and all the expenses of putting the road in condition for use, unless the court establishing the road shall order such costs and expenses to be paid out of the county treasury.

2495 (1439) (1675) (1378). **Who keeps such road in repair.** The person obtaining the establishment of a road under section 2492 (1436) and such other persons as shall habitually use the road, shall keep the same in repair without being exempt from road duty, unless the court of county commissioners shall otherwise order.

ARTICLE 2.

PRIVATE ROADS.

2496 (1440) (1676) (1379). **Establishment of private roads.** Private roads may be established by the court of county commissioners, on the application of any person; such roads not to exceed fifteen feet in width, and to be opened and kept in repair by the

person on whose application they are established, without exemption on public roads.

Declared to be constitutional.—Steele v. Commissioners, 83 Ala. 304.

2497 (1441) (1677) (1380). **Proceedings same as in case of public roads; location of road; damages.**—In establishing a private road, the same rules must be observed, and the same proceedings had, as in the case of public roads; but no road must be opened through any person's yard, garden, orchard, stable, lot, gin-house, or curtilage, without his consent; and the applicant must pay the owner of the land over which such road passes, all damages resulting thereto from the establishment of such road, to be assessed as in case of public roads.

ARTICLE 3.

BRIDGES, CAUSEWAYS AND FERRIES.

2498 (1442) (1678) (1381) (1189). **How established.**—The court of county commissioners of each county is invested with authority to establish toll-bridges, free bridges, causeways and ferries within their respective jurisdictions, as hereinafter provided, and may levy a special tax to build such bridges and causeways, when, in the opinion of such court, the public good requires it.

2499 (1443) (1679) (1382) (1190). **Bridges or causeways on the line of two counties, built at joint expense.**—Whenever a bridge or causeway is necessary on the line between two counties, and the work is too great to be done by the overseers, and not established as hereinafter provided for, the same must be built at the joint expense of such counties, in proportion to the amount of taxable property in each; and a county-line bridge, in the meaning of this section, shall be construed to be a bridge across a stream, or slough, between two counties, whether the actual dividing line between said counties runs on either bank, or in the center of such stream or slough.

2500 (1444) (1680) (1383) (1191). **License for ferries, etc.; bond.** The court of county commissioners may license any person to establish a ferry, bridge, or causeway, for a term not exceeding ten years, and fix the rates of toll and ferriage, without discriminating in favor of the inhabitants of their county; requiring the applicant to give bond and surety, to be approved by the judge of probate, in not more than two thousand dollars, payable to the county, and conditioned, if a ferry, to keep safe and convenient boats, with a sufficient number of ferrymen, and to keep the banks on each side of the watercourse in good repair; if a toll-bridge or causeway, that it shall be well built, of the width prescribed for the grade of the road it is in, and kept in good repair, so that it can be passed at all times with safety and convenience; which bond must be filed in the office of the judge of probate of the county in which the license is granted.

Court has a discretion to be exercised with reference to public good and

private injury.—Cox v. Easter, 1 Port. 130; Dyer v. Tuscaloosa Co., 2 Port. 296; State v. Commissioners, 3 Port. 412. **License is an incorporeal hereditament** which may be aliened and descends to heir.—Lewis v. Gainesville, 7 Ala. 85. **Court has no power to revoke** except for cause pointed out by statute. Lamar v. Commissioners, 21 Ala. 772. **Absence from state of licensee** no reason for revoking.—Garrett v. Ricketts, 9 Ala. 529. **License presumed, when.**—Milton v. Haden, 32 Ala. 30. **Complete when** order made and bond approved.—Collins v. Ewing, 51 Ala. 101.

2501 (1445) (1681) (1384). **Regulation and alteration of tolls.** The court of county commissioners has authority to regulate and fix the rates of toll on all toll-bridges and ferries in their respective counties, and, from time to time, alter the same, when, in the judgment of the court, the same shall be necessary and proper; but nothing contained in this section shall be so construed as to interfere with the chartered rights of the owners of any toll-bridge or ferry in this state; and no alteration in the tolls of any chartered bridge or ferry shall be made by the court of county commissioners, except upon the application of the owner of such bridge or ferry, or of a majority of the owners thereof.

2502 (1446) (1682) (1385) (1192). **Additional bond.**—The judge of probate must, when directed by the court of county commissioners, or whenever, in his opinion, the public good demands, require an additional bond to be given; and should the same not be given within ten days after such requisition, such failure must be reported to the next term of the court of county commissioners, and the license revoked.

2503 (1447) (1683) (1386) (1193). **Who entitled to license; established only on a public road.**—On application for ferries, where the banks on each side belong to the same person, he is entitled to the prior right of establishing a ferry; when the banks belong to different persons, the court may grant the license at its election, to either of such owners making the application; but should any person, not the owner of the land on either bank of the river where it is proposed to establish a ferry, make application for a license, he shall be required to produce before the court a statement in writing from the owner thereof, saying that he is not an applicant for such license; but no license for a ferry shall be granted until thirty days' notice of the intended application shall have been given, by notice posted at the court-house door, and at three other public places in the county, two of which shall be in the immediate vicinity where it is proposed to establish such ferry; and if the river is the dividing line between two counties then the notice shall be posted in both counties; and where the application is made in a county where the owner of the land resides, personal notice shall be given to him. Such license for a ferry shall be granted only at the crossing of a river at a point where a public road has been established.

2504 (1448) (1684) (1387) (1194). **Compensation of the owner of the land.**—The owner of any land appropriated for a public ferry must make application to the first term of the court, after the license is granted, and such court must appoint seven disinterested householders to assess his damages; such householders must be sworn

to act impartially, must view the land and assess the damages for its appropriation, and report the same to the judge of probate; if such damages are not paid within thirty days after notice by the owner of such ferry, the court, on application of the owner of the land, must revoke the license.

2505 (1449) (1685) (1388) (1195). **Toll-bridges, etc., between counties may be established by the court of either county.**—Toll-bridges, ferries and causeways on the line between any two counties may be established by the court of either county; and in such case, the bond is to be approved by, and filed in the office of the judge of probate of the county in which the license is granted.

2506 (1450) (1686) (1389) (1196). **Not to be within two miles of another; exception.**—No licensed toll-bridge or ferry must be established on the same watercourse within two miles of any other, unless within that distance of some town or city containing not less than five hundred inhabitants.

2507 (1451) (1687) (1390) (1197). **Suit on bond.**—Any person injured by a breach of any bond given under this article may sue thereon in his own name, and recover damages to the extent of the injury; and such bonds are not discharged by a single recovery, but may be sued on from time to time until the whole penalty is exhausted.

Lessee of ferry **liable for losses** in crossing.—Ladd v. Chotard, Minor, 366; Taylor v. Rushing, 2 Stew. & Port. 160. **Ferryman is a common carrier.** Babcock v. Herbert, 3 Ala. 392.

2508 (1452) (1688) (1391) (1198). **Detention at ferry.**—Any person unreasonably detained at a public ferry, toll-bridge, or causeway, may, for each detention, recover of the owner ten dollars before any justice of the county.

Ferryman bound to transport persons after night, unless circumstances render it dangerous.—Pate v. Henry, 5 Stew. & Port. 101; Koretke v. Irwin, 100 Ala. 323.

2509 (1453) (1689) (1392) (1199). **Excessive tolls; penalty.** Any keeper of any public ferry, toll-bridge, or causeway, who demands or receives from any person a higher rate of toll than is prescribed by the court of county commissioners, forfeits to such person twenty dollars, recoverable before any justice of the county.

2510 (1454) (1690) (1394) (1201). **Injuring bridge or causeway; passing round toll-gate; penalty.**—If any person breaks or injures any gate to a toll-bridge or causeway, or obstructs, injures, or destroys such bridge or causeway, or passes round or under the same, with intent to avoid the payment of toll, such person forfeits to the owner ten dollars for each of such acts, and is also liable to an action for damages.

2511 (1455) (1691) (1395) (1202). **Fords.**—Any person may, however, ford any watercourse at any public ferry, without being liable to toll.

2512 (1456) (1692) (1396) (1203). **Damages for injury by defect in bridge or causeway.**—When a bridge or causeway has been erected by contract with the county commissioners, with a guaranty,

by bond or otherwise, that it shall continue safe for the passage of travelers and other persons for a stipulated time, any person injured, in person or property, before the expiration of such period, by a defect in such bridge or causeway, may sue in his own name on the bond or other guaranty, and recover damages for the injury; and if no guaranty has been taken, or the period has expired, may sue and recover damages of the county.

Unprecedented flood or other casualty **no defense.**—Meriwether v. Lowndes, 89 Ala. 362. **Liability is purely statutory,** and does not extend to loss of stock running at large.—Lee v. Yarbrough, 85 Ala. 590. **County liable where no bond taken.**—Greene v. Eubanks, 80 Ala. 204. **Liability of county for defects in highways** not covered by this section.—Barbour v. Brunson, 36 Ala. 362; Covington v. Kinney, 45 Ala. 176; Barbour v. Horn, 48 Ala. 649; Sims v. Butler, 49 Ala. 110; Askew v. Hale, 54 Ala. 639. **Action** under this section **does not lie** in favor of person injured **against one who has merely contracted to keep bridge in repair.**—Williams v. Stillwell, 88 Ala. 332; Lee v. Yarbrough, 85 Ala. 590. **Claim must be presented for allowance before suit.**—Barbour v. Horn, 41 Ala. 114; Schroeder v. Colbert, 66 Ala. 137. **What complaint must allege.**—Barbour v. Horn, 41 Ala. 114; s. c., 48 Ala. 566; s. c., Ib. 649. **Measure of damages.**—James v. Conecuh, 79 Ala. 304. **Contract and bond may be proved by parol if not to be found.**—Williams v. Colbert, 81 Ala. 216. **No action lies unless bridge erected under contract,** etc.—Roberts v. Cleburne Co., Ala. (22 So. 545).

2513 (1457) (1693) (1397). **Suit brought for failure to repair bridge.**—When any bridge has been erected by contract with the county commissioners, with guaranty, by bond or otherwise, to stand for a stipulated period, and is, during such period, washed away, or so damaged as to become unsafe to the public, the court of county commissioners shall, upon the fact being made known to them by any freeholder of the county, notify the contractor to rebuild such bridge, if it be washed away, or repair it, if damaged; and in case of his refusal or neglect to do so in a reasonable time (to be judged of by the court), shall order suit to be brought in the name of the county on such bond.

2514 (1458) (1694). **Riparian owners authorized to charge toll.** Riparian owners upon the navigable and other waters of this state, who maintain in good order, for public convenience, erections and ferries upon the banks or shores of such waters, shall be entitled to charge usual and reasonable rates for the use thereof, or such rates as are prescribed in the several acts heretofore passed, authorizing such erections or ferries, or agreed on by such owners with the corporate authorities of any city, or town, or county, in which they are situated; but no erection or structure, or ferry of any kind, shall be permitted injuriously to affect the rights of navigation in such waters.

ARTICLE 4.

WATERCOURSES.

2515 (1459) (1723) (1440) (1205). **Navigable streams.**—All navigable waters in this state are public highways.

Bullock v. Wilson, 2 Port. 436; Mayor, etc., v. Eslava, 9 Port. 577; Ellis v. Carey, 30 Ala. 725; Glass v. State, Ib. 529; Rhodes v. Otis, 33 Ala. 578; Peters

v. N. O. M. & C. R. Co., 56 Ala. 528; Dickey v. State, 68 Ala. 508; Lewis v. Coffee County, 77 Ala. 190.

2516 (1460) (1724) (1441) (1206). **Obstructions, how removed.** The court of county commissioners is authorized to make contracts for opening or clearing out any navigable stream within the county, and for keeping the same free from obstructions.

2517 (1461) (1725) (1442) (1207). **May be divided into road precincts.**—Such court may lay off such navigable stream, or any portion of the same, in the county, as a road precinct, and appoint overseers thereto, as in case of public roads.

2518 (1462) (1726) (1443) (1208). **Hands to work on it as road duty.**—When any watercourse is established as a road precinct, hands must be apportioned to, and the same cleared out, obstructions removed, and kept in good order by the overseer, under the same regulations and penalties, as to apportioners, overseers and hands, as are applicable by the provisions of this chapter to public roads.

2519 (1463) (1727) (1445) (1210). **Damages for diverting.**—Any person, diverting any stream from its natural channel, is liable to any party aggrieved for the damages sustained.

CHAPTER 60.

HUSBAND AND WIFE. 2520-2537.

2520 (2341). **Separate property of wife.**—All property of the wife, held by her previous to the marriage, or to which she may become entitled after the marriage, in any manner, is the separate property of the wife, and is not subject to the liabilities of the husband.

Statute abrogates distinction between statutory and equitable separate estates; applies to property acquired prior to statute (Feb. 28, 1887).—Rooney v. Michael, 84 Ala. 585; Ramage v. Towles, 85 Ala. 588; Manning v. Pippen, 86 Ala. 357; Bruce v. Bruce, 95 Ala. 563; Turner v. Bernheimer, Ib. 241; Scharf v. Moore, 102 Ala. 468; Connolly v. Mahoney, 103 Ala. 568; Gunn v. Hardy, 107 Ala. 609; Simmons v. Richardson, Ib. 697. **And to contracts made on day statute passed.**—Young v. Pollak, 85 Ala. 439. **But does not affect the rights or remedies of third persons existing at the time of its passage.**—Jordan v. Smith, 83 Ala. 299; Maxwell v. Grace, 85 Ala. 577; Ernst v. Hollis, 89 Ala. 638; Darden v. Gerson, 91 Ala. 323; Jernigan v. Flowers, 94 Ala. 508; Gunn v. Hardy, 107 Ala. 609. **Nor apply to estate limited by ante-nuptial contract.** Smith v. Turpin, 109 Ala. 689; M. & C. R. Co. v. Bynum, 92 Ala. 335; Maxwell v. Grace, 85 Ala. 579. **Nor to personal property acquired under the laws of another state.**—Gluck v. Cox, 75 Ala. 310; s. c., 90 Ala. 331; Bush v. Garner, 73 Ala. 162; Loeb v. McCullough, 78 Ala. 533, 535. **As between husband and wife, possession is referred to title.**—Hawkins v. Ross, 100 Ala. 459; Allen v. Hamilton, 109 Ala. 634; McLeod v. Bishop, 110 Ala. 640; Larkin v. Baty, 111 Ala. 303. **Same; adverse possession.**—Harper v. Rudd, 89 Ala. 371; Gafford v. Strauss, Ib. 283. **Conveyance from husband to wife; attack by creditors; burden of proof.**—Robinson v. Mosely, 93 Ala. 70; Vaught v. Oehmig, 95 Ala. 306; Schloss v. McGuire, 102 Ala. 626; Nat. Bank v. Dickinson, 107 Ala. 265; McTeers v. Perkins, 106 Ala. 411. **Same; property purchased by husband, and title taken in name of the wife.**—Stoutz v. Huger, 107 Ala. 248; Kelly v. Connell, 110 Ala. 543. **Same; improvements erected by the husband on the wife's lands.**—Ware v. Seasongood, 92 Ala. 152; s. c., 104 Ala. 212; Nance v. Nance, 84 Ala. 375.

2521 (2342). Earnings of wife.—The earnings of the wife are her separate property; but she is not entitled to compensation for services rendered to or for the husband, or to or for the family.

Schlapback v. Long, 90 Ala. 525; Bates v. Morris, 101 Ala. 282; Larkin v. Woosley, 109 Ala. 258.

2522. Wearing-apparel of wife.—The wearing-apparel of the wife, however acquired, is her separate property.

2523 (2343). Damages for injuries to person or reputation. All damages which the wife may be entitled to recover for injuries to her person or reputation, are her separate property.

Barker v. Anniston, etc., St. Ry. Co., 92 Ala. 314.

2524 (2344). Liability for ante-nuptial contracts and torts of wife.—The husband is not liable for the debts or engagements of the wife, contracted or entered into before marriage, or for torts committed by her before marriage; but therefor she remains liable and suable as if she were sole.

2525 (2345). Liability for post-nuptial contracts and torts of wife.—The husband is not liable for the debts or engagements of the wife, contracted or entered into after marriage, or for her torts in the commission of which he does not participate; but the wife is liable for such debts or engagements, or for her torts, and is suable therefor as if she were sole.*

The husband, and not the wife, is liable for injuries caused by a vicious dog owned by her.—Strouse v. Leipf, 101 Ala. 433.

2526 (2346). Wife's power to contract.—The wife has full legal capacity to contract as if she were sole, except as otherwise provided by law.*

Contracts of the wife relating to her personal property, governed by the law of the husband's domicil, unless contract made where property is situate. Union Nat. Bank v. Hartwell, 84 Ala. 379.

2527 (2347). How wife sues, and must be sued.—The wife must sue alone, at law or in equity, upon all contracts made by or with her, or for the recovery of her separate property, or for injuries to such property, or for its rents, income, or profits, or for all injuries to her person or reputation; and upon all contracts made by her, or engagements into which she enters, and for all torts committed by her, she must be sued as if she were sole.

Wife may sue husband for property acquired from him prior to statute. Bruce v. Bruce, 95 Ala. 563; Rollins v. State, 98 Ala. 79. **Share of wife in estate, on final settlement, decreed to her alone.**—King v. Brown, 108 Ala. 68. **Wife sues alone to enforce a vendor's lien for purchase-money.**—Bogan v. Hamilton, 90 Ala. 454. **And is suable alone in such case; coverture no defense where no personal decree is sought.**—Crampton v. Prince, 83 Ala. 246; Bogan v. Hamilton, 90 Ala. 454; Joseph v. Decatur, 102 Ala. 346. **Must sue alone as stockholder to dissolve a private corporation.**—Wolfe v. Underwood, 91 Ala. 523. **And to recover property acquired by gift from, or contract with the husband.**—Allen v. Hamilton, 109 Ala. 634. **Husband not a proper party to a bill against the wife for partition of lands in which she has an interest.**—Marshall v. Marshall, 86 Ala. 383. **"Rents, income, or profits," when property held under ante-nuptial contract, who must sue.**—M. & C. R. Co. v. Bynum, 92 Ala. 335. **May be made co-defendant with husband in bill to foreclose mortgage on his lands in which she joined.**—Kimbrell v. Rogers, 90 Ala. 339. **Not properly joined as co-complainant in a bill to remove a cloud upon the title to the husband's homestead.**—Grider v. Amer. Mort. Co.

*As amended by joint committee.

99 Ala. 281. **Plea of coverture must show that the contract sued on is such as a married woman cannot legally enter into.**—Marion v. Reginstein, 98 Ala. 475; Strauss v. Glass, 108 Ala. 546.

Feb. 18, 1895. p. 1138.

2528 (2348). **Power of wife to alienate or mortgage her real and personal property.**—The wife, if the husband be of sound mind, and has not abandoned her, or be not a non-resident of the state, or be not imprisoned under a conviction for crime for a period of two years or more, cannot alienate or mortgage her lands, or any interest therein, without the assent and concurrence of the husband, the assent and concurrence of the husband to be manifested by his joining in the alienation in the mode prescribed by law for the execution of conveyances of land. But if the husband be non compos mentis, or has abandoned the wife, or is a non-resident of the state, or is imprisoned under a conviction for crime for a period of two years or more, the wife may alienate or mortgage her lands as if she were sole.*

Statute applies to lands held by wife as an equitable separate estate prior to its passage.—Rooney v. Michael, 84 Ala. 585. **Statutory mode of alienation exclusive; title cannot be divested by equitable estoppel.**—Wilder v. Wilder, 89 Ala. 414; Vincent v. Walker, 93 Ala. 165; Steiner v. Traum, 98 Ala. 315; Curry v. Amer. Mort. Co., 107 Ala. 437; Vansandt v. Weir, 109 Ala. 104; Cheney v. Nathan, 110 Ala. 254. **But wife may waive her vendor's lien.** Wilder v. Wilder, 89 Ala. 414. **An executory contract for the sale of the wife's lands is within the statute.**—Rooney v. Michael, 84 Ala. 585; Knox v. Childersburg Land Co., 86 Ala. 180. **What is a sufficient "joining in the alienation" by the husband.**—Sheldon v. Carter, 90 Ala. 380. **What is not.** Cheney v. Nathan, 110 Ala. 254; Davidson v. Cox, 112 Ala. 510. Wife may purchase lands as if she were sole.—McAnally v. Heflin, 105 Ala. 525. And may give a valid mortgage thereon to secure the purchase-money without the husband's assent.—Joseph v. Decatur Land Co., 102 Ala. 346; Crampton v. Prince, 83 Ala. 246; Rogan v. Hamilton, 90 Ala. 454. Husband and wife may mortgage her lands to borrow money, etc.—Falls v. U. S. Sav. & Loan Co., 97 Ala. 417; Simmons v. Richardson, 107 Ala. 697; Amer. Mort. Co. v. Thornton, 108 Ala. 258. Ratification of void mortgage made prior to statute; new consideration necessary.—New Eng. Mort. Co. v. Powell, 94 Ala. 423. Essentials of a valid ratification.—Duncan v. Freeman, 109 Ala. 185. Mechanic's lien; wife may create by parol without the assent of the husband.—Wadsworth v. Hodge, 88 Ala. 500; Cutliff v. McAnally, Ib. 507; Youngblood v. McAnally, Ib. 512; McAnally v. Hawkins Lum. Co., 109 Ala. 397. Wife, on obtaining her majority, may ratify contract of purchase during minority.—American F. L. Mort. Co. v. Dykes, 111 Ala. 178.

2529 (2349). **Contracts between husband and wife; she cannot become his surety.**—The husband and wife may contract with each other, but all contracts into which they enter are subject to the rules of law as to contracts by and between persons standing in confidential relations; but the wife shall not, directly or indirectly, become the surety for the husband.†

Confidential relations.—Bank v. Nelson, 106 Ala. 535; Lockwood v. Tate, 96 Ala. 353. **Husband as agent for the wife; declarations and admissions.** Jackson v. Stanley, 87 Ala. 270; Stout v. Kinsey, 90 Ala. 546; Agnew v. McGill, 96 Ala. 496; Steed v. Knowles, 97 Ala. 573; Steiner v. Tranum, 98 Ala. 315; Mitchell v. Scheusler, 98 Ala. 635; Bank v. Nelson, 105 Ala. 180; Sayre v. Weil, 94 Ala. 466. **Partnership between husband and wife.**—Schlapback v. Long, 90 Ala. 525; Reed Lumber Co. v. Lewis, 94 Ala. 626; O'Neil v. Bir. Brew. Co., 101 Ala. 383; Belser v. Tuscumbia Banking Co., 105 Ala. 514. **Wife cannot become surety for the husband.**—Schening v. Cofer, 97 Ala. 726; Hawkins v. Ross, 100 Ala. 459; McNeil v. Davis, 105 Ala. 657; Elston v. Comer, 108 Ala. 76. **Mortgage of wife's lands to secure the husband's debt, void as against the wife and her heirs.**—Heard v. Hicks, 82 Ala. 484; Lansden v. Bone, 90 Ala. 446; Hawkins v. Ross, 100 Ala. 459; McNeil v. Davis, 105 Ala. 657; Elston v. Comer,

*As amended by joint committee.
†Section 2350 of the Code of 1886 was stricken out by joint committee.

108 Ala. 76; Clement v. Draper, 108 Ala. 211. **But on the death of the wife intestate, the husband's life-estate therein, passes by covenant of warranty.**—Bone v. Lansden, 85 Ala. 562; Lansden v. Bone, 90 Ala. 446. **Husband and wife may convey her lands in payment of his debt.**—Hubbard v. Sayre, 105 Ala. 440; Giddens v. Powell, 108 Ala. 621.

2530 (2351). **Property subject to provisions of this chapter.** All property of the wife, whether acquired by descent or inheritance, or gift, devise, or bequest, or by contract or conveyance, or by gift from, or contract with the husband, is the separate property of the wife within the meaning, and is subject to all the provisions, of this chapter, saving and excepting only such property as may be conveyed to an active trustee for her benefit.

Active trustee defined.—Connolly v. Mahoney, 103 Ala. 568; Scharf v. Moore, 102 Ala. 468; Rooney v. Michael, 84 Ala. 589; Simmons v. Richardson, 107 Ala. 697. See citations to section 2520 (2341).

2531. Married women minors over eighteen relieved of disabilities of minority.—The marriage of any woman in this state who is under twenty-one and over eighteen years of age, or the arrival at the age of eighteen years of any married woman in this state, has the effect immediately to remove her disabilities of minority; and thereafter she has the same legal rights and abilities as married women over twenty-one years of age. Feb. 18, 1895, p. 812, §1.

2532. Contracts by non-resident married women concerning property in this state.—All contracts concerning real or personal property situated in this state, entered into by married women who are not residents of this state at the time of entering into such contracts, have the same force and validity as if such contracts were made by married women residing in this state.* Ib. §2.

2533 (2352) (2713) (2378) (1989). **Married women may make wills.**—Married women may, by last will and testament, dispose of their separate estates.

O'Donnell v. Rodiger, 76 Ala. 222; Hatchett v. Hatchett, 103 Ala. 556.

2534 (2353) (2714) (2379) (1990). **Husband's distributive share of the wife's estate.**—If a married woman having a separate estate die intestate, leaving a husband living, he is entitled to one-half of the personalty of such separate estate absolutely; and to the use of the realty during his life, unless he has been divested of all control over it by a decree of a court of chancery, as hereinafter provided.

Willis v. Cadenhead, 28 Ala. 472; Marshall v. Crow, 29 Ala. 278; Connolly v. Gayle, 54 Ala. 269; Marshall v. Gayle, 58 Ala. 284; Jones v. Wilson, 60 Ala. 332; Gayle v. Randall, 71 Ala. 469; Bone v. Lansden, 85 Ala. 562; s. c., 90 Ala. 446; Davenport v. Brooks, 92 Ala. 627; Connolly v. Mahoney, 103 Ala. 568; Thompson v. Thompson, 107 Ala. 163.

2535 (2356) (2733, 2734) (3539h, 3539i). **Insurance on life of husband.**—The wife, in her own name, or in the name of a trustee, may insure the life of the husband for the benefit of herself, or for the benefit of herself and any child or children of the marriage. Or the husband or father may insure his life for the benefit of his wife, or for the benefit of his wife and children, or for the benefit of his minor child or children, and such insurance is exempt from liability for his debts or engagements, or for his torts, or any penalty or dam-

*As amended by joint committee.

ages recoverable of him, if the annual premiums thereon do not exceed five hundred dollars; or if such premiums exceed five hundred dollars, then to the extent of the insurance which an annual premium of five hundred dollars would purchase.

Stone v. Knickerbocker Ins. Co., 52 Ala. 589; Continental Ins. Co. v. Webb, 54 Ala. 688; Fearn v. Ward, 65 Ala. 33; Felrath v. Schonfield, 76 Ala. 199; Tompkins v. Levy, 87 Ala. 263; Friedman v. Fennell, 94 Ala. 570.

2536 (2368) (2746) (2397) (2006). **Custody of children on voluntary separation.**—In all cases of voluntary separation between husband and wife, the court of chancery has power, on the petition of either party, twenty days' notice thereof being given to the other, to permit either the father or mother to have the custody and control of the children, and to superintend and direct their education, having regard to the prudence, ability and fitness of the parents, and the age and sex of the children.

Bryan v. Bryan, 34 Ala. 516; Anonymous, 55 Ala. 428.

2537 (2369) (2747) (2398) (2007). **Mode of proceeding; orders pending suit.**—Upon the hearing of the petition, witnesses may be examined orally, or testimony may be taken as in other chancery cases. Whilst the application is pending, the court may direct an injunction to issue, or make any order that the safety and well-being of the wife or children may require.

CHAPTER 61.

INNKEEPERS. 2538-2543.

2538 (1324) (522). **Hotel and inn keepers must be licensed.**—All keepers of a public inn or hotel must obtain license from the judge of probate of the county in which such inn or hotel is situate, and must pay to the judge such tax or the price of such license as is by law imposed.

2539 (1325). **Liability of inn or hotel keepers.**—In the absence of a special contract, as is authorized in the succeeding section, the rights of guests, and the liability of the keeper remain as at common law.

2540 (1326) (525). **Special contract between inn or hotel keeper and guest authorized.**—The keeper of a public inn or hotel may require any guest, or person proposing to become a guest, to enter into a special contract as to the kind and place of board, entertainment, or lodging to be furnished such guest, and the price therefor to be paid; and if such guest refuses to enter into such contract and to accept such board, entertainment, or lodging at the price proposed, as the keeper may offer, the keeper may refuse to receive or to entertain such guest, and because of such refusal shall not incur any liability whatever. Such special contract must be in writing, signed by both

parties; and thereby the inn or hotel keeper may limit his liability for the safety of the goods of such guest, as it is defined or declared by the common law.

Beale v. Posey, 72 Ala. 323; Lanier v. Youngblood, 73 Ala. 587.

2541 (1327) (1549) (1242). **Keep safes and post up notices.** Every keeper of a public inn or hotel in a city must provide himself with an iron chest, or other safe depository for valuable articles belonging to his guests and customers, and must keep posted up on his doors and other public places in his house of entertainment, written or printed notices to his guests and customers, that they must leave their valuables with the landlord, his agent, or clerk, for safe-keeping, that he may make safe deposit of the same in the place provided for that purpose.

Beall v Posey, 72 Ala. 323; Lanier v. Youngblood, 73 Ala. 587.

2542 (1328) (1550) (1243). **Not liable for articles not deposited.** Such hotel or inn keeper as shall comply with the requirements of the preceding section, shall not be liable for any money, jewelry, watches, plate, or other things made of gold or silver, or of rare and precious stones, or for other valuable articles of such description as may be contained in small compass, which may be abstracted or lost from any such public inn or hotel, if the same shall not be left with the hotel or inn keeper, his clerk, or agent for deposit, unless such loss shall occur through the fraud of the hotel or inn keeper, or some clerk or servant employed by him in such inn or hotel.

2543 (1329) (1551) (1244). **Liability on failure to comply.**—Any hotel or inn keeper, who shall refuse or neglect to comply with the requirements of section 2541 (1327) shall not be entitled to the exemptions and benefits contained in the preceding section, but shall, in all respects, be liable as at common law.

CHAPTER 62.

INSANE HOSPITAL. 2544-2574.

2544. Incorporation; name and powers.—The institution for the custody and treatment of insane persons, already located in the county of Tuscaloosa, and near the city of Tuscaloosa, is a body corporate and politic, under the name and style of the Alabama Bryce Insane Hospital, and by that name may sue and be sued, may contract and be bound; may have, possess and enjoy real and personal property, and have perpetual succession; may have and use a common seal, and break or alter the same at pleasure; and for the purpose herein set forth, have all powers incident to corporations of such nature, and suits for and against such corporation shall be brought only in the appropriate courts of the county of Tuscaloosa. Feb. 9, 1893, p. 344, §1.

Ib. §2. **2545. Trustees; appointment and compensation; filling vacancies; president and secretary.**—The affairs of said corporation shall be managed and controlled by a board of seven trustees, four of whom shall constitute a quorum, who shall elect a president and secretary from their number for their own government, but who shall receive no compensation for their services other than the amounts of their traveling expenses actually paid out while attending the meetings of the board, or while on other business of the hospital to which they have been appointed by the board. Such trustees shall be nominated by the governor to the senate for confirmation or rejection. The governor shall fill all vacancies that shall occur in the recess of the senate, and his appointments shall hold until confirmed or rejected by the senate. Three of such trustees shall reside in the neighborhood of the hospital, and shall constitute the resident board, to manage such business of the hospital as shall be delegated and committed to them by the full board at their regular meetings. The other four members of the board shall be appointed from other parts of the state. The term of service for each trustee shall be six years. When a trustee is appointed to fill a vacancy, the appointment shall be for the unexpired term of the member of the board who has vacated the office; and the present arrangement whereby the terms of office of different trustees expire in periods of two years, shall continue.

Ib. §2. **2546. Trustees; powers and duties; meetings; reports.**—The board of trustees shall hold at least one regular meeting during the year. They shall determine the time when the fiscal year of the hospital shall close, and as near after that date as practicable, they shall hold an annual meeting, when they shall make a thorough inspection and examination of the hospital and its management, which session of the board shall embrace at least two days; and at which session they shall adopt and transmit to the governor a full report of all the affairs of the hospital. At their meeting preceding the session of the general assembly, the trustees shall make their report to the governor to be annual or biennial, as the case may be, so as to embrace all the time between the sessions of the general assembly. One thousand copies of this report the governor shall cause to be printed at the expense of the state, one half of which shall be distributed among the members of the general assembly, and the other half shall be sent to the superintendent, to be distributed at his discretion to other similar institutions, or otherwise. The board of trustees shall adopt rules and regulations not inconsistent with the provisions of this chapter, for their own government, and for the government of the resident board; and shall adopt and have printed, rules and regulations for the management of the hospital, which shall specify, as far as practicable, the duties of the different officers and employes.

Ib. §2. **2547. Treasurer; bond and salary.**—The trustees shall elect from outside their number, a suitable person as treasurer of the hospital, and determine his salary, who shall give a good and sufficient

bond, to be approved by the resident board, which bond shall amply secure all funds and other effects of the hospital placed in his hands.

Ib. §§3, 14.

2548. Superintendent; qualifications, powers and duties; term, removal and salary; assistants and employes.—For the direct control and management of the hospital, the trustees shall, when necessary, elect a superintendent, and determine his salary, who shall in all his duties be their principal executive officer, and be held strictly accountable to them. Such superintendent must be a physician, who, before he assumes the duties of his office, must qualify himself to practice medicine under the existing laws of the State of Alabama. He must be of prompt business habits, and of a humane, kindly disposition. Such superintendent must be appointed for a term of not less than eight years, and must not be removed except for incompetency or unfitness, fully declared and shown, or for neglect of the trust reposed in him. Such superintendent, with the concurrence of the resident board, shall appoint all the assistant physicians, stewards, supervisors, nurses, attendants and other employes of the hospital, who are under his control and government; and shall have the power to remove them from the employ of the hospital at his discretion; and he shall determine, with the concurrence of the resident board, all the salaries, wages and other compensations that shall be paid said officers and employes. And he shall grant admission to any trustee at any time into any of the wards or departments of the hospital, and free access to any of its books and records.

Ib. §4.

2549. Admission of patients; qualifications for admission.—The hospital shall be maintained solely for the support, custody and treatment of insane persons; no other class of patients shall be admitted. No patient shall be received into the hospital without the proper papers hereinafter specified from the judge of probate of the county in which the patient resides. A person shall be considered insane or fit to be a patient in the hospital, who exhibits, in the first place, such a degree of brain debility, or mental aberration, as to render him (or her) constantly troublesome, or a nuisance, or dangerous to others, or dangerous to his (or her) own life or person, or dangerous to property; in the second place, this disability must not be transient like delirium in a fever, but of a more or less permanent character; in the third place, lack or loss of mental ability to properly conduct his (or her) usual work or business, shall be considered along with aberrant conduct in determining the question of a person's insanity.

Ib. §5.

2550. Same; order of admission.—In order of admission into the hospital, when its means of accommodation are crowded, preference shall be given to recent, curable cases, over chronic or incurable. Among those to whom preference shall be last given, shall be idiots, or any who have been imbecile and weak-minded from childhood; to those who are subject to epileptic convulsions; and to those whose temporary insanity is produced by the injurious use of alcoholic drinks or opiates.

Ib. §6. **2551. Same; preliminary steps; duty of probate judge; application.**—When a relative, friend or other citizen interested, is desirous of placing a person in the hospital as a patient, he shall apply to the judge of probate of the county in which such person resides, and the judge of probate, without delay, shall proceed to investigate the case, by examining witnesses or not, as he sees fit; and if he is reasonably convinced that the application is a just one, he shall have prepared as full and explicit answers to the following list of interrogatories as is practicable, which answers he shall forward at once to the superintendent of the hospital, with an application for the admission of the person:

1. What is the name of the person in full? Age? Sex? Color? Civil condition (single or married)? Where born?

2. Is the person idiotic? Or has he (or she) been eccentric, imbecile or weak-minded since childhood?

3. Has the person epileptic convulsions or fits of any kind?

4. Can the person's insanity be attributable to the injurious use of alcoholic drinks or opiates?

5. Will the person's expenses in the hospital be paid by the state or by whom?

6. How long has the present insane condition of the person lasted, and did it begin suddenly or gradually?

7. Has he (or she) ever been insane before? When, and how long each time?

8. Has the person ever before been a patient in an insane asylum, or been confined in jail, or a poorhouse on that account?

9. In what way does the person's insanity now exhibit itself?

10. State any delusions the person may have.

11. Is the patient easily managed at home? And what means of restraint have been used?

12. Is the patient cleanly or filthy in habits? Does he (or she) ever attempt self-injury or suicide? Does he (or she) ever attempt to injure others, or threaten it? Is he (or she) destructive of clothing or property? How well does he (or she) attend to ordinary work or business?

13. In what other ways, than being insane, is he (or she) sick or diseased?

14. What near relatives of the person are, or have been, insane? Or idiotic? Or epileptic? Or inebriate?

Ib. §7. **2552. Same; reply of superintendent.**—On receiving the application and the answers to the above list of interrogatories, the superintendent shall promptly forward a reply to the judge of probate, in accordance with the crowded condition of the hospital, and in accordance with the above instructions as to the order of admission of patients, whether the patient can be received or not.

Ib. §8. **2553. Same; certificate of judge; removal of patient; expenses of indigent patient.**—When informed by the superintendent that the person can be received as a patient into the hospital, the judge of probate shall call at least one respectable physician, the family phy-

sician of the person, if practicable, and other credible witnesses, and investigate the facts of the case, either with or without a jury, and either with or without the presence in court of the person whose sanity is in question, according to his discretion; and if the judge, or the jury, if there be one, believe that satisfactory evidence has been adduced to show the person to be insane, the judge of probate must make certificates similar to the forms set out in this chapter, and send the insane patient, with the certificates committing him (or her) to the insane hospital. A copy of the certificate, committing the patient to the insane hospital, shall also be kept on file in the office of the probate judge. The judge of probate can deputize the sheriff, or other officers, or a friend or friends of the patient to carry him (or her) to the hospital. All necessary expenses incurred by county officers or others in conveying indigent patients to the hospital shall be paid out of the county treasury on order of the court of county commissioners.

Ib. §9.

2554. Same; duty of judge to ascertain financial condition of patient; expenses of paying or indigent patient; certificate.—At the same time that the judge of probate, or the jury, as the case may be, investigates the fact of the sanity or insanity of the person, if judged insane, the judge or the jury shall also examine witnesses under oath as to the financial standing and condition of the person, and if it appear that he (or she) has not sufficient means or estate to pay for his (or her) support in the hospital, the judge shall so state the fact in the certificate similar to the form set out in this chapter, and the expenses of the patient in the hospital shall be paid by the state in the manner specified in this chapter. If, however, it appear that the patient in his own estate, or his parents, if a minor, is possessed of sufficient means, or if his relatives or friends are willing to provide for his support, the judge of probate shall state the fact in the certificate that he (or she) will be a paying patient, and the judge of probate shall contract with the responsible parties, in the form specified, for the quarterly payment in advance of the amount charged under the direction of the resident board of trustees for the ordinary support and treatment of patients in the hospital. If, however, the patient's guardian or friends wish to pay for extra attention, diet, or treatment for the patient, the superintendent is authorized to furnish the same, in so far as the keeping of such paying patients does not interfere with or disturb the general mangement or discipline of the institution.

Ib.

2555. Form of certificates.—The certificates required to be made by the probate judge by the two preceding sections, shall read substantially as follows:

"I (A. B.), judge of probate of the county of ——, and the State of Alabama, do hereby certify that it having been alleged to me that (C. D.), a resident of said county, is insane, and that his (or her) own and the public welfare demand that he (or she) be sent for custody and treatment to the Alabama Bryce Insane Hospital, pursuant to the statutes in such cases made and provided, I have called before me

the following credible witnesses (stating their names), and Dr. ——, a reputable physician, practicing medicine in this state, and having examined them under oath, and fully investigated the facts of the case, with the said (C. D.) present in court (or not, as the case may be), and having considered it necessary to call a jury (or not, as the case may be), I do hereby certify that sufficient proof has been adduced before me (or to the jury) to satisfactorily show the said (C. D.) to be insane, and that he (or she) ought to be committed to the Alabama Bryce Insane Hospital for safe-keeping and treatment.

I further certify that the following credible witnesses (stating their names) have been examined as to the financial condition of the said (C. D.), and that satisfactory proof has been adduced to show that he (or she) has (or has not) sufficient means to pay his (or her) expenses in the Alabama Bryce Insane Hospital; and I therefore commit him (or her) to that institution as a paying (or indigent) patient.

Given under my hand at ——, in the county and state aforesaid, this —— day of ——, in the year ——.

A. B.,
Judge of Probate."

Ib **2556. Same; bond of paying patient.**—If the finding of the judge of probate, or the jury, if there be one, be that the patient is financially able to pay his or her expenses in the hospital, the judge of probate shall cause the following bond to be made by at least two solvent and responsible parties, which bond shall be sent, together with the certificates of insanity, to the superintendent of the hospital:

"Know all men by these presents, that we —— ——, and —— ——, of the county of ——, in the State of Alabama, are held and firmly bound unto the Alabama Bryce Insane Hospital in the penal sum of three hundred dollars, for the payment of which we hereby bind ourselves, jointly and severally.

Sealed with our seals, and dated this —— day of ——, A. D. ——.

The conditions of the above obligation are as follows: Whereas (C. D.) of the county of ——, State of Alabama, is about to be admitted as a paying patient into the Alabama Bryce Insane Hospital; now, if while he shall remain therein, the undersigned shall constantly supply him with suitable clothing, and pay all charges of said hospital against him quarterly in advance; and whenever his removal shall be required, immediately remove him; and if he shall escape from said hospital, pay all reasonable charges incurred in restoring him; and if he die therein, pay all reasonable expenses incurred for his funeral; and in case of failure to perform promptly and faithfully any of the above conditions, pay all losses that accrue to said hospital by litigation, collector's fees, or otherwise, then this obligation shall be void; otherwise to remain in full force.

Witness our hands and seals, this —— day of ——, A. D. ——.

E. F. (Seal.)
G. H. (Seal.)

I hereby certify that in my opinion the obligors in the above bond have executed the same in good faith, and that the amount of the penalty specified therein can be recovered from them by due process of law.

In witness whereof I have hereunto set my hand at ——, this —— day of ——, A. D. ——.

A. B.,

Judge of probate of —— county and State of Alabama."

Signers jointly and severally liable.—Enslen v. Ala. Ins. Hospital, Ala. (21 So. 74).

2557. Release of obligors on bond of paying patient.—In any case in which satisfactory evidence is adduced before the judge of probate that a paying patient in the hospital, has, since admission, and since his last advance payment of quarterly dues, become indigent in circumstances, so that he can no longer pay the ordinary charges of the hospital for his support, the judge of probate can relieve his bondsmen, and shall at once notify the superintendent of the fact, who, at the end of the current quarter, must transfer his name from the list of paying patients to the list of indigent patients whose expenses are paid by the state. But, however, the appeal to the judge and the notice to the superintendent must both have been made before the close of a quarter for which payment has been made. Ib. §10.

2558. When bond may be required of patient admitted as indigent; duty of probate judge.—If in any case in which a person who has been admitted into the hospital as an indigent patient it shall be brought to the attention of the probate judge of the county from which the patient was sent, that such patient has since admission become possessed of means sufficient to pay for his (or her) support in the hospital, the judge shall at once investigate the case, and if he find the facts to be as stated, he shall, upon penalty of having the patient returned by the superintendent to the care of his (or her) friends or relatives, cause to be made a bond for the support of the patient as hereinbefore specified. Friends or relatives can have any patient transferred from the indigent to the paying class upon paying into the hands of the steward of the hospital the charges for three months in advance, and giving bond for the continued payment of the same. Ib. §11.

2559. Discharge of patient by superintendent; by trustees. The superintendent, under such regulations as the board of trustees may adopt, shall discharge from the hospital all patients who have entirely recovered from their insanity. The resident board of trustees shall have the authority, with or without the concurrence of the superintendent, to discharge any patient from the hospital at any time. Ib. §§12, 14.

2560. Furloughs granted by superintendent; readmission.—The superintendent of the hospital shall have the authority, if he think it will benefit the patient, to furlough any patient at the request of his (or her) friends or relatives, for a period not exceeding six Ib. §13.

months; but the furlough shall be granted only at the request of friends who shall pay all the traveling expenses of the patient from and back to the hospital, and send some person to accompany the patient on the way from and back to the hospital, if thought best by the superintendent; and if, at the expiration of six months the patient has not been returned to the hospital, or an application has not been made for an extension of the furlough, his (or her) name shall be transferred from the furlough to the discharged list; and readmission cannot be obtained without a certificate from the judge of probate of the county in which the person resides, in the same manner as if the person had never been a patient of the hospital.

Ib. §16. **2561. Expenses of removal of patient restored to sanity.**—When a patient shall have been restored to normal mental condition sufficiently long to warrant the opinion on the part of the superintendent that such patient has recovered, the superintendent shall inform the friends or relatives of his (or her) recovery; and if the friends or relatives do not furnish the means to pay the necessary traveling expenses home, the superintendent shall notify the probate judge of the county from which the patient was sent of the fact, and the county commissioners of said county shall pay the reasonable and actual expenses of such removal out of the treasury of said county.

Ib. §17. **2562. Patients brought without certificate; duty of probate judge of Tuscaloosa county.**—When any person shall be brought as a patient to the hospital without the proper certificate from the judge of probate of the county in which he (or she) resides, it shall be the duty of the judge of probate of the county of Tuscaloosa to examine such person as to his (or her) insanity and pecuniary ability, and give the proper certificates of admission; and it shall be the duty of the superintendent to record the patient as coming from the county in which he (or she) resides, and to notify the judge of probate of that county of the facts in the case; and said patient shall be under the control of the probate court of said county as to the payment of traveling expenses and other matters as herein provided.

2563 (1250) (1494) (1067). **Physician of convicts reports certain classes of insane convicts.**—The physician of the state and county convicts must report to the governor the names of all insane convicts imprisoned in the penitentiary, or sentenced to hard labor for the county, whose general deportment during confinement has been good, and who were not convicted of rape.

2564 (1251) (1495) (1068). **Governor causes removal to hospital on report of physician.**—The governor must, when any case of insanity is reported to him, under the preceding section, appoint three physicians of skill and experience; of whom the physician of the convicts must be one, to examine the persons reported to be insane, and report to him the result of such examination; and if such board of physicians shall report such person insane, and a fit subject for the hospital for insane persons, the governor must cause such person to be removed to the hospital for insane persons at Tuscaloosa, at the cost of the state.

2565 (1252) (1496) (1069). **Compensation for removal.**—The same compensation must be allowed for guarding any insane convicts in the penitentiary, to and from the insane hospital, as is allowed to sheriffs and guards carrying prisoners to the penitentiary, to be paid by the state.

2566 (1253) (1497) (1070). **Restored convict returned or discharged.**—A convict to the penitentiary, sent to the insane hospital, must, upon his restoration to sanity before the expiration of his term of imprisonment, be returned to the penitentiary or discharged, as the governor may order.

2567 (1254) (1498) (1072). **Convict insane at the expiration of his term.**—When any person is imprisoned in the penitentiary of this state, under a sentence of a circuit court, and is insane at the expiration of his term of imprisonment, the lessee must report the same to the governor, who must cause an examination to be made of the extent and character of such insanity; and if upon such investigation it be found that such person is a proper subject for confinement in the hospital for insane persons, he must order him to be removed from the penitentiary to the hospital, and if such person be in indigent circumstances, and had no known place of residence previous to his confinement in the penitentiary, the expenses of keeping such person must be paid by the state.

2568. Admission of insane criminal must be prearranged with superintendent.—No insane criminal or person guilty of crime must be sent to the hospital until the sheriff or other person having the legal custody of such patient shall have forwarded to the superintendent of the hospital a written application, accompanied by a certified copy of the order of the court or the judgment under the authority of which the committal was made, and shall have received information in reply that there is room in the hospital building for such patient. Feb. 11, 1891, p. 476.

2569. Exemption of employes from certain duties.—The superintendent and other regular employes of the hospital shall be exempt from militia service, from liability to work on the public roads, and from serving on juries. Feb. 9, 1893, p. 344, §19.

2570. Police of grounds; appointment, powers and duties.—The superintendent of the hospital has authority to appoint or employ one or more suitable persons to act as police officers to keep off intruders and prevent trespasses upon and damage to the property of the hospital. Such persons shall be charged with all the duties and invested with all the powers of police officers, and may eject trespassers from the hospital buildings and grounds, and may, without warrant, arrest persons guilty of disorderly conduct, or of trespass on the property of the institution, and carry them before the nearest justice of the peace or other officer charged with the trial of such offenders, before whom, upon proper affidavit charging the offense, such person so arrested may be tried and convicted as in case of persons brought before him on a warrant; and such officer or officers shall have authority to summon a posse comitatus. Ib. §20.

Ib. §21. **2571. Superintendent not compelled to attend as a witness in certain cases; deposition.**—The superintendent of the hospital shall not be compelled to attend, as a witness, to testify as an expert in any case or on any question of insanity or psychological medicine; provided he shall certify in writing to the court from which the summons is issued, within ten days after the service of the summons, that his absence from the hospital will, in his best judgment, interfere seriously with his professional duties as superintendent. But defendants in criminal cases, and the state, by consent of the defendant, and in civil cases, either party, may take the deposition of the superintendent as to all matters involving his opinion as an expert, when such testimony is admissible.

Ib. §22. **2572. Public highways not permitted through grounds; exception.**—No public highway shall be allowed on or over the grounds of the hospital without the consent of the superintendent and resident board of trustees, granted by resolution to be recorded on the minutes of the board.

Feb. 28, 1889, p. 79, §1. **2573. Trustees may give certain rights, and quitclaim lands to the United States for certain purposes.**—The trustees are authorized and permitted to grant to the United States government, the privilege to open rock-quarries along the banks of the Warrior river on the lands of the hospital under such regulations and requirements as they may think proper, so as to guard against injury to the remaining lands of the hospital, free of charge or rent of any kind. And the board of trustees may quitclaim to the United States so much of the land as may be needed for the foundation of the walls of locks and dams and lock-tender houses, along the banks of the Warrior river, in the county of Tuscaloosa, under such regulations and requirements as they may see proper.

Feb. 9, 1893, p. 344, §15. **2574. Appropriation; disposition of unexpended balance.**—A sum, regulated by the board of trustees, not exceeding three dollars per week for each indigent and criminal patient, shall be paid by the state for the support of the hospital, on the last days of March, June, September and December of each year; and the auditor of public accounts shall issue his warrant for that amount, on the order of the treasurer of the hospital, countersigned by the superintendent. And any balance remaining in the hands of the treasurer or steward on the thirtieth day of September of each year, shall be placed to the credit of a fund which shall be expended for permanent improvements, under the direction of the resident board of trustees.

CHAPTER 63.

INSURANCE COMPANIES.

ARTICLE 1.—THE DEPARTMENT OF INSURANCE AND PROVISIONS REGULATING THE BUSINESS OF INSURANCE GENERALLY. 2575–2613.
2. PROVISIONS FOR THE PROTECTION OF LOCAL AGENTS OF FOREIGN COMPANIES. 2614–2618.
3.—PROVISIONS DESIGNED TO PREVENT TARIFF ASSOCIATIONS TO FIX RATES OF INSURANCE. 2619–2621.
4.—FIRE-INSURANCE PATROL. 2622–2625.

ARTICLE 1.

THE DEPARTMENT OF INSURANCE AND PROVISIONS REGULATING THE BUSINESS OF INSURANCE GENERALLY.

2575. Definition of terms used in this article.—When consistent with the context, and not obviously used in a different sense, the term "company" or "insurance company" as used in this article includes all corporations, associations, partnerships or individuals engaged, directly or indirectly, as principals in any business of insurance; the word "domestic" designates those companies incorporated or formed of individuals living in this state; and the word "foreign" when used without limitation, includes all those formed by authority of any other state or government; the terms "unearned premiums" and "reinsurance reserve" and "liability reserve" and "net value of policies" or "premium reserve" severally intend the liability of an insurance company upon its insurance contracts, other than accrued claims, computed by rules of valuation established by section 2583; by the term of "net assets" is meant the funds of an insurance company available for the payment of its obligations in Alabama. Feb. 18, 1897, p. 1377, §1.

2576. Contract of insurance defined.—A contract of insurance is an agreement expressed or implied by which one party, for a consideration, promises to pay money, or its equivalent, or to do some act of value to the assured upon the destruction or injury of something in which the other party has an insurable interest. Ib. §2.

2577. Insurance commissioner; his duties and powers; deputy-commissioner.—The department of insurance shall have for its chief officer the secretary of state, who shall be styled the "Insurance Commissioner ex officio." The insurance commissioner shall exercise the powers and perform the duties conferred and imposed upon him by this article, or by any other law of the state. He may appoint a deputy-commissioner to assist him in the discharge of his duties, who shall receive an annual salary to be fixed by the governor, not to exceed twelve hundred dollars, to be paid by fees collected from insurance companies as provided in this article, and who shall be removable at the pleasure of the insurance commissioner. The said deputy-commissioner shall give bond with a guarantee company, or Ib. §3.

personal sureties, in the sum of ten thousand dollars, to be approved by the insurance commissioner, for the faithful performance of his duties.

Ib. §4. **2578. General supervision of insurance companies; visitation and examination; penalties.**—Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance, the insurance commissioner shall be satisfied, by such examinations and evidence as he sees fit to make and require, that such company is duly qualified under the laws of the state, to transact business therein. As often as once in two years the insurance commissioner shall personally or by his deputy or some competent person appointed by him for that purpose, visit each domestic insurance company and examine its affairs, especially as to its financial condition and ability to fulfill its obligations, and whether it has complied with the law. He shall also make an examination of any such company whenever he deems it prudent to do so or upon the request of five or more of the stockholders or persons pecuniarily interested therein, who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in unsound condition. Whenever he deems it prudent for the protection of policy-holders in this state that any company authorized to do business in this state has violated any of the provisions of this article, he shall, in like manner, visit and examine, or cause to be visited and examined by some competent person or persons he may appoint for that purpose, any foreign insurance company applying for admission or already admitted to do business by agencies in this state. For the purposes aforesaid, the commissioner or his deputy or person making the examination, shall have free access to all the books and papers of an insurance company that relate to its business, and to the books and papers kept by any of its agents, and may summon and qualify as witnesses under oath and examine the directors, officers, agents and trustees of any such company, and any other persons, in relation to its affairs, transactions, and condition. Any insurance company examined under the provisions of this article, shall pay the proper charges incurred in such examination, including the expenses of the insurance commissioner or his deputy, and the expenses and compensation of his assistants employed therein. Whoever, without justifiable cause, neglects upon due summons to appear and testify before the insurance commissioner or his deputy or any person appointed by him as provided in this section, and whoever obstructs the insurance commissioner, his deputy or examiner, in his examination of insurance companies, shall be guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars nor more than five hundred dollars. Any insurance company violating any provision of this section or refusing to submit to the aforesaid examination when requested, shall forfeit their right to do business in this state for the next twelve months thereafter, and the insurance commissioner shall immediately revoke the license, if already issued, to said insurance company, to

do business in this state; *Provided*, that in case of foreign life-insurance companies, for the purposes of this article, the insurance commissioner shall accept as true and correct the sworn published statement made to and approved by the insurance commissioner, or like officer, of the state in which said company is incorporated.

Ib. §5.

2579. When commissioner must revoke authority of foreign company.—If the insurance commissioner is of the opinion, upon examination or other evidence, that a foreign insurance company is in an unsound condition, that its actual funds, exclusive of its capital, are less than its liabilities, or if it has failed to comply with the law, or if its officers or agents refuse to submit to examination, or to perform any legal obligation in relation thereto, or fail to pay any judgment against it by a citizen of this state, he shall revoke or suspend all certificates of authority granted to it or its agents, and shall cause notification thereof to be published in one or more newspapers of general circulation, and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the insurance commissioner; *Provided*, *however*, that unless the ground for revocation or suspension relates only to the financial condition or soundness of the company, or to a deficiency in its assets he shall notify the company not less than ten days before revoking its authority to do business in this state, and he shall specify in the notice the particulars of the supposed violation.

Ib.

2580. When domestic company restrained and receiver appointed.—If, upon examination, the insurance commissioner is of opinion that any domestic insurance company is insolvent, or has exceeded its powers, or has failed to comply with any provision of the law, or that its condition is such as to render its further proceedings hazardous to the public, or to its policy-holders, he shall apply to a court of competent jurisdiction through the attorney-general for the state, to issue an injunction restraining it in whole or in part from further proceedings with its business. Such court may, in its discretion, issue the injunction forthwith, or upon notice and hearing thereof, and after a full hearing of the matter, may dissolve or modify such injunction, or make it perpetual, and may make all orders and decrees needful in the premises and may appoint agents or receivers to take possession of the property and effects of the company, and to settle its affairs, subject to such rules and orders as the court may from time to time prescribe, according to the course of proceedings in equity.

Ib. §6.

2581. Proceedings when capital of domestic company impaired. Whenever it appears to the insurance commissioner that the capital of a domestic insurance company is impaired to the extent of twenty per cent. or more, he shall notify the company that its capital is legally subject to be made good; and if such company shall not, within sixty days after such notice, satisfy him that it has repaired its capital, as provided by law, he shall institute proceedings against it, in accordance with the preceding section.

Ib. §7. **2582. When domestic life company notified to issue no new policies until capital made good.**—When the assets of a domestic life-insurance company, exclusive of its capital, are not of net cash value equal to its liabilities, including the net value of its policies, or when a domestic life-insurance company shall show an impairment of twenty per cent. of its capital, computed by the rules of valuation established by section 2583, he shall notify such company and its agents to issue no new policies until its assets come equal to its liabilities.

Ib. §8. **2583. Method of ascertaining status of foreign life and domestic companies.**—The insurance commissioner shall each year compute the net value on the thirty-first day of December of the preceding year, of all outstanding policies of life-insurance in companies authorized to make insurance on lives in this state upon the basis of the "combined experience" or "actuaries' table" or the "American experience table" rate of mortality, with the interest at four per cent. per annum; and the aggregate net value, so ascertained, of the policies of any such company, shall be deemed its liability on account of its policy obligations, other than accrued claims, to provide for which it shall hold assets of an amount equal to such net value above all other liabilities. Whenever a foreign life-insurance company shall present to the insurance commissioner a certificate from the insurance commissioner of another state, as to the value of its policies in force, the insurance commissioner of this state shall be allowed to accept such valuation in lieu of his own valuation; *Provided*, that the valuation shall be made according to the standard fixed in this section. To determine the liability upon its contracts of insurance of an insurance company other than life, the insurance commissioner shall require such companies to charge as the liability for reinsurance of outstanding policies fifty per cent. of the premiums received on policies or risks having not more than one year to run, and a pro rata of all premiums received on policies or risks having more than one year to run, and in the case of companies doing a liability insurance an additional reserve fund shall be charged and known as "liability reserve" to an amount of not less than three hundred dollars for each suit pending against such company's policyholders for which it may be liable in the lower court and seven hundred dollars additional when such suit is appealed by the defendant to a higher court. The insurance commissioner shall allow to the credit of an insurance company, in the account of its financial condition, on such assets as are or can be made available for the payment of losses in Alabama. He shall not allow stockholders' obligations of any description as part of the assets or capital of any insurance company unless the same are secured by collateral satisfactory to the insurance commissioner.

Ib. §9. **2584. Annual statement to be filed with insurance commissioner; form; contents and publication; designating agent for service of process; gross premium tax; penalties.**—No foreign insurance company shall be admitted and authorized to do business in this

state until—*First.* It shall file or deposit with the insurance commissioner a properly certified copy of its charter, or deed of settlement and a statement of its financial condition and business on the thirty-first day of December next preceding, in such form as has been determined upon at the last convention of insurance commissioners of the United States immediately preceding the year in which such statement is filed, with such additional information as the insurance commissioner may require for the protection of Alabama policy-holders.

(a) All companies must state the total amount of gross premiums received, designating the amount received in this state, and shall at the same time pay to the insurance commissioner the sum of one dollar upon each one hundred dollars of said gross premiums so received in this state, and the company neglecting to make such returns accurately and in full at the time of filing the annual statement, shall pay to the state, in addition to said taxes, the sum of five hundred dollars within sixty days from date of notice of such delinquency and shall be debarred from transacting any business of insurance in this state until said taxes and penalties are fully paid.

(b) Its statement shall be subscribed under oath by the president and secretary, or other chief officers or managers, and shall be renewed annually on or before the first day of March of each year (but the insurance commissioner may for good cause extend the time), or as soon thereafter as the insurance commissioner may require, and shall contain a full report of its condition as prescribed in this section, on the thirty-first day of December preceding, which statement shall be published by it at its own expense in a daily newspaper of general circulation in this state. Upon failure of any company to comply with this section promptly, fully and correctly, such company will forfeit its right to do business in this state for one year thereafter, and shall pay to the state the sum of two hundred and fifty dollars and shall forever thereafter be debarred from doing business in this state until such penalty is fully paid.

(c) The annual statement of a company of a foreign country shall only be required to embrace its business and conditions in the United States.

(d) Any company willfully making a false annual or other statement required of it by law, and persons making oath to and subscribing the same, shall severally be punished by a fine of not less than five hundred dollars, nor exceeding one thousand dollars, and any person making oath to such false statement shall be deemed guilty of the crime of perjury, and punishable for such under the criminal laws of this state.

Second. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that, if a life-insurance company, it has on deposit with the treasurer of the state, or with the proper officer of some other state, securities to the actual cash value of at least one hundred thousand dollars, consisting of bonds of this

state, the United States, or the state in which such company is organized, or notes or bonds secured by mortgages on real estate for double the amount; and such companies shall file with the insurance commissioner the certificate of the official with whom the securities are deposited, stating the name and amount of each of said bonds, notes, or stocks, and that he is satisfied they are worth one hundred thousand dollars, and that the deposit is made with him by the company for the protection of all policy-holders and creditors in the United States; that, if an insurance company other than life, it has an actual paid-up cash capital of not less than one hundred thousand dollars, of which at least fifty thousand dollars shall be invested in bonds of the United States, or other good securities, to be certified as such by the insurance commissioner of the state in which said company is organized, reckoning the same at their current market value; or in lieu of a cash capital stock such company shall have and maintain a warranty capital or surplus above all liabilities, including reinsurance reserve of not less than one hundred thousand dollars; *Provided, however*, that companies transacting the business of plate glass or live stock insurance exclusively shall not be required to have a cash capital or surplus of more than fifty thousand dollars.

Third. It shall, by a duly executed instrument filed in this office, constitute and appoint the insurance commissioner, or his successor, its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein shall agree that any lawful process against it which may be served upon its said attorney, shall be of the same force and validity as if served on the company, and that the authority thereof shall continue in force irrevocably as long as any liability of the company remains outstanding in this state. Any process issued by any court of record in this state, and served upon such commissioner by the proper officer of the county in which said commissioner may have his office, shall be deemed a sufficient process on said company; and it is hereby made the duty of the insurance commissioner, promptly after such service of process by any claimant, to forward by registered mail an exact copy of such notice to the company.

Ib. §§10, 16. **2585. Agents to be licensed; certificate.**—Insurance companies not corporated by the laws of the State of Alabama, but legally authorized to do business in this state through regularly commissioned and licensed agents located in this state, shall not make contracts of insurance on life or property herein, save through agents of such companies regularly commissioned and licensed to write policies of insurance in Alabama; *Provided, however*, that this article shall not apply to fire-insurance companies covering actual property of railroad companies engaged in interstate commerce. Every insurance company licensed to do business in this state under the provisions of this article, shall obtain from the insurance commissioner a certificate of authority for every individual agent writing or solic-

iting insurance for them in this state, and such certificate shall be renewable in January of each year.

2586. Companies and societies excepted.—Nothing in this article contained shall be construed to apply to any fire-insurance company underwriting the property of cotton manufacturers exclusively, nor to any secret benevolent society such as Masons, Odd Fellows, Knights of Pythias, Ancient Order of United Workmen, National Union, or other orders of like kind. Ib. §11.

2587. Guarantee fund of foreign companies to secure policy-holders and creditors.—Any foreign company, if incorporated or associated under the laws of any government or state other than the United States shall not be admitted until, besides complying with the conditions of section 2584, it has made a deposit with the treasurer of this state or with the financial officer of some other state of the United States a sum of not less than two hundred thousand dollars. Such deposit must be in exclusive trust for the benefit and security of all the company's policy-holders and creditors in the United States, and may be made in bonds of this state or of the United States, or of some state in the United States, or other good securities satisfactory to the insurance commissioner, and such deposit shall be deemed for all purposes of the insurance law, the capital of the company. Ib. §12.

2588. Companies of foreign countries may appoint trustees to hold its guarantee and indemnity fund.—Any admitted company of a foreign country may appoint trustees who are citizens of the United States and approved by the insurance commissioner to hold funds in trust for the benefit of its policy-holders and creditors in the United States. Said trustees shall be named by the directors of the company and a certified copy of the record of the appointment of such trustees, and of the deed of trust shall be filed in the office of the insurance commissioner, who may examine such trustees and assets in trust, and all books and papers relating thereto in the same manner that he may examine the officers, agents, assets and affairs of insurance companies. The funds so held by such trustee, so far as the same are in securities, money, or credits admissible as sound assets in the financial accounts of insurance companies, shall, together with its deposits made in accordance with the preceding section, constitute the assets of such company as regards its policy-holders and creditors in the United States. Ib. §13.

2589. Domestic life companies must have one hundred thousand dollars invested in approved securities.—Every life-insurance company doing business in Alabama, chartered by the laws of this state, shall be required for better protection of the policy-holders, to keep at all times the sum of one hundred thousand dollars invested in bonds, securities, or mortgages on real estate for double the amount loaned, to be certified as safe and worth this amount by the insurance commissioner. Ib. §14.

2590. Domestic fire companies must have one hundred thousand dollars paid-up capital; exception.—Fire-insurance companies Ib.

chartered by the laws of this state shall not be allowed to transact business in this state, unless possessed of at least one hundred thousand dollars paid-up capital; *Provided*, that the provisions of this section shall not apply to mutual fire-insurance companies heretofore chartered by the state.

Ib. §15. **2591. Domestic companies, other than life and fire, hereafter organized; minimum capital.**—Every insurance company hereafter incorporated, or organized under the laws of this state, for the purpose of engaging in any insurance business other than that of life and fire insurance, before actively engaging in such business, shall be required to have not less than fifty thousand dollars of paid-up capital; *Provided*, *however*, that this section shall not apply to any company incorporated or organized under the laws of this state prior to the eighteenth day of February, 1897, for the purpose of engaging in the insurance business, and then actively engaged in such business.

Ib. §17. **2592. "Lloyd's" may transact business of insurance, other than life, on certain conditions.**—Associations of individuals, whether organized within the state or elsewhere, formed upon the plan known as "Lloyd's"—whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by policy—may be authorized to transact business of insurance, other than life in this state, in like manner and upon the same terms and conditions as are required of and imposed upon insurance companies regularly organized. *Provided*, *however*, that all such "Lloyd's," whether organized within this state or elsewhere, not having an actual paid-up cash capital, shall make the same deposit, and upon the same terms and conditions as required by section 2587 of foreign insurance companies incorporated or associated under the laws of any government or state other than the United States or one of the United States.

Ib. §18. **2593. Insurance commissioner must keep records and make report to governor.**—The insurance commissioner shall keep and preserve in permanent form a record of his proceedings, including a concise statement of the result of official examinations of insurance companies. He shall, annually, and as early as consistent with full and accurate preparation, make a report to the governor of his official transactions and shall include in such report a statement of the receipts and expenditures of his department for the preceding year; an exhibit of the financial condition and business transactions of the several insurance companies, as disclosed by their annual statements, abstracts of which statements shall appear therein, and such other information and comments in relation to insurance and the public interest therein as he deems fit to communicate.

Ib. §19. **2594. Domestic companies taxed one per cent. on gross premiums.**—Domestic insurance companies shall, at the end of each twelve months and in the same manner as foreign insurance companies, pay one dollar on each one hundred dollars of gross premiums received on policies issued in this state, and be subject to the penal-

ties provided in section 2584 for foreign companies; *Provided*, that any insurance company paying to the state a tax on its property or shares may deduct the same from this tax.

Ib. §20. **2595. Deposits, charges and payments required by other states of insurance companies of this state, also required of insurance companies of such states.**—Whenever the existing or future laws of any other state of the United States shall require of the insurance companies incorporated by, or organized under, the laws of this state, or the agents thereof, any deposit of securities in such state for the protection of policy-holders, or otherwise, greater than the amount required for similar purposes from similar companies of other states by the then-existing laws of this state, then, in every such case, all companies of such states establishing, or having heretofore established, an agency or agencies in this state, shall be, and are hereby, required to make the same deposit for a like purpose with the treasurer of the state, and to pay into the treasury of this state the taxes, fines, penalties, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed by the law of such state upon companies of this state and the agents thereof.

Ib. §21. **2596. Misrepresentations in application or proof of loss; when material.**—No written or oral misrepresentation of warranty therein made, in the negotiation of a contract or policy of life-insurance, or in the application therefor or proof of loss thereunder, shall be deemed material to defeat or void the policy, or prevent its attaching, unless such misrepresentation is made with actual intent to deceive, or unless the matter misrepresented increase the risk of loss.

Ib. §22. **2597. Life-policies incontestable after three annual premiums paid.**—No life-insurance company shall contest a claim under any policy of insurance on the plea of fraud or irregularities in application after three annual premium payments have been made on policy, but must pay the full amount of policy within sixty days after proofs of death have been received at the home office of the company in the United States.

Ib. §23. **2598. Policy issued by foreign company not invalidated by war, etc.**—No policy of insurance issued to a citizen of this state by an authorized company organized under the laws of a foreign country, shall be invalidated by the occurrence of hostilities between such foreign country and the United States.

Ib. §24. **2599. State treasurer to take and hold deposits of securities; exchange and withdrawal of same.**—The treasurer of the state, in his official capacity, shall take and hold deposits made by any domestic insurance company, for the purpose of complying with the laws of any other state, to enable such company to do business in such state, and shall, also, in like manner, take and hold any deposit made by a foreign insurance company under any law of the state. The company making such deposit shall be entitled to the income thereof, and may, from time to time, with the consent of the treasurer, when not forbidden by the law under which the deposit

is made, change in whole or in part the securities which compose the deposit, for other competent securities of equal value. Upon request of any domestic insurance company, said treasurer may return to such company the whole or any portion of the securities of such company, when he shall be satisfied that the securities so asked to be returned are subject to no liability, and not required to be longer held by any provision of law, or purpose of the original deposit. And he may return to the trustees, or other representatives authorized for that purpose, of a foreign insurance company, any deposit made by such company, when it shall appear that such company has ceased to do business in the state, and is under no obligation to policy-holders or other persons in the state, or in the United States, for whose benefit such deposit was made.

Ib. §25. **2600. Dividends of domestic companies to be made from surplus profits only.**—It shall not be lawful for the directors, trustees or managers of any insurance company, incorporated by the laws of this state, to make any dividend, except from the surplus profits. Any dividend made contrary to this section shall subject the company making the same to forfeiture of its charter.

Ib. §26. **2601. License, fees and charges; expenses of department to be paid from that fund.**—The insurance commissioner shall collect from each company filing copy of charter or deed of settlement and financial statement one hundred dollars, and same amount with each annual statement thereafter for the privilege of carrying on its business in the State of Alabama; for each certificate or renewal thereof to an insurance agent or solicitor, two and one-half dollars; for each seal of office, with certificate, one dollar; for copies of any paper on file or deposit with the insurance commissioner, or in his office, ten cents per hundred words; *Provided*, that the auditor shall pay upon vouchers approved by the governor out of this fund alone the expenses of the insurance department.

Ib. §27. **2602. Contracts of insurance to be in plain language, free from ambiguity; rebates on premiums prohibited; penalty.**—No life, nor any other insurance company, nor any agent thereof, shall make any contract of insurance, nor agreement as to policy-contract, other than is plainly expressed in the policy issued thereon; nor shall any such company or agent pay or allow, or offer to pay or allow as inducement to insurance, any rebate of premiums payable on the policy, nor shall any particular policy-holder of the same class be allowed any advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever not specified in the policy-contract of insurance. Any company or agent directly or indirectly violating this section shall be held guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and shall be fined not less than two hundred and fifty dollars for each subsequent offense.

Ib. §28. **2603. Who are agents of foreign companies; penalty for acting without license.**—Any person who solicits insurance on behalf of

any insurance company not organized under or incorporated by the laws of this state, until such company has fully complied with all the requirements of this article, and until such company has received from the insurance commissioner the certificate of authority to transact business of insurance in this state, or takes or transmits, other than for himself, any applications for insurance, or any policy for insurance, to or from such company, or in any way gives notice that he will receive or transmit the same, or receives or delivers a policy of insurance of any such company, or examines or inspects a risk, or receives, collects, or transmits any premium of insurance, or makes or forwards any diagram of any building or buildings, or does or performs any other act or thing in the making or consummating of any contract of insurance with or for any insurance company, other than for himself, or examines or adjusts, or aids in adjusting any loss or on behalf of any such insurance company, whether any such acts shall be done at the request or instance or by the employment of such insurance company, or of or by any other person, shall be held guilty of a misdemeanor, and upon conviction by a court having jurisdiction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or may be imprisoned in the county jail not more than thirty days, or both, at the discretion of the court.

Ib. §29.

2604. Liability of agent for loss sustained on contract unlawfully made by him.—Any agent or person shall be personally liable for the full amount of loss sustained on all contracts of insurance unlawfully made by or through him, directly or indirectly for or in behalf of any insurance company not authorized by insurance commissioner to do business in this state at the time the application for such insurance was made, or at the date when such insurance policy became effective.

Ib. §30.

2605. Persons placing insurance with unlicensed foreign company must report to insurance commissioner and pay tax on gross premium; penalty, etc.—Any person who may desire to place his insurance in foreign companies not authorized to do business in this state may place such insurance, but the person placing such insurance shall at once make return of his action in this behalf to the insurance commissioner, together with one per cent. on the gross premiums received on the insurance so placed, and it shall be lawful under such contracts of insurance for any person to adjust a loss under same; *Provided further*, that when any losses are adjusted as provided in this section, it shall be the duty of such adjuster before entering into an adjustment of such loss, directly or indirectly, or the company or companies represented by him, to cause to be paid to the insurance commissioner of this state one-half of one per cent. of the amount paid on such loss, and for failure to comply with the requirements of this proviso, such adjuster shall be subject to all the pains and penalties inflicted by the second preceding section upon agents for acting as agents of unlicensed insurance companies, and in addition thereto such adjuster and insurance company or compa-

nies represented by him shall be forever barred from adjusting a loss or doing business in this state.

Ib. §31. **2606. When contract of insurance regarded as made in this state.**—All contracts of insurance, the application for which is taken within the state, shall be deemed to have been made within this state, and subject to the laws thereof.

Ib. §32. **2607. Proceeds of life-insurance exempt from creditors of the assured or beneficiary, regardless of amount.**—Any person may insure his own or her own life for the sole benefit of his or her estate, his wife or her husband, his or her children, or others, as shall be provided in the policy of insurance, and the sum or amount of insurance becoming due and payable by the terms of the application and policy shall be exempt from all creditors of the assured or beneficiary, and must be paid to the beneficiary so named in the policy, or to his or her assigns.

Ib. §33. **2608. When sheriff must summon jury and investigate cause of fire; report facts to insurance commissioner, and keep record of fires.**—The sheriff of each county shall, when required by the insurance commissioner, in addition to his duties now required by law, appoint a competent jury, who shall be property-holders, of not more than three citizens of the same county to investigate the cause, origin and circumstances of every fire occurring or threatened in such county in which insured property has been destroyed or damaged or threatened to be destroyed or damaged by fire who shall be paid out of the insurance fund a per diem of one dollar and fifty cents and mileage of three cents per mile. Such investigation shall be begun within two days, not including the Lord's day, of the occurrence of such fire, and the sheriff shall direct such investigation. The jury investigating shall, within one week after investigation begins, furnish to the said sheriff a written statement of all the facts relating to the cause and origin of the fire, the kind, value and ownership of the property destroyed and such other information as may be required by the sheriff or insurance commissioner. The sheriff of each county shall keep a complete record of all fires where property has been insured, occurring in his county as may be required of him by the insurance commissioner, which record shall at all times be open to public inspection, and such portions of it as the insurance commissioner may desire must be transcribed and forwarded to him.

Ib. §34. **2609. Sheriff may swear witnesses, take testimony, make arrests, etc.**—The said sheriff shall, when in his opinion said proceedings are necessary, take or cause to be taken, the testimony on oath of all persons supposed to be cognizant of any facts, or to have means of knowledge in relation to the matters as to which an examination is herein required to be made, and shall cause the same to be reduced to writing; and if the evidence, in his opinion, is sufficient to charge any person with arson he shall cause the arrest of such person and shall furnish to the proper solicitor all evidence, names of witnesses and other information in his possession. He shall have the powers of a justice of the peace in addition to his regular powers as

sheriff for the purpose of summoning witnesses before him to testify, and false swearing in any matter or proceeding aforesaid shall be deemed perjury, and shall be punished as such. He and his jury shall, in the performance of his duty, have the authority to enter upon and examine any insured building or premises where any fire has occurred and other buildings and premises adjoining same. All investigations held by or under the direction of the sheriff may in his discretion be private, and witnesses may be kept separate and apart from each other and not allowed to communicate to any one on the subject under investigation until the report is made public.

Ib. §35.

2610. Fire and police departments of cities must assist sheriff in such investigations; removing combustible material; appeal; penalty.—In regularly incorporated cities, towns or villages having fire departments and police protection it shall be the duty of the members of the fire and police departments to render every assistance to the sheriff or jury that may be required of them before, during or after that investigation, that would aid in the conviction of any one guilty of arson. The chiefs or their assistants of the fire and police departments of any city, town or village shall have the right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material or inflammable conditions dangerous to the safety of such building or premises, they shall order the same to be removed or remedied, and such shall forthwith be complied with by the owner of said building or premises; *Provided, however*, that if the said owner feels aggrieved he may appeal to the sheriff, and unless his decision revokes the officer's order, such shall be complied with immediately by the owner. Any owner of buildings or premises failing to comply with the orders of the authority above specified within one week after notice shall be guilty of a misdemeanor and punished by a fine of not less than ten dollars, nor more than fifty dollars for each day's neglect. Any officer referred to in this section who neglects or refuses to comply with any of the requirements of this article shall be guilty of a misdemeanor and punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars for each offense.

Ib. §36.

2611. Expenses of sheriff's investigation; how paid.—The sheriff may employ clerks and an assistant, and incur such expenses as may be necessary in the performance of his duties, not to exceed such sum as the insurance commissioner may recommend, which must be paid only out of the insurance fund, and must render to the insurance commissioner in such form as may be required an itemized account of all such expenditures before payment is made.

Ib. §37.

2612. Inquisitorial power vested in grand jury, who must be specially charged, etc.—Inquisitorial power shall be, and the same is hereby given the grand juries of this state, to inquire into any violation of this article and present or indict such person or persons violating the same, and the judges of the courts of this state

having proper jurisdiction, shall give this in charge to the grand juries of their respective courts.

Ib. §38. **2613. Penalties to be sued for by solicitor and paid over to insurance commissioner, less twenty-five per cent.**—For violation of any provision of this article, the penalty whereof is not specifically provided herein, the offender shall be punished by a fine of not more than five hundred dollars and every penalty provided for in this article shall be sued for and recovered in the name of the State of Alabama by the solicitor of the circuit in which the offense is committed, and when sued for and collected must be paid by the solicitor to the insurance commissioner, less twenty-five per cent. to be retained by said solicitor for his services, and in the case of non-payment of such penalty, the party, if not a corporation so offending, shall, on conviction, be imprisoned in the county jail or sentenced to hard labor for the county for a period not to exceed six months, in the discretion of the court of trial; and should a judgment, decree, or order of a court be entered or made after service of process as prescribed by this article against a company, the same shall be valid and binding on said corporation, as if it had been incorporated by the general assembly and served with process in this state, and when collected must be paid as directed for an individual, and in the event of non-payment such insurance company shall forever be debarred from transacting business in this state.

ARTICLE 2.

PROVISIONS FOR THE PROTECTION OF LOCAL AGENTS OF FOREIGN COMPANIES.

Feb. 18, 1897, p. 1530, §1. **2614. Foreign companies doing business here must contract through local agents; exception.**—Fire, fire marine, and marine insurance companies not organized under the laws of this state, but legally authorized to do business in this state through regularly commissioned agents located in this state, shall not make contracts of fire, fire marine, and marine insurance on property herein save through agents of such companies regularly commissioned to write policies or certificates of fire, fire marine, or marine insurance in this state; *Provided*, that this article shall not apply to such companies covering the actual property of railroad companies doing directly a transportation business over its own line beyond the limits of this state.

Ib. §2. **2615. Foreign company applying for license must file affidavit showing compliance with preceding section, etc.**—Before issuing certificate of license to any fire, fire marine, or marine insurance company to transact the business of fire, fire marine, or marine insurance in this state, the auditor shall require in any case, in addition to the requirements already provided by law, that each and every such fire, fire marine, or marine insurance company shall file with him the affidavit of its president or other chief officer that it has not violated any of the provisions of this article for the space

of twelve months last past, and that they accept the terms and obligations of this article as a part of the consideration of their license.

Ib. §3.

2616. Auditor may institute investigation; bond; costs and expenses.—Complaint being filed with the auditor by any citizen of this state that any company authorized to do business in this state has violated any of the provisions of this article, the auditor shall diligently investigate the matter, and if necessary examine by himself or his accredited representative at the head office located in the United States of America, and also such other offices or agents of such companies as may be deemed proper, all books, records and papers of the same and also the officers thereof under oath as to such alleged violation or violations; *Provided*, that before making such examination the auditor shall require the party or parties making complaint to file with him a good and sufficient bond to cover any expense or cost that may be necessary in making such examination, and in the event the insurance company be found not guilty of a violation of this article, then said bond shall be responsible for all the expense incurred by reason of said investigation; but should said company be found guilty of a violation of this article, then said company shall be responsible for the expense thereof.

Ib. §4.

2617. Company violating this article forfeits right to do business in the state.—Any fire, fire marine, or marine insurance company violating any provision of this article or refusing to submit to the aforesaid examination when requested, shall forfeit their right to do business in this state for the next twelve months thereafter, and the auditor shall immediately revoke the license already issued to said fire, fire marine, or marine insurance company, to do business in this state.

Ib. §5.

2618. Payment of expenses of examination may be enforced by suit.—If any such company shall fail or refuse to pay such expenses of examination upon the presentation of a bill therefor by the auditor, the said auditor may bring suit against such company in any court of competent jurisdiction.

ARTICLE 3.

PROVISIONS DESIGNED TO PREVENT TARIFF ASSOCIATIONS TO FIX RATES OF INSURANCE.

Feb. 18, 1897, p. 1428, §1.

2619. Contract of insurance made by company belonging to tariff association construed to add twenty-five per cent. to face of policy.—Every contract or policy of insurance hereafter made or issued shall be construed to mean that in the event of loss or damage thereunder, the assured or beneficiary thereunder may, in addition to the actual loss or damage suffered, recover twenty-five per cent. of the amount of such actual loss, any provision or stipulation in such contract or policy to the contrary notwithstanding; *Provided*, at the time of the making of such contract or policy of insurance, or subsequently before the time of trial, the insurer belonged to, or

was a member of, or in any way connected with, any tariff association or such like thing by whatever name called, or who had made any agreement or had any understanding with any other person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any kind or class of insurance risk; *And provided further*, no stipulation or agreement in such contract or policy of insurance to arbitrate loss or damage nor to give notice or make proofs of loss or damage shall in any such case be binding on the assured or beneficiary, but right of action accrues immediately upon loss or damage.

Ib. §2. **2620. Jury finding certain facts must add amount of penalty to verdict, etc.**—If it is shown to the reasonable satisfaction of the jury by a preponderance of the weight of the testimony that such insurer at the time of the making of such agreement or policy of insurance or subsequently before the time of trial belonged to, or was a member of, or in any way connected with any tariff association or such like thing by whatever name called, either in or out of this state, or had made any agreement or had any understanding either in or out of this state with any other person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any risk of insurance on any person or property or on any kind or class of insurance risk, they must, if they find for the assured or beneficiary, in addition to his actual damages, assess and add twenty-five per cent. of the amount of such actual loss, and judgment shall be rendered accordingly.

Ib. §3. **2621. Liberal construction to be given this article.**—This article shall be liberally construed to accomplish its object.

ARTICLE 4.

FIRE-INSURANCE PATROL.

2622 (1381) (1605). **Organization and powers of fire-insurance patrol.**—Fire underwriters and insurance agents of any city may provide a patrol of men, and superintendent and accommodations and apparatus therefor, to prevent and extinguish fires, and to save property or life endangered by fire; such patrol and superintendent may for such purposes enter a building on fire, or in danger of taking fire, subject to the control of the chief engineer or fire-marshal.

2623 (1382) (1606). **How patrol maintained.**—Annually, in January, or as soon thereafter as practicable, there shall be held, after ten days' notice in a daily newspaper of such city, a meeting of underwriters and agents engaged in fire-insurance business in such city, at which each underwriter and agent is entitled to one vote. A majority vote shall determine as to the maintenance of such patrol, and fixing the expenses thereof for the next year, not to exceed two per cent. of all premiums (except on cotton) reported, as provided

in the next succeeding section, and assess the same proportionally to the premiums (except on cotton) reported by each underwriter or agent, determining the time of payment. Such assessment is collectible in any court of competent jurisdiction, on suit of a person designated by such underwriters and agents for that purpose.

2624 (1383) (1607). **Semi-annual report of premiums collected.** At such meetings the fire underwriters and agents may require a semi-annual statement, under oath, of fire premiums received for insuring property in such city (except on cotton), to be made to any person they may designate, on the first days of January and July, by each fire underwriter or agent in such city.

2625 (1384) (1608). **Penalty for failure to make report; how suit brought.**—The person so selected may, in writing, demand such report within ten days after the first days of January and July; and any underwriter or agent, who neglects to render such statement for fifteen days after such demand, shall forfeit fifty dollars for the use of such fire-patrol fund, and also twenty-five dollars for each additional day of neglect, to be computed to the day of trial, to be recovered on suit of such person so selected, in any court of competent jurisdiction.

CHAPTER 64.

INTEREST AND USURY. 2626–2632.

2626 (1750) (2088) (1827) (1519). **Rate of interest fixed at eight per cent.**—The rate of interest upon the loan or forbearance of money, goods, or things in action, is eight dollars upon one hundred dollars for one year; and at that rate for a greater or less sum, or a longer or shorter time.

Lex loci contractus controls the rate of interest.—McGarry v. Nicklin, 110 Ala. 559; Falls v. U. S. Sav. B. & L. Co., 97 Ala. 417; Camp v. Randle, 81 Ala. 240; Cubbedge v. Napier, 62 Ala. 518; Hanrick v. Andrews, 9 Port. 9. **Courts do not take judicial notice of the rates of interest in other states.**—Ins. Co. of N. A. v. Forcheimer, 86 Ala. 541; Camp v. Randle, 81 Ala. 240; Clark v. Pratt, 20 Ala. 470; Harrison v. Harrison, Ib. 629; Peacock v. Banks, Minor, 387; Hunt v. Mayfield, 2 Stew. 124; Crawford v. Simonton, 7 Port. 110. **Contract made in one state, to be performed in another, may stipulate for the rate of interest in either.**—McGarry v. Nicklin, 110 Ala. 559; Amer. Mtg. Co. v. Sewall, 92 Ala. 163; Cubbedge v. Napier, 62 Ala. 518; Hunt v. Hall, 37 Ala. 702; Hanrick v. Andrews, 9 Port. 9. **In the absence of a stipulation in such case, contract bears rate of interest of the place of payment.**—Hunt v. Hall, 37 Ala. 702; Hanrick v. Andrews, 9 Port. 9. **Parol evidence not admissible to show place of payment of note.**—Moore v. Davidson, 18 Ala. 209.

2627 (1751) (2089) (1828) (1520). **Interest accrues on breach of contract.**—All contracts, express or implied, for the payment of money, or other thing, or for the performance of any act or duty, bear interest from the day such money, or thing, estimating it at its money value, should have been paid, or such act, estimating the compensation therefor in money, performed.

Generally, interest is compensation for the withholding of the principal, and when the principal is ascertained to be due, interest follows as an incident.—State v. Lott, 69 Ala. 147; Flinn v. Barber, 64 Ala. 193; Boyd v. Gilchrist, 15 Ala. 849; Whitworth v. Hart, 22 Ala. 343; Cheek v. Waldrum, 25 Ala. 152; Hollingsworth v. Hammond, 30 Ala. 668; Tarleton v. Goldthwaite, 23 Ala. 346; Lewis v. Bradford, 8 Ala. 632; Reynolds v. Mardis, 17 Ala. 32; Godwin v. McGehee, 19 Ala. 468; Bradley v. Harden, 73 Ala. 70; Lewis v. Lee County, Ib. 148; Sawyers v. Baker, 77 Ala. 461; Comer v. Lehman, 87 Ala. 362; Neal v. Clay, 48 Ala. 252. **Interest is in lieu of damages allowed at common law for withholding debt.**—Vincent v. Gilmer, 51 Ala. 387; McWhorter v. Standifer, 2 Port. 519. **Courts of chancery allow interest whenever it would be recoverable at law.**—Stickney v. Moore, 108 Ala. 590; Chambers v. Wright, 52 Ala. 444; Crocker v. Clements, 23 Ala. 296; Tarleton v. Goldthwaite, Ib. 346; Godwin v. McGehee, 19 Ala. 468. **Demand; when necessary, interest does not run until made.**—Tyree v. Parham, 66 Ala. 424; Hunter v. Wood, 54 Ala. 71; Ingersoll v. Campbell, 46 Ala. 282; Gunn v. Howell, 35 Ala. 144; Maxcy v. Knight, 18 Ala. 300; Vaughan v. Goode, Minor, 417. **Interest not allowed when statute prescribes a specific penalty, by way of damages, for the default.**—James v. Governor, 1 Ala. 605. **Nor in statutory action to recover damages for trespass by cattle.**—Jean v. Sandiford, 39 Ala. 317. **Nor in action of trespass quare clausum fregit.**—Glidden v. Street, 68 Ala. 600. **But allowed in action for negligent killing of stock.**—G. P. R. Co. v. Fullerton, 79 Ala. 298; A. G. S. R. Co. v. McAlpine, 75 Ala. 113; Borden v. Bradshaw, 68 Ala. 362. **And on breach of warranty in a sale of real or personal property.**—Kingsbury v. Milner, 69 Ala. 502; Caldwell v. Sawyer, 30 Ala. 283; Rowland v. Shelton, 25 Ala. 217; Marshall v. Wood, 16 Ala. 806; Stoudenmier v. Williamson, 29 Ala. 558. **And on contract payable in, or for the delivery of, specific property.**—Neel v. Clay, 48 Ala. 252. **Attorney; when liable for interest on money collected.**—Gunn v. Howell, 35 Ala. 144; Kimbro v. Waller, 21 Ala. 376; Sally v. Capps, 1 Ala. 121; Barton v. Peck, 1 S. & P. 486; McBroom v. Governor, 6 Port. 32. **Is liable for interest on money received from fund in court.**—Smith v. Alexander, 87 Ala. 387. **Commission merchant; when interest allowed on balance due customer.**—Tyree v. Parham, 66 Ala. 424. **When interest begins to run on unpaid subscriptions for stock in private corporation, in favor of creditors.**—Nat. Com. Bk. v. McDonnell, 92 Ala. 387. **Interest on mortgage debt, as between tenant for life and remainderman, owning the equity of redemption.**—Ohmer v. Boyer, 89 Ala. 273. **Accounts.**—Prestridge v. Patrick, 46 Ala. 653; Shields v. Henry, 31 Ala. 53; Waring v. Henry, 30 Ala. 721; Marr v. Southwick, 2 Port. 351; Moore v. Patton, Ib. 451. **Bills, notes, bonds.**—Hunt v. Hall, 37 Ala. 702; Maxcy v. Knight, 18 Ala. 300; Moore v. Davidson, Ib. 209; Vaughan v. Goode, Minor, 417. **Note and mortgage construed together to ascertain when interest begins to run.** Prichard v. Miller, 86 Ala. 500. **A promise to pay a sum certain "with interest," bears interest from date.**—Campbell v. Jones, 79 Ala. 475.

2628 (1752) (2090) (1829) (1521). **Interest on judgments.** Judgments and decrees for the payment of money, other than costs, bear interest from the day of rendition.

Billingsley v. Billingsley, 24 Ala. 518; Kyle v. Mays, 22 Ala. 692; Ijams v. Rice, 17 Ala. 404; Crawford v. Simonton, 7 Port. 110; Sanders v. Rives, 3 Stew. 109.

2629 (1753) (2091) (1830) (1522). **Partial payments applied to interest.**—When partial payments are made, the interest due is first to be paid, and the balance applied to the payment of the principal.

Handley v. Dobson, 7 Ala. 359; Coleman v. Smith, 55 Ala. 368; Vaughan v. Smith, 69 Ala. 92; Milhous v. Dunham, 78 Ala. 48.

2630 (1754) (2092) (1831) (1523). **Interest on usurious contracts; recovery back of usury.**—All contracts for the payment of interest upon the loan or forbearance of goods, money, things in action, or upon any contract whatever, at a higher rate than is prescribed in this chapter, are usurious and cannot be enforced, either at law or in equity, except as to the principal; and if any interest has been paid, the same must be deducted from the principal, and judgment rendered for the balance only. And when the principal and a higher rate of interest thereon than is prescribed by

law have been paid, the excess over and above the principal and legal interest with interest on such excess from the time of the completed payment, may be recovered by suit brought within one year from the time of such completed payment.*

Usury is a personal defense.—Stickney v. Moore, 108 Ala. 590; Moses Bros. v. Home B. & L. Assn., 100 Ala. 465; Speakman v. Oaks, 97 Ala. 503; Welsh v. Coley, 82 Ala. 363; Kilpatrick v. Henson, 81 Ala. 464; Griel v. Lehman, 59 Ala. 419; McGuire v. VanPelt, 55 Ala. 344. **Plea of usury; when insufficient.**—Powell v. Crawford, 110 Ala. 294; Moses Bros. v. Home B. & L. Ass'n, 100 Ala. 465; Woodall v. Kelly, 85 Ala. 368; Burns v. Campbell, 71 Ala. 271; Masterson v. Grubbs, 70 Ala. 406. **When defense waived.**—Welsh v. Coley, 82 Ala. 363; Munter v. Linn, 61 Ala. 492; Mitchell v. McCullough, 59 Ala. 179. **Usury in mortgage debt no defense to action for the recovery of real or personal property mortgaged.**—Powell v. Crawford, 110 Ala. 294; Bradford v. Daniel, 65 Ala. 133; Kelly v. M. B. & L. Assn., 64 Ala. 501. **But see** Hooper v. Birchfield, Ala. (22 So. 68). **Person acquiring commercial paper at a usurious discount, not a bona fide holder.**—Hart v. Adler, 109 Ala. 467; McCall v. Rogers, 77 Ala. 349; Wailes v. Couch, 75 Ala. 134; Carlisle v. Hill, 16 Ala. 398; Saltmarsh v. Tuthill, 13 Ala. 390. **When sale of valid note at greater rate of discount than legal interest is not usurious.**—Capital City Ins. Co. v. Quinn, 73 Ala. 558; Wildsmith v. Tracy, 80 Ala. 258; Ala. Gold Life Ins. Co. v. Hall, 58 Ala. 1. **Mortgagee whose debt is usurious, not a bona fide purchaser.**—Smith v. Lehman, 85 Ala. 394; Meyer v. Cook, Ib. 417. **Nor purchaser of property in payment of usurious debt.**—Peterson v. Steiner, 108 Ala. 629; LeGrand v. Eufaula Nat. Bk., 81 Ala. 123. **When such sale not fraudulent.**—Loucheim v. First Nat. Bk., 98 Ala. 521; Harris v. Russell, 93 Ala. 59; Lehman v. Greenhut, 88 Ala. 478. **Broker's commission; when do not render contract usurious.**—George v. New Eng. Mtg. Co., 109 Ala. 548; Amer. Mtg. Co. v. King, 105 Ala. 358; Land Mtg. Co. v. Vinson, Ib. 389; Amer. Mtg. Co. v. Peoples, 102 Ala. 241; Allen v. MCullough, 99 Ala. 612; Amer. Mtg. Co. v. Sewell, 92 Ala. 163; Ginn v. New Eng. Mtg. Co., Ib. 135; Woosley v. Jones, 84 Ala. 88. **Compound interest; when contract for, not usurious.** Gross v. Coffey, 111 Ala. 468; Stickney v. Moore, 108 Ala. 590; Ginn v. New Eng. Mtg. Co., 92 Ala. 135; Caldwell v. Dunklin, 65 Ala. 461; Broughton v. Mitchell, 64 Ala. 210; Paulling v. Creagh, 54 Ala. 646. **Contracts for sale of lands, when usurious.**—Dykes v. Bottoms, 101 Ala. 390; Dawson v. Burrus, 73 Ala. 111; Stewart v. Cross, 66 Ala. 22; Uhlfelder v. Carter, 64 Ala. 527; Bradford v. Daniel, 65 Ala. 133. **Effect of subsequent agreement to pay usury.**—Woodall v. Kelly, 85 Ala. 368; Allen v. Turnham, 83 Ala. 323; VanBiel v. Fordney, 79 Ala. 76. **Stipulation in mortgage for attorney's fee is not usurious.**—Harmon v. Lehman, 85 Ala. 379; Shelton v. A. & T. Co., 82 Ala. 315. **Usury in contract for advances by warehouseman.**—Harmon v. Lehman, 85 Ala. 379; Smith v. Lehman, Ib. 394. **For advances by mortgagee.**—Meyer v. Cook, 85 Ala. 417. **Rule in equity; where the payee seeks relief on usurious contract.**—Hawkins v. Pearson, 96 Ala. 369; Hunt v. Acre, 28 Ala. 580; Noble v. Walker, 32 Ala. 456. **Where the maker seeks relief.**—Eslava v. Crampton, 61 Ala. 507; Rogers v. Torbut, 58 Ala. 523; Uhlfelder v. Carter, 64 Ala. 527. **What holder of commercial paper must show to avoid defense of usury.**—Hanrick v. Andrews, 9 Port. 9. **Of non-commercial paper.**—McCullough v. Mitchell, 64 Ala. 250; Masterson v. Grubbs, 70 Ala. 406.

2631 (4140) (4435) (1689) (1417). **Banker discounting paper at more than eight per cent. forfeits all interest.**—Any banker who discounts any note, bill of exchange, or draft at a higher rate of interest than eight per cent. per annum, not including the difference of exchange, cannot enforce the collection of the same, except as to the principal; and if any interest has been paid, the same must be deducted from the principal and judgment rendered for the balance only. As amended Feb. 4, 1893, p. 244.

2632 (1755) (2093) (1832) (1524). **Interest at one hundred per cent. on notes and change-bills of one dollar or less.**—All change-bills and notes for a sum not exceeding one dollar, issued or circulated in this state without authority of law, bear interest at the rate

*As amended by joint committee.

of one hundred per cent. per annum, from the day of their date, or time of issue, or circulation; and may be sued by the holder thereof, without regard to the person to whom the same are payable, and a recovery had against the person issuing or giving circulation to the same.

CHAPTER 65.

INTERPLEADER AT LAW. 2633-2635.

2633 (2610) (2906, 2907) (2540, 2541) (2144, 2145). **Suggestion of claim of third party; when can be made; notice and proceedings.**—A defendant against whom an action is pending upon any contract for the payment of money may, at any time before issue joined, make affidavit that a person not a party to the suit, without collusion with him, claims the money in controversy, and deposit the money in court, praying an order that such person be required, on notice, to come in and defend; and thereupon, if such person do not voluntarily come in and make himself a party defendant, the court must, if he reside within the state, order a summons to issue to him to appear at the next term and make himself a party defendant, of which service must be made for at least ten days before the return-day; or if he reside without the state, order notice to him by publication for three successive weeks, in some newspaper published in the county, or if there be no such paper, in a newspaper published nearest to the county; and after such notice has been given, the court may make an order that such person be substituted as a party to the suit in place of the defendant, and thereupon such person stands in the place of the defendant, and the latter is discharged from liability to the plaintiff and substituted defendant for the money sought to be recovered of him.

Applies only when facts would authorize resort to bill of interpleader in chancery; that jurisdiction not impaired.—Nelson v. Goree, 34 Ala. 565; Johnson v. Maxcy, 43 Ala. 521, 541; Jackson v. Jackson, 84 Ala. 343; s. c., 91 Ala. 292; Crass v. M. & C. R., 96 Ala. 447. **Failure to object to order of substitution waives irregularity.**—Nelson v. Goree, 34 Ala. 565. **Defendant availing himself of benefit of statute admits sufficiency of complaint;** claimant can only contest for the money.—Johnson v. Maxcy, 43 Ala. 521. Plea suggesting claim of another, but not praying an order requiring him to defend, demurrable.—Atkins v. Knight, 46 Ala. 539.

2634 (2611). **When defendant in detinue may require adverse claimant to come in and defend.**—The defendant in an action for the recovery of chattels in specie, not claiming title, may, at any time before issue joined, make affidavit that a person not a party to the suit, without collusion with him, claims the chattels, or a part thereof, and pray an order that such person be required, on notice, to come in and defend; and thereupon, if such person do not voluntarily come in and make himself a party defendant, the court must,

if he resides within the state, order a summons to issue to him to appear at the next term and make himself a party defendant, of which service must be made for at least ten days before the return-day; or, if he resides without the state, order notice to him, by publication for three successive weeks in some newspaper published in the county, or, if there be no such paper, in a newspaper published nearest to the county. If such person appears and makes himself a party defendant, the defendant may be discharged; and if the defendant has retained possession of the chattels, giving bond, the court may order the chattels to be delivered to such person, on his giving bond with sufficient surety, to be approved by the clerk, payable to the plaintiff, in the penalty of the bond of the defendant, with condition that if he is cast in the suit he will, within twenty days thereafter, deliver the chattels and pay all such damages as may be assessed for the detention thereof, and all costs adjudged against him. If such person refuse or neglect for three days after being made a party defendant to give such bond, the chattels must be delivered to the plaintiff, on his giving bond with sufficient surety, to be approved by the clerk, payable to such person, in the penalty of the bond of the defendant, and with like condition; on the execution and approval of either bond, the bond of the defendant is discharged and must be canceled. The bonds taken under this section, on breach of the condition thereof, and on the return of the sheriff, as in the case of bonds taken from plaintiff or defendant in other actions for the recovery of chattels in specie, have the force and effect of judgments, on which execution may issue against all or any of the obligors. If such person, on notice, does not come in and defend, the judgment rendered in the action bars him from maintaining any action against plaintiff or defendant for the chattels, or the taking, or conversion, or detention thereof. If the plaintiff fail to give bond as provided in this section, the chattels must be delivered to the defendant.

When outstanding superior title in another may be set up by defendant without employing statute.—Behr v. Gerson, 95 Ala. 438; Jackson v. Jackson, 97 Ala. 372; Powell v. Robinson, 76 Ala. 423; Young v. E. Ala. Ry. Co., 80 Ala. 100; Calhoun v. Thompson, 56 Ala. 166; Croswell v. Lehman, 54 Ala. 363.

2635. Affidavit when defendant a corporation; by whom made. When the defendant is a corporation the affidavit under either of the two preceding sections may be made by such officer, agent or servant of the corporation as may have knowledge of the facts set forth in the affidavit.

CHAPTER 66.

JUDICIAL POWER; RECORDS; SUBSTITUTION. 2636-2653.

2636 (646) (539). **Judicial power.**—The judicial power of the state is vested in the senate sitting as a court of impeachment; the

supreme court, the circuit courts, the chancery courts, the courts of probate, the county courts, the courts of county commissioners, the justices of the peace, and notaries public exercising the jurisdiction and powers of justices of the peace; such inferior courts of law or equity, as have been, or may be established by law; and such officers or persons as have been, or may be by law invested with powers of a judicial nature.

A special judge appointed under section 928 to hold a term of the circuit court "is as much an officer of this state during the time and for the purpose for which he was appointed as the regular incumbent," and the same judicial notice will be taken of his authority.—Bell v. State, Ala. (22 So. 526).

2637 (647) (540). **Judge is incompetent to try certain cases.** No judge of any court, chancellor, county commissioner, or justice must sit in any cause or proceeding in which he is interested, or related to either party within the fourth degree of consanguinity or affinity, or in which he has been of counsel, or in which is called in question the validity of any judgment or judicial proceeding in which he was of counsel, or the validity or construction of any instrument or paper prepared or signed by him as counsel or attorney, without the consent of the parties entered of record, or put in writing, if the court is not of record.

Not exclusive of disqualifications imposed by the common law.—Pegues v. Baker, 110 Ala. 251; Medlin v. Taylor, 101 Ala. 239; Gill v. State, 61 Ala. 169. **Judge of probate whose election is contested incompetent to try another contest** on same grounds.—Medlin v. Taylor, 101 Ala. 239. **Justice who married defendant's first cousin,** the wife having died leaving children, incompetent.—Pegues v. Baker, 110 Ala. 251. **Judge being first cousin of person slain,** incompetent to try one charged with the homicide.—Gill v. State, 61 Ala. 169. **The incompetency extends to preliminary orders, as** setting day, determining number and drawing jurors.—Salm v. State, 89 Ala. 56. **But not to mere ministerial acts** involving no discretion.—Hayes v. Collier, 47 Ala. 726; Heydenfeldt v. Towns, 27 Ala. 423. **Judge of probate who is a surety on administrator's bond** incompetent to preside on settlement. Wilson v. Wilson, 36 Ala. 655. **Judge who is surety on bail-bond in bastardy,** incompetent.—State v. Castleberry, 23 Ala. 85. **Being connected by marriage with prosecutor in burglary** does not qualify.—Newman v. State, 49 Ala. 9. **In proceeding by State Bar Association to disbar an attorney, circuit judge not incompetent** because he is a member of the association.—Ex parte State Bar Association, 92 Ala. 113. **Interest of county commissioners in claim** does not render allowance void.—Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. **Adjudication by a judge of his own incompetency** is not conclusive.—Medlin v. Taylor, 101 Ala. 239; Ex parte State Bar Association, 92 Ala. 113; Ellis v. Smith, 42 Ala. 349; Lyon v. State Bk., 1 S. 442. **Objection to judge on account of interest** cannot be raised on motion to quash execution on the judgment.—Collins v. Hammock, 59 Ala. 448. **Regularity of proceedings before special judge** cannot be raised on petition for prohibition.—Epperson v. Rice, 102 Ala. 668. **Judgment of disqualified judge, rendered without consent** entered of record, not void but voidable.—Hine v. Hussey, 45 Ala. 496; Hayes v. Collier, 47 Ala. 726; Trawick v. Trawick, 67 Ala. 271; Plowman v. Henderson, 59 Ala. 559; Koger v. Franklin, 79 Ala. 505; Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576. **When mandamus will lie to compel presiding judge to proceed** to try case.—Ex parte State Bar Association, 92 Ala. 113. **If presiding judge competent, power cannot be conferred on special judge.** Ex parte State Bar Association, 92 Ala. 113. Judge may not be challenged in his own court.—Lyon v. State Bank, 1 S. 442.

2638 (648) (542) (637) (561). **Powers of courts to inflict summary punishment.**—The power of the several courts in this state to issue attachments and inflict summary punishment for contempts, does not extend to any other cases than—

1. Disrespectful, contemptuous, or insolent behavior in court, tending, in anywise, to diminish or impair the respect due to judicial tribunals, or to interrupt the due course of trial.

Withers v. State, 36 Ala. 252; Powell v. State, 48 Ala. 154.

2. A breach of the peace, boisterous conduct, violent disturbance, or any other act calculated to disturb or obstruct the administration of justice, committed in the presence of the court, or so near thereto as to have that effect.

3. The misbehavior of any officer of the court, in his official transactions, or the disobedience or resistance of any officer of the court, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command thereof.

Ex parte Walker, 25 Ala. 81; Ex parte Hamilton, 51 Ala. 66; Goldthwaite v. Ellison, 99 Ala. 497, 500.

4. Deceit, or abuse of the process or proceedings of the court, by any person or party, or any unlawful interference with the process or proceedings of the court.

5. Refusing to be sworn, or to answer, either in court or before the grand jury, any lawful question as a witness or garnishee.

6. When summoned as a juror in a court, improperly conversing with a party to an action, to be tried at such court, or with any other person in relation to the merits of such action, or receiving a communication from a party, or other person, in respect to it, without immediately disclosing the same to the court.

7. Conversing with a juror, knowing him to be such, in relation to the merits of any action which he is engaged in the trial of; or supplying any juror with refreshments of any kind, except water, during the time he is engaged in the trial of any cause, without leave of the court.

2639 (649) (543) (638) (562). **Other powers.**—Every court has power—

1. To preserve and enforce order in its immediate presence, and as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.

2. To enforce order before a person or body empowered to conduct a judicial investigation under its authority.

3. To compel obedience to its judgments, orders and process, and to the orders of a judge out of court, in an action or proceeding therein.

4. To control, in furtherance of justice, the conduct of its officers, and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.

5. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties.

6. To amend and control its process and orders, so as to make them conformable to law and justice.

Amendments nunc pro tunc can be made only on record evidence.—Ex parte Gilmer, 64 Ala. 234; M. & C. R. Co. v. Whorley, 74 Ala. 264; Ex parte Henderson, 84 Ala. 36; Kuehlthau v. State, 92 Ala. 91.

2640 (650) (544) (639) (563). **Punishment for contempt.**—For the effectual exercise of the powers conferred by the preceding section, the court may punish for contempt in the cases provided for in this chapter.

Right of trial by jury does not apply to contempt proceeding.—Ex parte Hamilton, 51 Ala. 66.

2641 (652) (546) (641) (565). **Reading of minutes.**—The minutes of the court must be read each morning in open court, and, on the adjournment of the court, must be signed by the judge.

Statute directory; failure of judge to sign minutes does not affect the validity of judgments or decrees.—Bartlett v. Lang, 2 Ala. 161; Frazier v. Praytor, 36 Ala. 691.

2642. Double records dispensed with.—The orders, judgments and decrees entered upon the minutes of the court are parts of the record of the causes to which they pertain, and need not be copied into the final record. If so copied, no fee shall be charged therefor.

2643 (651) (545) (640) (564). **No records or papers removed from county.**—No records or papers of any court must be removed out of the county, except in cases of invasion or insurrection, whereby the same may be endangered, or unless by order of the court.

2644 (653) (562). **Papers to be recorded on filing.**—The original pleading in civil suits, at law or in equity, the original process issuing thereon, all affidavits and bonds taken in the course thereof, must be recorded immediately on the filing thereof, or on the return of such process; and the costs of such record are taxable as part of the costs of the cause. If the original pleading, or process, or affidavit, or bond, should be lost, a copy of such record, duly certified, shall stand in the place, and have the force and effect of the original. The original pleading, or the affidavit, or bond, must not be taken from the office of the clerk or register until after the record thereof, and such record forms part of the final record of the cause.

Record, and not original papers, is legal evidence of what it contains. Duncan v. Freeman, 109 Ala. 185. But if record not made up, original papers admissible.—Wharton v. Thomason, 78 Ala. 45.

2645. When record used on trial of cause.—When such original papers have been lost, mislaid or destroyed and have not been substituted as provided in the preceding section, the record thereof may be used upon the trial of the cause in all respects as the original; and no previous notice of such use of the record is necessary. In such case, the court may, if deemed advisable, direct the clerk or register, within a specified time, to make and file in the cause, a certified copy of the record so used upon the trial, the costs thereof to be paid as the court may direct.

2646 (654) (562, 565). **Taking file in pending suit from office.** The file pertaining to a pending suit must not be taken from the office of the clerk, or register, or judge of probate, except by an attorney or solicitor of record of a party to the suit, upon a receipt in writing signed by such attorney or solicitor, stating the number and title of the cause, and the papers contained in the file. If any of such papers are lost or mislaid before a return of the file, and a sur-

render of the receipt, the costs of substituting them must be paid by such attorney or solicitor.

2647 (656) (555) (648, 649). **Substitution of lost or destroyed court records and papers.**—All courts have the inherent power, if original papers or records, pertaining to matters of civil jurisdiction, or to civil cases which are pending, or which have been determined, are lost or destroyed, to cause a substitution thereof, and the substituted paper or record is of equal validity with the original.

Independent of statute, **courts have power to substitute lost records.** Dozier v. Joyce, 8 Port. 303; Williams v. Powell, 9 Port. 493; McLenden v. Jones, 8 Ala. 298; Doswell v. Stewart, 11 Ala. 629; Murray v. Tardy, 19 Ala. 710; Bishop v. Hampton, Ib. 792; Adkinson v. Keel, 25 Ala. 551; Taylor v. McElrath, 35 Ala. 320; Pruitt v. Pruitt, 43 Ala. 73; Shiver v. Shiver, 45 Ala. 349; Dabney v. Mitchell, 54 Ala. 198, 66 Ala. 495; Bradford v. State, 54 Ala. 230; Lilly v. Larkin, 66 Ala. 110, 122; McBryde v. Rhodes, 69 Ala. 133; Ward v. State, 78 Ala. 455. **Correctness of original record not inquired into** on motion to substitute.—Ward v. State, 78 Ala. 455; Peddy v. Street, 87 Ala. 299. **Any number of parties may join** in the notice and motion.—Pruitt v. Pruitt, 43 Ala. 73. **Court to which cause transferred may substitute** lost transcript. Dunn v. State, 60 Ala. 35.

2648 (657). **Substitution in pending cause or proceeding.**—If the cause or proceeding, in which the substitution of a lost or destroyed paper is proposed, be pending and undetermined, the substitution must be made on notice of not less than one day to the adverse party, or his attorney or solicitor of record, if he have such attorney or solicitor, accompanied with a copy of the paper offered in substitution. But if such adverse party, or his attorney or solicitor of record, do not reside in the county, notice may be given by the filing of the paper, and the entry of a motion to substitute, or the filing of such motion, for one day prior to the making thereof. On the hearing of such motion, affidavits and counter-affidavits may be received as to the correctness of the proposed substitute.

Pruitt v. Pruitt, 43 Ala. 73; Shiver v. Shiver, 45 Ala. 349; Ward v. State, 78 Ala. 455.

2649 (658) (554, 556). **Substitution, if cause or proceeding be not pending.**—If, after the determination of any civil cause or proceeding, the original papers, or any part thereof, pertaining thereto, which are not of record, are lost or destroyed; or if the record of such papers, with such papers, should be lost or destroyed; or if the record of any judgment or decree, or of any judicial proceeding, or quasi judicial proceeding, or any part thereof, should be lost or destroyed, any party in interest may, on application in writing, stating the facts, accompanied with the substitute proposed of such lost or destroyed paper or record, verified by affidavit, obtain an order of substitution. If the adverse party be of full age, of sound mind and a resident of the state, notice of the application and a copy thereof, accompanied with a copy of the proposed substitute, must be served on him at least ten days before the term of the court in which such application is made. If he be of unsound mind, or an infant, residing in the state, notice must be served on his guardian, or, if he have no guardian, upon the person with whom he resides, or in whose care or custody he may be. But if such party, whether he be of full age

and sound mind, or an infant, or of unsound mind, reside without the state, or his residence be unknown, upon affidavit stating the facts, the register, or the clerk of the court, or the judge of probate, or the justice of the peace must make and enter an order of publication as to such party, and cause notice to be given by publication for three successive weeks in some public newspaper published in the county; or if there be no such newspaper, in a newspaper published in an adjoining county. If the adverse party be of unsound mind, or an infant, the court must appoint a guardian ad litem to represent and defend for him. On the hearing the court may receive affidavits and counter-affidavits as to the correctness of the proposed substitute.

Box v. Delk, 47 Ala. 729; Tanner v. Mills, 50 Ala. 356; Lilly v. Larkin, 66 Ala. 110, 122; McBryde v. Rhodes, 69 Ala. 133; Peddy v. Street, 87 Ala. 299.

2650 (661) (559, 560) (652, 653). **Records of deeds or other instruments lost or destroyed.**—If the record of a deed, contract, conveyance, or other instrument, the record of which is by law required or authorized, be lost or destroyed, the original of such deed, contract, conveyance, or instrument may be recorded again, and such record shall have relation to, and be operative from the day the original record was operative. If the original be lost or destroyed, a copy thereof may be recorded, on proof of its correctness, of the record, and of the loss or destruction of the original; and the record of such copy shall have relation to, and be operative from the day the original record was operative. But in case of the loss or destruction of the original, an application for the record of the copy must be made to the court, or successor of the court, in which the original record was made, and notice thereof given to the party in adverse interest, as is prescribed in the preceding section.

See citations to three preceding sections.

2651 (662) (557) (650). **Costs of substitution.**—Any proceedings for substitution under any of the provisions of this chapter, if there be no defense, shall be paid by the party applying for such substitution; if a defense is interposed, by the unsuccessful party; but in no case shall any officer be entitled to any fees in such proceedings, if the loss or destruction of the paper or instrument, sought to be substituted, was caused by his neglect or fault.

2652 (659) (558) (651). **Appeal from order granting or refusing substitution.**—From any order of a court of record, granting or refusing substitution under the preceding section, an appeal lies to the supreme court as from final judgments or decrees in civil cases; and bills of exceptions may be taken as in other civil cases. From an order of the justice of the peace, an appeal to the circuit or city court lies, as in other cases, and the trial is de novo.

2653 (660). **Substitution of records of supreme court.**—If the records of the supreme court, or any part thereof, be lost or destroyed, the same may be substituted under such rules and regulations as the court may prescribe.

CHAPTER 67.

JURORS AND JURIES. 2654–2657.

2654 (2750) (3017) (2667) (2263). **How jurors drawn.**—Jurors for the trial of civil cases are drawn, summoned, impaneled and sworn as directed by the provisions of chapter 166 of this Code.

2655 (2751) (3016) (2666) (2262). **Challenges.**—Each party has the right to challenge four of the jury peremptorily.

Neither party has a right before challenge to interrogate a juror to ascertain whether he is subject to challenge.—K. C. M. & B. R. Co. v. Malone, 109 Ala. 495; Bales v. State, 63 Ala. 30. Or to require the court to do so.—Hawes v. State, 88 Ala. 37.

2656 (2752) (3018) (2668) (2264). **Struck jury.**—In all actions triable by jury, either party may demand a struck jury, and must thereupon be furnished by the sheriff with a list of twenty-four jurors in attendance upon the court, from which a jury must be obtained by the parties or their attorneys alternately striking one from the list until twelve are stricken off, the party demanding the jury commencing; and the jury thus obtained must not be challenged for any cause, except bias or interest as to the particular case.

Demand should be made before organization of jury entered upon.—McArthur v. Carrie, 32 Ala. 75. **All persons litigant on one side,** whether plaintiffs or defendants, **regarded as one party.**—M. & E. Ry. Co. v. Thompson, 77 Ala. 448; R. & D. R. Co. v. Greenwood, 99 Ala. 501. Each party is **entitled to a panel of twenty-four jurors before striking.**—Smith v. Kaufman, 100 Ala. 408; Adams v. Thornton, 82 Ala. 260. **If number reduced by excuses, panel should be again filled** to twenty-four.—Smith v. Kaufman, 100 Ala. 408; **even though a jury had been obtained.**—Birmingham, etc., Co. v. Ralph, 92 Ala. 273. **Failure of parties on one side to agree among themselves** cannot prejudice other side; court may allow each to strike in rotation.—M. & E. Ry. Co. v. Thompson, 77 Ala. 448. **Does not preclude challenge because of bias or interest.**—Dothard v. Denson, 72 Ala. 541; Davis v. Hunter, 7 Ala. 135. **Challenge for favor;** investigation by the court.—Calhoun v. Hannan, 87 Ala. 277.

2657 (2753) (3026) (2676) (2272). **When state, county, or city interested, citizens competent jurors.**—In actions to which the state, or a county, or a city or town, is a party, or has an interest, citizens of the state, county, city, or town, are not disqualified by reason of interest.

CHAPTER 68.

JUSTICES OF THE PEACE.

ARTICLE 1.—TERM OF OFFICE, AND GENERAL JURISDICTION. 2658–2665.
2.—GENERAL RULES OF PROCEDURE. 2666–2686.
3.—TRIAL BY JURY. 2687–2694.

APPEAL AND CERTIORARI, SEE §§481–495.
ATTACHMENTS, SEE §§571–578.
EXECUTIONS, SEE §§1932–1952.
FORCIBLE ENTRY AND UNLAWFUL DETAINER, SEE §§2124–2149.
GARNISHMENT, SEE §§2208–2212.
SUMMARY JUDGMENTS, SEE §§3812–3824.
TRIAL OF RIGHT OF PROPERTY, SEE §§4141–4151.

ARTICLE 1.

TERM OF OFFICE AND GENERAL JURISDICTION.

As amended Feb. 26, 1889, p. 58.

2658 (835) (754) (838) (708). **Two justices for each precinct; term of office.**—Within the limits of every election precinct there shall be two justices of the peace, elected as provided in the chapter on "Elections," who shall hold office for four years and until their successors are qualified.

Local officer whose official acts are confined to prescribed limits.—Ex parte Davis, 95 Ala. 9.

2659 (836) (755, 299) (839) (709). **Vacancies; how filled, etc.** Vacancies in the office of justice are to be filled by appointment of the governor; and the justice appointed must be duly commissioned, and holds office for the unexpired term of his predecessor.

2660 (837) (300) (315) (270). **Notice of vacancy.**—When a vacancy in any election precinct is occasioned by the death or removal from such precinct of any justice, the other justice for such precinct, if there be one, and if not, the constable therein, must give notice to the judge of probate of such vacancy, the cause and the name of the justice whose office is vacated; and the judge of probate must thereupon notify the governor.

2661 (838) (756) (840) (710). **Bond; by whom approved.**—Before entering on the duties of the office, they must give bond and surety, payable and conditioned as provided by law, in the sum of one thousand dollars, which bond must be approved by the judge of probate of the county, and filed and recorded in his office.

Liability on bond.—Lester v. Governor, 12 Ala. 624; McGrew v. Governor, 19 Ala. 89; Kelly v. Moore, 51 Ala. 364; Irion v. Lewis, 56 Ala. 190; Mason v. Crabtree, 71 Ala. 479; Olmstead v. Brewer, 91 Ala. 124. **When sureties are estopped** from alleging that their principal was not a justice.—Williamson v. Woolf, 37 Ala. 298. **What a sufficient consideration for bond.**—Williamson v. Woolf, 37 Ala. 298.

2662 (839) (757) (841) (711). **Jurisdiction.**—Justices of the peace have original jurisdiction within their respective counties, to be exercised as provided by law—

1. Of all actions founded on contract, when the sum claimed does not exceed one hundred dollars.

2. Of all actions founded on any wrong or injury, when the damages claimed do not exceed one hundred dollars, except in actions of libel, slander, assault and battery, and ejectment, of which actions they have not jurisdiction.

3. Of all actions of forcible entry and unlawful detainer.

4. Of all actions brought to recover specific property, when the value does not exceed one hundred dollars.

5. In such other cases as jurisdiction is, or may be given by law, not contrary to the constitution.

Had no civil jurisdiction at common law.—Horton v. Elliott, 90 Ala. 480; Boynton v. State, 77 Ala. 29; Taylor v. Woods, 52 Ala. 474. **Jurisdiction conferred by the constitution not self-executing;** given force and effect alone by statute.—K. C. M. & B. R. Co. v. Whitehead, 109 Ala. 495; Carter v. Alford, 64 Ala. 236; Taylor v. Woods, 52 Ala. 474; Pearce v. Pope, 42 Ala. 319. **Jurisdiction above fifty dollars not exclusive.**—K. C. M. & B. R. Co. v. Whitehead, 109 Ala. 495. **Test of jurisdiction is the amount in controversy, or sum claimed.**—Long v. Bakefield, 48 Ala. 608; Lykes v. Schwartz, 91 Ala. 461. **Objection must be made before justice,** or is waived on appeal.—L. & N. R. Co. v. Baker, 96 Ala. 435; Western R. Co. v. Lazarus, 88 Ala. 453; Burns v. Henry, 67 Ala. 209; Carter v. Alford, 64 Ala. 236; Glaze v. Blake, 56 Ala. 379. **Subdivision 1.**—Hogan v. Odam, 3 Stew. 59; Witherspoon v. Barber, Ib. 335; Cothran v. Weir, 3 Ala. 24; Hart v. Turk, 15 Ala. 675; Rose v. Thompson, 17 Ala. 628; Vaughan v. Robinson, 20 Ala. 229; Crabtree v. Cliatt, 22 Ala. 181; Pike v. Bright, 29 Ala. 332; Herrin v. Buckelew, 37 Ala. 585; Pearce v. Pope, 42 Ala. 319; Long v. Bakefield, 48 Ala. 608; Solomon v. Ross, 49 Ala. 198. **Subdivision 2.**—Taylor v. Woods, 52 Ala. 474; Burns v. Henry, 67 Ala. 209; Glaze v. Blake, 56 Ala. 379; A. G. S. R. Co. v. Christian, 82 Ala. 307; Brown v. A. G. S. R. Co., 87 Ala. 370. **Subdivision 3.**—See note to section 2124 et seq. **Subdivision 4.**—Rogers v. Gaines, 73 Ala. 218; Carter v. Alford, 64 Ala. 236; Glaze v. Blake, 56 Ala. 379; Burns v. Henry, 67 Ala. 209. **Remittitur of excess beyond jurisdiction.**—Nibbs v. Moody, 5 S. & P. 198; Bentley v. Wright, 3 Ala. 607; Henderson v. Plumb, 18 Ala. 74; Crabtree v. Cliatt, 22 Ala. 181; Solomon v. Ross, 49 Ala. 198; Wharton v. King, 69 Ala. 365; Davis v. Bedsole, Ib. 362; Davis v. Jones, 109 Ala. 418. **Remedy, when judgment in excess of jurisdiction.**—A. G. S. R. Co. v. Christian, 82 Ala. 307; Burns v. Henry, 67 Ala. 209; Brown v. A. G. S. R. Co., 87 Ala. 370; Rodgers v. Gaines, 73 Ala. 218.

2663 (840) (758) (842) (712). **Authority.**—Every justice is a conservator of the peace within his county, and has authority therein—

1. To administer oaths and take affidavits, except in those cases in which the power is expressly restricted to some other officer.

2. To punish for contempt, by fine as high as six dollars, and by imprisonment, not exceeding six hours; one or both.

3. When the office of constable in his precinct is vacant, or in other case of emergency, to appoint a person to act in his place, without giving bond and surety, in the execution of all process, except the collection of executions.

4. To take the acknowledgment or probate of all deeds, or conveyances required to be recorded, and certify the same for registration.

5. To exercise such other powers as are, or may be conferred on him by law.

Conservator of the peace throughout his county.—Boynton v. State, 77 Ala. 29; Ex parte Davis, 95 Ala. 9. **Subdivision 1.**—Bloodgood v. Smith, 14 Ala. 423. **Omission to certify affidavit,** if actually sworn to, not fatal.—McCartney v. Branch Bank, 3 Ala. 709. **Mere clerical errors,** harmless.—Schwartz v. Baird, 100 Ala. 154; Coleman v. State, 63 Ala. 93. **Subdivision 3.**—Special

constable may levy attachment returnable before the justice.—Bransfield v. Austin, 49 Ala. 227; Solomon v. Ross, 49 Ala. 198; Peebles v. Weir, 60 Ala. 413. But not, if returnable to circuit court.—Carter v. Ellis, 90 Ala. 138; Peebles v. Weir, 60 Ala. 413. **"Case of emergency"** determined by the justice. Noles v. State, 24 Ala. 672. **Subdivision 4.**—Authority to take acknowledgments; confined to his own county.—Edinburgh, etc., Co. v. Peoples, 102 Ala. 240; Amer. Mtg. Co. v. King, 105 Ala. 358; N. E. Mtg. Co. v. Payne, 107 Ala. 578.

2664 (841) (759) (843) (713). **Duties.**—It is the duty of every justice of the peace—

1. To keep a docket of all cases brought before him, in which must be entered the names of the parties, the return of the officer, and the entry of the judgment, specifying the amount of the same, and the day of its rendition.

2. To issue all process necessary to maintain his jurisdiction and enforce his authority, under such rules and regulations as are, or may be provided by law.

3. To keep his office in the election precinct for which he is elected or appointed.

4. To pay over all moneys he may collect or receive, by virtue of his office, to the person entitled thereto, without delay.

5. To perform such other duties as are, or may be required of him by law.

Must be an "entry of the judgment."—Francis v. Bailey, 104 Ala. 566; Little v. Fitts, 33 Ala. 343; Crabtree v. Cliatt, 22 Ala. 181. **When not void for uncertainty.**—Wyatt v. Judge, 7 Port. 37; Lightsey v. Harris, 20 Ala. 409. **Subdivision 2.**—Kyle v. Evans, 3 Ala. 481. **Subdivision 3.**—Ex parte Davis, 95 Ala. 9. **Subdivision 4.**—Has no authority to collect money before judgment.—Mason v. Crabtree, 71 Ala. 479. **Money collected cannot be retained for his debt,** nor is it subject to set-off.—Lowrie v. Stewart, 8 Ala. 163; Spence v. Mitchell, 9 Ala. 744; Prewett v. Marsh, 1 S. & P. 17. See also Garretson v. Joseph, 100 Ala. 279.

2665 (842) (760) (844) (714). **Removal from precinct vacates office.**—Justices of the peace vacate their offices by removing from their election precincts, and are liable to a penalty of forty dollars for acting as justice after such removal, to be recovered before any justice of the county in which such justice resides, by any one suing for the same; one half to the use of the person suing for the same, and the other half to the use of the county.

ARTICLE 2.

GENERAL RULES OF PROCEDURE.

2666 (3300) (3602) (3203) (2764). **Time and place of trial.**—Justices of the peace must designate certain days, at least once a month, and appoint a particular place within their precincts, for the trial of civil causes, but, in cases of emergency, they may make their process returnable at any other time or place; and at such time and place all civil actions and proceedings cognizable before them must be tried, unless otherwise provided.

Justice cannot generally try case out of his precinct.—Taylor v. Woods, 52 Ala. 474; Boynton v. State, 77 Ala. 29; Horton v. Elliott, 90 Ala. 480; Ex parte Davis, 95 Ala. 9. But **may issue process anywhere in the county** returnable to his office.—Ex parte Davis, 95 Ala. 9.

2667 (3301) (3604) (3205) (2766). **How suits commenced; form of summons.**—Civil suits before justices of the peace, unless otherwise provided, must be commenced by a summons issued by him, with the cause of action indorsed thereon; and the form of the summons must be in substance as follows:

"The State of Alabama, } To any lawful officer of the county of —— county. } ——:

Summon —— —— to appear before me, on the —— day of ——, next, at —— (designating the place), to answer the complaint of —— ——, and there make return of this summons.

Witness my hand, this, the —— day of ——, 18—.

—— ——, Justice of the Peace."

When cause of action sufficiently shown.—Freeman v. Speegle, 83 Ala. 191; Smith v. E. T. V. & G. R. Co., 98 Ala. 154; Heard v. Harris, 68 Ala. 43; Brown v. State, 63 Ala. 97; Johnson v. State, 73 Ala. 21; Independent Pub. Co. v. Amer. Press Ass'n., 102 Ala. 475; Smith v. Dick, 95 Ala. 311; W. U. T. Co. v. Meyer, 61 Ala. 158. **Amendments**; allowed, unless they work a change of the form of action, or an entire change of parties, plaintiff or defendant.—Lagerfelt v. McKie, 100 Ala. 430; Smith v. E. T. V. & G. R. Co., 98 Ala. 154; M. & M. R. Co. v. McKellar, 59 Ala. 458. **Departure**; reached by motion to strike, not by demurrer, or plea in abatement.—L. & N. R. Co. v. Barker, 96 Ala. 435; Freeman v. Speegle, 83 Ala. 191.

2668 (3302) (3605) (3206) (2767). **Service of summons.**—The summons must be executed three days before the return-day thereof, by personal service on the defendant.

2669 (3303) (3606) (3207) (2768). **In what precinct suit to be brought.**—Unless otherwise provided, no person can be sued out of the precinct of his residence, or of that in which the debt was created, or the cause of action arose; and if suit is brought contrary to the provisions of this section, it must, on motion, be dismissed by the justice.

*Applies to suits begun by summons, not by attachment.—Thompson v. Clopton, 31 Ala. 647; Atkinson v. Wiggins, 69 Ala. 190; Ex parte Davis, 95 Ala. 9.

2670 (3304) (3607) (3208) (2769). **When there are several defendants.**—When there are more defendants than one, the suit may be brought in the precinct of the residence of any one of them.

2671 (3305) (3608) (3209) (2770). **When there is no justice in precinct.**—If there is no justice, or notary public having the jurisdiction of a justice, within the precinct of the defendant's residence, or if he is from any cause incompetent to try the cause, the summons must be issued and the cause tried by the justice of an adjoining precinct competent to try the same.

Taylor v. Woods, 52 Ala. 474; Boynton v. State, 77 Ala. 29; Horton v. Elliott, 90 Ala. 480; Ex parte Davis, 95 Ala. 9.

2672 (3306) (3609). **When branch summons may issue.**—When a joint or joint and several cause of action exists, and the defendants reside or may be found in different counties, original and branch summons may be issued by any justice of the peace having jurisdiction of any one of such defendants, and be executed in any county, and must be returned and filed with the justice of the peace issuing the same, and shall constitute but one suit, in the same manner as if only one summons had issued against all the defendants; and it

shall be the duty of the justice of the peace, on issuing such branch summons, to indorse thereon that it is a branch of the original suit, and that all the summons constitute one suit, and are for one and the same cause of action.

2673 (3313) (3603, 3617, 3662) (3219) (2780). **What circuit-court rules applicable.**—As to parties, trial, competency of witnesses, admissibility of evidence, regulation of suits, and the time within which suits may be brought, unless otherwise provided, suits before justices of the peace shall be governed by the same rules and provisions, so far as they are applicable, as suits in the circuit court.

Bullock v. Ogburn, 13 Ala. 346; Pike v. Bright, 29 Ala. 332; Levystein v. Marks, 56 Ala. 564; Ryall v. Prince, 82 Ala. 264. Applies to pleas in abatement. Noles v. Marable, 50 Ala. 366; Perry v. Hurt, 54 Ala. 285; Beck v. Glenn, 69 Ala. 121.

2674 (3315) (3630, 3631) (3233, 3234) (2786, 2787). **Set-off and recoupment in such suits.**—The rules and provisions of law relating to set-off and recoupment, which prevail in the circuit court, shall also, so far as applicable, prevail in suits before justices of the peace; and the defendant, if his demand is greater than that of the plaintiff, may have judgment for the residue, if it does not exceed one hundred dollars; if it exceeds that sum, and the defendant enters on the docket of the justice satisfaction of so much of his claim as equals the amount of the plaintiff's demand, as ascertained by the justice, and tenders the plaintiff a receipt therefor, judgment must be rendered in favor of the defendant for costs; and the amount so entered on the docket shall be taken as a credit on the defendant's demand.

Smith v. Fleming, 9 Ala. 768; Bowman v. Gary, Minor, 326; Wharton v. King, 69 Ala. 365.

2675 (3317) (3618) (3221) (2782). **Judgments in detinue.**—In actions for the recovery of specific personal property, the justice must ascertain the value of each article separately, if practicable, and also assess damages for its detention, if he finds for the plaintiff; if he finds for the defendant, he must in like manner ascertain the value, and, if in the possession of the plaintiff, assess damages for its detention. Judgment against either party must be for the property sued for, or its alternate value, with damages for its detention to the time of trial.

Applies when property is in possession of the unsuccessful party.—Brown v. Brown, 5 Ala. 508; Robinson v. Richards, 45 Ala. 354; Wittick v. Keiffer, 31 Ala. 199; Jones v. Pollen, 66 Ala. 306. **Measure of damages the highest value between commencement of suit and time of trial.**—Johnson v. Marshall, 34 Ala. 524; Freer v. Cowles, 44 Ala. 314; Holly v. Flournoy, 54 Ala. 99; Worthan v. Gurley, 75 Ala. 356. **If property to be had, the defendant has no election to pay the value,** and retain the property.—Robbins v. Richards, 45 Ala. 354. **Misuser and abuse of property legitimate element of damages,** in addition to value.—Worthan v. Gurley, 75 Ala. 356; Freer v. Cowles, 44 Ala. 314.

2676 (3316) (3660) (3263) (2817). **Effect of death of either party.** When any of the parties to a suit die during its progress, the suit abates, unless the cause of action survives, when it may be revived within six months thereafter, by five days' notice to the legal representative to appear and prosecute or defend the suit, unless such

legal representative voluntarily makes himself a party; and upon the death of the defendant being made known to the justice, he must continue the cause six months.

2677 (3314). **Judgment by default or nil dicit.**—No judgment by default or nil dicit shall be entered by a justice of the peace until twelve o'clock of the day to which the process is returnable.

Judgment by default against corporation must show proof of service.—Ind. Pub. Co. v. Am. P. Asso., 102 Ala. 475.

2678 (3318) (3633) (3237) (2790). **Effect of judgment as a bar.** A judgment rendered by a justice of the peace on the merits of the case is a bar to any other suit for the same cause of action.

Boswell v. Tunnell, 10 Ala. 958; Waddle v. Ishe, 12 Ala. 308; Ex parte Davis, 95 Ala. 9; Cotton v. Holloway, 96 Ala. 544.

2679 (3319) (3634) (3238) (2791). **Evidence of judgment.**—A statement of any judgment rendered by a justice of the peace, made and certified by him, or his successor in possession of his docket, is presumptive evidence of the fact.

Generally.—Ware v. Roberson, 18 Ala. 105; Burns v. Campbell, 71 Ala. 271. **Admissible only in civil cases.**—Watson v. State, 63 Ala. 19; Burns v. Campbell, 71 Ala. 271; Lunsford v. Dietrich, 86 Ala. 250. **Statute merely cumulative.** Blackman v. Dowling, 57 Ala. 78. **When secondary evidence admissible.** Roach v. Privett, 90 Ala. 391; Burns v. Campbell, supra.

2680 (3320) (3635) (3239) (2792). **Completion of unfinished business on vacancy in office.**—When a justice of the peace dies, resigns, or removes from his precinct, the remaining justice of the peace, or if there is none, the nearest justice to his place of residence, is authorized to complete the unfinished business, in the same manner as if it had been commenced before him.

Horton v. Elliott, 90 Ala. 480; Ex parte Davis, 95 Ala. 9.

2681 (3307) (3610) (3212) (2773). **Taking of depositions and examination of witnesses.**—The depositions of witnesses in cases before justices of the peace may be taken, on application to the justice, in the same manner, and upon the same grounds as in cases in the circuit court, and also when the witness is a non-resident of the county and lives ten miles, or more, from the place of trial; in all other cases, witnesses must be examined orally before the justice.

2682 (3308) (3611) (3213) (2774). **Issue and service of subpœnas.**—The justice, on the application of either party, must issue subpœnas for witnesses, stating therein the names of the parties, by whom the witness is summoned, and the time and place of trial; which must be executed by the constable in the same manner as the summons.

2683 (3309) (3612) (3214) (2775). **Service of subpœna in another county.**—Where the witness is not a resident of the county, but resides within ten miles of the place of trial, computing the distance by the route usually traveled, the subpœna may be served either by a constable of the county in which it was issued, or by one in which the witness resides; but in the latter case, a justice of such county must certify that he is an acting constable thereof.

2684 (3310) (3613, 3614) (3215, 3216) (2776, 2777). **Fine against**

defaulting witness.—If any witness duly summoned fails to attend, a conditional fine of ten dollars may be entered against him by the justice, which must be made absolute, if the witness, upon notice issued by the justice, and served three days before the trial, fails to make a sufficient excuse, either in person, by some one who knows the facts constituting the excuse, or by affidavit before some officer authorized to administer oaths, and presented at the time designated for the trial thereof; and if the fine is made absolute, execution must issue therefor, and the proceeds, when collected, must be paid to the county treasurer.

2685 (3311) (3614) (3216) (2777). **Attendance, how enforced; liability.**—A witness may also be compelled by attachment to appear and testify; and he is also liable to the party summoning him for any injury caused by the want of his testimony.

2686 (3312) (3615) (3217) (2778). **Fees to witnesses.**—Witnesses are entitled to fifty cents per day while in attendance on the trial, to be taxed as part of the costs.

ARTICLE 3.

TRIAL BY JURY.

2687 (3370) (3619) (3222). **Appeal to jury, how taken; subpœnas for witnesses.**—Any party, dissatisfied with the judgment rendered by a justice of the peace, may, within five days thereafter, appeal to a jury, on giving bond with sufficient sureties, to be approved by the justice, in double the amount of the judgment and costs, with condition for the payment of such judgment as may be rendered against him; and such justice, his successor in office, or any other justice of the peace in the county, may issue subpœnas for all witnesses that the parties may desire.

E. T. V. & G. R. Co. v. Hughes, 76 Ala. 590.

2688 (3371) (3620) (3223). **How appeal tried, before whom and its effect.**—Such appeal must be tried before any one or more of the justices of the peace in the precinct in which the cause originated, by five jurors, to be drawn, sworn and impaneled as hereinafter directed, whose verdict shall be final and conclusive between the parties, unless removed by certiorari or appeal to the next term of the circuit court, or other court of like jurisdiction, of the county; and such jury must be impaneled and sworn, and the trial conducted, and the evidence admitted, in the same manner as in the circuit court; and such justice must enter up judgment on his docket in accordance with the verdict of the jury, and issue execution thereon as in other cases before justices of the peace.

2689 (3372) (3621) (3224). **Mode of drawing juries.**—The mode of drawing juries under the preceding section must be as follows: The justices of the peace in each precinct must, once in two years, make a list of all persons liable to serve on juries in the circuit court, who reside in the precinct, and must write the name of each

person so liable on a separate piece of paper, which must be deposited in a box marked "number one"; and must draw therefrom not less than five, nor more than seven of the names so deposited, from time to time, as may be necessary to try the causes pending in their courts, which names must be entered in the justice's docket, and deposited in a box marked "number two"; and after all the names are drawn from number one, they must commence drawing from number two, and so on alternately.

2690 (3373) (3622) (3225). **Penalty on jurors for failure to attend; how deficiency supplied.**—The justices or justice of each precinct may draw a jury at any time within five days after judgment is rendered, should an appeal be taken within that period; and any person so drawn and summoned by a constable three days before court, neglecting to attend, shall be subject to the same fines and forfeitures, and be proceeded against in the same manner as witnesses are for failing to attend justices' courts; and the constable, by direction of the justice, must fill and complete such jury from the bystanders in case of deficiency of jurors; but there must be at least three of the original panel on such jury.

2691 (3375) (3624) (3227). **Jurors, how summoned.**—The justice must issue a venire facias for the jury so drawn, returnable to the next regular term of his court, and the constable must, at least three days before court, summon the jurors so drawn to attend such court.

2692 (3376) (3625) (3228). **Oath of jurors.**—The following oath must be administered to the jury by the justice of the peace, before any cause is submitted for their consideration: "You, and each of you, do solemnly swear that you will well and truly try all issues submitted to you by the court during the day, and a true verdict render according to the law and the testimony; so help you God."

2693 (3374) (3623) (3226). **Pay of jurors.**—Such jurors shall be entitled to fifty cents each for their attendance, which must be taxed in the bill of costs.

2694 (3377) (3626) (3229). **Jury trials only at regular terms; exception.**—The jury trial, within the meaning of this chapter, must be had on a regular court-day, as provided for in section 2666 (3300) unless it becomes necessary to adjourn such court to a stated time, not beyond ten days, in order to dispose of the causes pending therein.

CHAPTER 69.

LANDS OF THE STATE.

ARTICLE 1.—SALT SPRINGS. 2695–2698.
2.—GRANTS BY THE STATE. 2699–2702.

ARTICLE 1.

SALT SPRINGS.

2695 (639) (526) (621) (549). **Salt springs may be leased by the governor.**—The governor may lease the salt springs, and lands granted to the state under the second clause of the sixth section of the act of congress of March 2, 1819, to the best advantage, in conformity with the provisions of the grant.

2696 (640) (527) (622). **Governor appoints agent.**—The governor may appoint a suitable agent, whose duty it shall be to superintend the salt springs and salt lands donated to the state by the congress of the United States; to prevent all trespass and waste on such lands; to lease the springs and lands on such terms and conditions as he may see fit not to exceed ten years at any one time; to settle all accounts with any former agent or agents, lessee or lessees; to take charge of all property of every kind on such lands; to collect all property, debts and demands, due the state from all persons, and generally, to save and to secure to the state whatever property, debts and demands may be due the state on account of such lands. The agent shall report, every six months, to the governor all the property of every kind collected or received, and all settlements made by him, and, generally, all his actings and doings in regard to the salt lands.

2697 (641) (528) (623). **Compensation.**—The agent shall receive such compensation for his services as the governor may deem proper and right, not to exceed one thousand dollars for any one year, and may be removed at any time by the governor, and a successor appointed.

2698 (642) (529) (624). **Former agents and lessees to settle.** All former agents and lessees, and all debtors and other persons having property or debts due the state, are authorized and required to settle and deliver the same to the agent appointed by the governor under this article.

ARTICLE 2.

GRANTS BY THE STATE.

2699 (1875) (2228) (1620) (1350). **Grants by state made by patent.**—For the conveyance of any real property belonging to the

state, a patent issues under the seal of the state, signed by the governor, and attested by the secretary of state.

2700 (1876) (2229) (1621) (1351). **Grants and patents recorded.** The secretary of state must record, in well-bound books, all grants and patents issued by the state.

2701 (1877) (2230) (1622) (1352). **Patent issues on payment, certified by treasurer.**—All purchasers of real property belonging to this state, their heirs and assigns, except in cases otherwise provided by this Code, are entitled to receive a patent therefor, on producing to the secretary of state a certificate signed by the state treasurer, that the amount due for such real estate has been paid into the state treasury.

2702. Patents for swamp and overflowed lands.—The governor is authorized and empowered to issue patents to the purchasers of the swamp and overflowed lands, or lands in lieu of swamp and overflowed lands, which may have been patented to this state, or which may hereafter be so patented, upon satisfactory proof being made to him that such lands have been fully paid for in money or in scrip sold and transferred by him and authorized by the acts of congress to be received in payment for such lands. Nov. 26, 1888, p. 5.

CHAPTER 70.

LANDLORD AND TENANT.

ARTICLE 1.—LANDLORD'S LIEN FOR RENT OF FARM-LANDS AND ADVANCES. 2703–2715.
2.—LANDLORD'S LIEN FOR RENT OF STOREHOUSES AND OTHER BUILDINGS. 2716–2721.
3.—USE AND OCCUPATION. 2722.

ARTICLE 1.

LANDLORD'S LIEN FOR RENT OF FARM-LANDS AND ADVANCES.

2703 (3056) (3467). **Lien declared.**—A landlord has a lien, which is paramount to, and has preference over all other liens, on the crop grown on rented lands for rent for the current year, and for advances made in money, or other thing of value, either by him directly, or by another at his instance or request for which he became legally bound or liable at or before the time such advances were made, for the sustenance or well-being of the tenant or his family, or for preparing the ground for cultivation, or for cultivating, gathering, saving, handling, or preparing the crop for market; and also on all articles advanced, and on all property purchased with money advanced, or obtained by barter in exchange for articles advanced, for the aggregate price or value of such articles and property.

Nature, priority and extent of lien.—Mecklin v. Deming, 111 Ala. 159;

Waite v. Corbin, 109 Ala. 154; Ballard v. Mayfield, 107 Ala. 396; McCarty v. Roswald, 105 Ala. 511; Bowling v. Crook, 104 Ala. 130; Belser v. Youngblood, 103 Ala. 545; Kelly v. Eyster, 102 Ala. 325; Ehrman v. Oats, 101 Ala. 604; Atkinson v. James, 96 Ala. 214; Clanton v. Eaton, 92 Ala. 612; Richards v. Bestor, 90 Ala. 352; Bryan v. Kelly, 85 Ala. 569; Powell v. State, 84 Ala. 444; Leslie v. Hinson, 83 Ala. 266; Dunlap v. Steele, 80 Ala. 424; Hardin v. Pulley, 79 Ala. 381; Thornton v. Strauss, 79 Ala. 164; Hamilton v. Maas, 77 Ala. 283; Kennon v. Wright, 70 Ala. 434; Wilson v. Stewart, 69 Ala. 302; Corbitt v. Reynolds, 68 Ala. 378; Scaife v. Stovall, 67 Ala. 237; Lomax v. LeGrand, 60 Ala. 537; Smith v. Bryant, Ib. 235; Ellis v. Martin, Ib. 394; Westmoreland v. Foster, Ib. 448; Starnes v. Allen, 58 Ala. 316; Collins v. Whigham, Ib. 438; Folmar v. Copeland, 57 Ala. 588; Dryer v. Abercrombie, Ib. 497; Nelson v. Webb, 54 Ala. 436; McDonald v. Morrison, 50 Ala. 30. **Incident to the relation of landlord and tenant.**—Bain v. Wells, 107 Ala. 562; Nelson v. Webb, 54 Ala. 436; Smith v. Pritchett, 98 Ala. 449; Abraham v. Nicrosi, 87 Ala. 173; Drakford v. Turk, 75 Ala. 339; Mortgage Co. v. Turner, 95 Ala. 272; Hardin v. Pulley, 79 Ala. 381; Ellis v. Martin, 60 Ala. 394; Scaife v. Stovall, 67 Ala. 237; Crawford v. Jones, 54 Ala. 459; Tucker v. Adams, 52 Ala. 254. **Relation must arise from contract,** express or implied.—Bowling v. Crook, 104 Ala. 130; Robinson v. Holt, 90 Ala. 115; Abraham v. Nicrosi, 87 Ala. 173; Mortgage Co. v. Turner, 95 Ala. 272; Bailey v. Campbell, 82 Ala. 342; Foster v. Goodwin, Ib. 384; Union Warehouse v. McIntyre, 84 Ala. 78; Hardin v. Pulley, 79 Ala. 381; Wolffe v. Wolff, 69 Ala. 549; Drakford v. Turk, 75 Ala. 339; Tucker v. Adams, 52 Ala. 254. **Relation exists, at the election of the landlord, when tenant holds over.**—Rhodes v. Weeden, 108 Ala. 252; Robinson v. Holt, 90 Ala. 115; Wolffe v. Wolff, 69 Ala. 549; Abraham v. Nicrosi, 87 Ala. 173; Singer Mfg. Co. v. Sayre, 75 Ala. 270; Parker v. Hollis, 50 Ala. 411; Crommelin v. Thiess, 31 Ala. 412. **Also, when tenant holds under contract void under the statute of frauds;** lien enforced in action for use and occupation.—Bain v. McDonald, 111 Ala. 269; Lagerfelt v. McKie, 100 Ala. 430; Smith v. Pritchett, 98 Ala. 649; Nelson v. Webb, 54 Ala. 436; Crawford v. Jones, Ib. 459. **When such contract withdrawn from statute of frauds by possession and part payment of rents,** lien enforced in action of rent for the entire term.—Rhodes v. Weeden, 108 Ala. 252; Eubank v. May, 105 Ala. 629; McMahan v. Jacoway, Ib. 585; Dahm v. Barlow, 93 Ala. 120; Martin v. Blanchett, 77 Ala. 288; Shakespeare v. Alba, 76 Ala. 351; Singer Mfg. Co. v. Sayre, 75 Ala. 270; Nelson v. Webb, 54 Ala. 436. **Lien does not extend to leasehold interest in land.**—First Nat. Bank v. Electric Co., 97 Ala. 465; Abraham v. Nicrosi, 87 Ala. 173. **Advances defined.**—Atkinson v. James, 96 Ala. 214; Clanton v. Eaton, 92 Ala. 612; Hamilton v. Maas, 77 Ala. 283; Cockburn v. Watkins, 76 Ala. 486; Bell v. Hurst, 75 Ala. 44; Lake v. Gaines, Ib. 143; Thompson v. Powell, 77 Ala. 391; Holman v. Locke, 51 Ala. 287; Wells v. Thompson, 50 Ala. 83; Flexner v. Dickerson, 65 Ala. 129. **Advances at "instance and request" of landlord;** he must incur a liability therefor, and tenant must consent to, or ratify, such arrangement.—Gerson v. Norman, 111 Ala. 433; Henderson v. State, 109 Ala. 40; Clanton v. Eaton, 92 Ala. 612; Drakford v. Turk, 75 Ala. 44; Scaife v. Stovall, 67 Ala. 237. **Right to make advances cannot be transferred.**—Gerson v. Norman, 111 Ala. 433; Henderson v. State, 109 Ala. 40; Clanton v. Eaton, 92 Ala. 612; Leslie v. Hinson, 83 Ala. 266; Bell v. Hurst, 75 Ala. 44; Drakford v. Turk, Ib. 339. **Waiver and postponement of lien.**—Gerson v. Norman, 111 Ala. 433; Stephens v. Adams, 93 Ala. 117; Napier v. Foster, 80 Ala. 339; Coleman v. Siler, 74 Ala. 435; Tuttle v. Walker, 69 Ala. 172; Westmoreland v. Foster, 60 Ala. 448. **Not waived by landlord's consent to remove crop** from premises.—Waite v. Corbin, 109 Ala. 154; Weil v. McWhorter, 94 Ala. 543; Coleman v. Siler, 74 Ala. 435; Tuttle v. Walker, 69 Ala. 172. **Nor by taking note with personal security.**—Stephens v. Adams, 93 Ala. 117; Coleman v. Siler, 74 Ala. 435; Denham v. Harris, 13 Ala. 465. **Or note with waiver of exemptions.**—Stephens v. Adams, 93 Ala. 117. **Lien lost by sale to a bona fide purchaser without notice.**—Andrews Mfg. Co. v. Porter, 112 Ala. 381; Weil v. McWhorter, 94 Ala. 540; Tuttle v. Walker, 69 Ala. 172; Wilson v. Stewart, 69 Ala. 302; Scaife v. Stovall, 67 Ala. 237. **Remedies against purchasers with notice; action on the case,** when lien destroyed or rendered incapable of enforcement on the property or its proceeds.—Couch v. Davidson 109 Ala. 313; Ehrman v. Oats, 101 Ala. 604; McCarty v. Roswald, 105 Ala. 511; Shepherd v. Taylor, Ib. 507; Kelly v. Eyster, 102 Ala. 325; Atkinson v. James, 96 Ala. 214; Manasses v. Dent, 89 Ala. 565; Powell v. Thompson, 80 Ala. 51; Thompson v. Powell, 77 Ala. 391; Lake v. Gaines, 75 Ala. 143; Hurst v. Bell, 72 Ala. 336; Kennon v. Wright, 70 Ala. 434; Boggs v. Price, 64 Ala. 514; Lomax v. LeGrand, 60 Ala. 537; Westmoreland v. Foster, Ib. 448; Lavendar v. Hall, Ib. 214; Wilson v. Stewart, 69 Ala. 302; Hussey v. Peebles, 53 Ala. 432; Price v. Pickett, 21 Ala. 741. **Assumpsit for money had and received,** if property sold, and proceeds in possession of tenant or third person with notice. McCarty v. Roswald, 105 Ala. 511; Barnett v. Warren, 82 Ala. 557; Thornton

v. Strauss, 79 Ala. 164; Ehrman v. Oats, 101 Ala. 604; Coffey v. Hunt, 75 Ala. 236; Scaife v. Stovall, 67 Ala. 237; Westmoreland v. Foster, 60 Ala. 448; Price v. Pickett, 21 Ala. 741; Thompson v. Merriman, 15 Ala. 166. **That tenant has other property subject to lien, no defense.**—Andrews Mfg. Co. v. Porter, 112 Ala. 381; Couch v. Davidson, 109 Ala. 313; Waite v. Corbin, Ib. 154. **Notice of lien; knowledge that crop grown on rented premises sufficient.**—Kelly v. Eyster, 102 Ala. 325; Atkinson v. James, 96 Ala. 214; Manasses v. Dent, 89 Ala. 565; Lomax v. LeGrand, 60 Ala. 537; Westmoreland v. Foster, Ib. 448; Scaife v. Stovall, 67 Ala. 237. **Officer levying other process, must, at his peril, pay off rent lien,** although tenant has other property sufficient.—Andrews Mfg. Co. v. Porter, 112 Ala. 381; Couch v. Davidson, 109 Ala. 313; Smith v. Huddleston, 103 Ala. 223. **Attorney's fee stipulated in lease,** may be recovered in attachment for rent.—Richards v. Bestor, 90 Ala. 352. **When lien enforced in equity.**—Carmen v. Ala. Nat. Bank, 101 Ala. 189; Bingham v. Vandegrift, 93 Ala. 283; Coffey v. Hunt, 75 Ala. 236; Westmoreland v. Foster, 60 Ala. 448; Abraham v. Hall, 59 Ala. 386. **Rights of mortgagee holding subject to landlord's lien.**—Ballard v. Mayfield, 107 Ala. 396; Belser v. Youngblood, 103 Ala. 545; Keith v. Ham, 89 Ala. 590; Bird v. Womack, 69 Ala. 390. **When several rentals of separate parcels,** lien only on crop grown on each parcel for the rent thereof.—Nelson v. Webb, 54 Ala. 436.

2704 (3057) (3468). **Maturity of rent and advances.**—Unless otherwise stipulated, such rent and advances shall become due and payable on the twenty-fifth day of December of the year in which the crop is grown.

Dozier v. Robinson, 82 Ala. 408; Campbell v. Hatchett, 55 Ala. 548; Horton v. Miller, 84 Ala. 537.

2705 (3058) (3469). **Lien continues and attaches to crop of succeeding year.**—When the tenant fails to pay any part of such rent or advances, and continues his tenancy under the same landlord, on the same or other lands, the balance due therefor shall be held and treated as advances to him by the landlord for the next succeeding year, for which the original lien for advances, if any remain unpaid, shall continue on the articles advanced, or property purchased with money advanced, or obtained by barter in exchange for articles advanced, and for which a lien shall also attach to the crop of such succeeding year.

Reese v. Rugely, 82 Ala. 267; Powell v. State, 84 Ala. 444; Gunter v. Dubose, 77 Ala. 326; Thompson v. Powell, Ib. 391; Cockburn v. Watkins, 76 Ala. 486; Fitzsimmons v. Howard, 69 Ala. 590.

2706 (3059) (3470). **Assignment; remedies of assignee.**—The claim of the landlord for rent and advances, or for either, may be by him assigned; and the assignee shall be invested with all the landlord's rights, and entitled to all his remedies for their enforcement.

Generally.—Clanton v. Eaton, 92 Ala. 612; Leslie v. Hinson, 83 Ala. 266; Drakford v. Turk, 75 Ala. 339; Coffey v. Hunt, Ib. 236; Bell v. Hurst, Ib. 44; Corbitt v. Reynolds, 68 Ala. 223; Westmoreland v. Foster, 60 Ala. 448; s. c., 52 Ala. 223. **Assignment by parol, or by delivery of the rent note,** sufficient in equity.—Wells v. Cody, 112 Ala. 278. **May be assigned by mortgage.**—Ballard v. Mayfield, 107 Ala. 396.

2707 (3060) (3471). **Rent and advances; recovery of.**—Separate actions may be brought for rent and for advances, or both may be combined in the same action.

2708 (3061) (3472). **Lien enforced by attachment; grounds.** The landlord, or his assignee, may have process of attachment for the enforcement of his lien for rent and advances, or either, when such rent and advances, or either, as the case may be, are due, and

the tenant fails or refuses, after demand made, to pay the same; and also in the following cases, whether such rent and advances, or either, are due or not:

1. When there is good cause to believe that the tenant is about to remove from the premises, or otherwise dispose of any part of the crop, without paying such rent and advances, or either, and without the consent of the landlord, or, when the claim has been assigned, of the assignee.

2. When the tenant has removed from the premises, or otherwise disposed of any part of the crop without paying such rent and advances, or either, and without the consent of the landlord, or, when the claim has been assigned, of the assignee.

3. When the tenant has disposed of, or there is good cause to believe that he is about to dispose of, any of the articles advanced or obtained by purchase with money advanced, or by barter in exchange for any article advanced, in fraud of the rights of the landlord, or of his assignee, as the case may be.

Remedy by attachment cumulative.—Carmen v. Ala. Nat. Bank, 101 Ala. 189; Atkinson v. James, 96 Ala. 214; Ellis v. Martin, 60 Ala. 394; Campbell v. Hatchett, 55 Ala. 548; Westmoreland v. Foster, 60 Ala. 448; McDonald v. Morrison, 50 Ala. 30. **Writ should issue against the crop**; when issued against estate generally, may be abated, but is not void.—Bryan v. Kelly, 85 Ala. 569; Agee v. Mayer, 71 Ala. 88; Ellis v. Martin, 60 Ala. 394; DeBardeleben v. Crosby, 53 Ala. 363. **When attachment issues on a cause of action not authorized,** defect reached by rule on plaintiff to show cause why same be not dissolved.—Mortgage Co. v. Turner, 95 Ala. 272; Adair v. Stone, 81 Ala. 113; Drakford v. Turk, 75 Ala. 339; Rich v. Thornton, 69 Ala. 473; Dryer v. Abercrombie, 57 Ala. 497; Brown v. Coats, 56 Ala. 439. But attachment **will not be dissolved, when part of demand only is not within the statute.** Giddens v. Bolling, 93 Ala. 92; Ballard v. Stephens, 92 Ala. 616. **See also** Albright v. Mills, 86 Ala. 324; Perkerson v. Snodgrass, 85 Ala. 137; Baxley v. Segrest, Ib. 183; Reese v. Rugely, 82 Ala. 267; Dozier v. Robinson, Ib. 408; Horton v. Miller, 84 Ala. 537; Knowles v. Steed, 79 Ala. 427; Gunter v. Dubose, 77 Ala. 326; Fitzsimmons v. Howard, 69 Ala. 590; Busbin v. Ware, Ib. 270; Bell v. Allen, 76 Ala. 450; Cockburn v. Watkins, Ib. 486; Scaife v. Stovall, 67 Ala. 237; Shield v. Dothard, 59 Ala. 595; Staggers v. Washington, 56 Ala. 225.

2709 (3062) (3473). **Affidavit and bond required.**—Before such attachment is issued, the plaintiff, or his agent, or attorney, must make affidavit, setting forth the amount that is or will be due for rent and advances, or either, as the case may be, or, if the rent is not payable in money, the value of the part of the crop, or other thing agreed to be paid as rent, that one of the causes for issuing an attachment prescribed in the preceding section exists, and that the attachment is not sued out for the purpose of vexing or harassing the defendant; and must also execute a bond in double the amount claimed, with sufficient surety, payable to the defendant, and with condition that the plaintiff will prosecute the attachment to effect, and pay the defendant all such damages as he may sustain from the wrongful or vexatious suing out of such attachment.

What affidavit should show when claim for advances.—Ballard v. Stephens, 92 Ala. 616; Beard v. Woodard, 78 Ala. 317; Flexner v. Dickerson, 65 Ala. 129; Fitzsimmons v. Howard, 69 Ala. 590; Gunter v. Dubose, 77 Ala. 326; Reese v. Rugely, 82 Ala. 267. **When affidavit sufficient.**—Ballard v. Mayfield, 107 Ala. 396; Baxley v. Segrest, 85 Ala. 183; Knowles v. Steed, 79 Ala. 427; Robinson v. Holt, 85 Ala. 596; Staggers v. Washington, 56 Ala. 225; Goldsmith v. Stetson, 39 Ala. 183. **When and how objection made.**—Ballard v. Mayfield,

supra; Perkerson v. Snodgrass, 85 Ala. 137; Horton v. Miller, 84 Ala. 537; Knowles v. Steed, 79 Ala. 427; Gunter v. Dubose, 77 Ala. 326; Graham v. Hughes, Ib. 590; Walker v. Ivey, 74 Ala. 475; Goldsmith v. Stetson, 39 Ala. 183; Mobile Life Ins. Co. v. Teague, 78 Ala. 147.

2710 (3063) (3473). **Issue and trial of attachment; on what property leviable.**—Such attachment may be issued by any officer authorized to issue attachments in other cases, and made returnable before any court of competent jurisdiction, and must be tried in the same manner and upon the same notice as other attachment causes are tried, and may be levied on the crop, or the proceeds thereof, and on the articles advanced, and property purchased with money advanced, or obtained by barter in exchange for articles advanced.

Bryan v. Kelly, 85 Ala. 569; Lehman v. Howse, 73 Ala. 302; Robinson v. Lehman, 72 Ala. 401; Agee v. Mayer, 71 Ala. 88; Ellis v. Martin, 60 Ala. 394; DeBardeleben v. Crosby, 53 Ala. 363; Ehrman v. Oats, 101 Ala. 604; Rowe v. Baber, 93 Ala. 422; Perkerson v. Snodgrass, 85 Ala. 137; Barnett v. Warren, 82 Ala. 557; Knowles v. Steed, 79 Ala. 427; Busbin v. Ware, 69 Ala. 279; Westmoreland v. Foster, 60 Ala. 448; Staggers v. Washington, 56 Ala. 225; Price v. Pickett, 21 Ala. 741; Hawkins v. Gill, 6 Ala. 620.

2711 (3064) (3474). **Relation between party furnishing land and party furnishing team and labor.**—When one party furnishes the land, and another party furnishes the labor and team to cultivate it, with stipulations, express or implied, to divide the crop between them in certain proportions, the relation of landlord and tenant, with all its incidents, and to all intents and purposes, shall be held to exist between them; and the portion of the crop to which the party furnishing the land is entitled shall be held and treated as the rent of the land.

Statute remedial merely.—Gardner v. Head, 108 Ala. 619; Adams v. State, 87 Ala. 89; Smith v. State, 84 Ala. 438; Collier v. Faulk, 69 Ala. 58; Holcombe v. State, Ib. 218; McCall v. State, Ib. 227; Wilson v. Stewart, Ib. 302.

2712 (3065) (3475). **What a contract of hire; lien of laborer, and proceeding to enforce.**—When one party furnishes the land and the team to cultivate it, and another party furnishes the labor, with stipulations, express or implied, to divide the crop between them in certain proportions, the contract of hire shall be held to exist, and the laborer shall have a lien upon the crop produced by his labor for the value of the portion of the crop to which he is entitled; and such lien shall have the same force and effect, and shall be enforced in the same manner, and under the same conditions, and in the same cases as the lien in favor of a landlord; but no more of the crop shall be levied on than may be necessary to satisfy the demand.

See citations to preceding section.

2713 (3066) (3476). **When levied on crop of subtenant; vacation of levy.**—When lands are cultivated by a subtenant, and an attachment or other process is sued out by the superior landlord, or his assignee, for the purpose of enforcing his lien for rent and advances, or either, the crop of the tenant in chief must first be exhausted, before levy is made on the crop of the subtenant; but if the tenant in chief makes no crop, or if the crop made by him is not sufficient to satisfy the plaintiff's demand, then a sufficient amount of the crop of the subtenant may be levied on to supply the de-

ficiency; and any levy made in violation of this section may be vacated on motion, at the first term of the court thereafter.

Bain v. Wells, 107 Ala. 562; Starke v. Bernheim, 102 Ala. 464; Albright v. Mills, 86 Ala. 324; Steinhardt v. Bell, 80 Ala. 208; Lehman v. Howze, 73 Ala. 302; Robinson v. Lehman, 72 Ala. 401; Agee v. Mayer, 71 Ala. 88.

2714 (3067) (3477). **When subtenant may require attachment against tenant in chief; effect of failure to attach.**—The subtenant may notify the superior landlord, or his assignee, of the existence of any one of the several causes authorizing the issue of an attachment against the crop of the tenant in chief, and if such notice is given, and an affidavit is made by the subtenant before an officer authorized by law to administer oaths, setting forth the existence of any one of such causes, and is served by the subtenant, in person, or by his agent, on such landlord, or his assignee, at the time the notice is given, and the landlord, or his assignee, fails or refuses to proceed within a reasonable time thereafter against the crop of the tenant in chief, he thereby loses his right to proceed against the crop of the subtenant for any deficiency in the crop of the tenant in chief to satisfy his claim, in so far as that deficiency resulted from such failure or refusal to proceed.

See citations to preceding section.

2715 (3068) (3478). **Article applies to tenant in chief and subtenant.**—The provisions of this article shall apply to parties occupying the relation of tenant in chief and subtenant.

ARTICLE 2.

LANDLORD'S LIEN FOR RENT OF STOREHOUSES AND OTHER BUILDINGS.

2716 (3069). **Lien declared.**—The landlord of any storehouse, dwelling-house, or other building, shall have a lien on the goods, furniture and effects belonging to the tenant, for his rent, which shall be superior to all other liens, except those for taxes.

Lien attaches under this section **only when "the building is the leading inducement for taking the lease."**—Garrison v. Webb, 107 Ala. 499; Union Warehouse v. McIntyre, 84 Ala. 78. **Lien for the entire rent attaches to such property of the tenant as** has at any time during the term, **"enjoyed the protection of the premises for which the rent is claimed"**; but not to all his effects.—Ex parte Barnes, 84 Ala. 540; Andrews Mfg. Co. v. Porter, 112 Ala. 381; Couch v. Davidson, 109 Ala. 313; Scott v. Renfro, 106 Ala. 611; Smith v. Huddleston, 103 Ala. 223; Aderhold v. Blumenthal, 95 Ala. 66; McKleroy v. Cantey, Ib. 295; Weil v. McWhorter, 94 Ala. 540; Stephens v. Adams, 93 Ala. 117; Abraham v. Nicrosi, 87 Ala. 173. **Not lost by removal of property, nor by sale** (except merchandise sold in the usual course of trade) **to a purchaser with notice** of the tenancy.—Andrews Mfg. Co. v. Porter, 112 Ala. 381; Scott v. Renfro, 106 Ala. 611; Couch v. Davidson, 109 Ala. 313; Aderhold v. Blumenthal, 95 Ala. 66; McKleroy v. Cantey, Ib. 295; Seisel v. Folmar, 103 Ala. 491; Weil v. McWhorter, 94 Ala. 540. **Lien attaches when property brought on premises; prevails over subsequent mortgage.**—Seisel v. Folmar, 103 Ala. 491; Union Warehouse v. McIntyre, 84 Ala. 78; Kyle v. Swem, 99 Ala. 573. **But not over mortgage to secure purchase-money.**—Glass v. Tisdale, 106 Ala. 581. Lien **prevails over claim of exemptions.**—Smith v. Huddleston, 103 Ala. 223; McKleroy v. Cantey, 95 Ala. 295; Bryan v. Kelly, 85 Ala. 569; Ex parte Barnes, 84 Ala. 540. **Waiver of exemptions** in rental contract does not affect lien.—Stephens v. Adams, 93 Ala. 117. **Lien attaches to the proceeds of goods in hands of an assignee;** may be reached by garnishment.—McKleroy v. Cantey, 95 Ala. 295. See also note to section 2703.

2717 (3070). **Lien enforced by attachment; grounds.**—The landlord shall have the right, for the enforcement of such lien, to sue out an attachment before any officer authorized to issue attachments, and returnable to any court having jurisdiction of the amount claimed, when the rent, or any installment thereof, is due, and the tenant fails or refuses, on demand, to pay such rent or installment; and also in the following cases, whether due or not:

1. When the tenant has fraudulently disposed of his goods, or is about to fraudulently dispose of his goods.

2. When the tenant has made an assignment for the benefit of his creditors.

3. When the tenant has made a complete transfer of all, or substantially all of his goods, without the consent of the landlord, or without first having paid the rent in full for the term.

Remedy by attachment cumulative; other remedies may be pursued. Andrews Mfg. Co. v. Porter, 112 Ala. 381; Couch v. Davidson, 109 Ala. 313; Smith v. Huddleston, 103 Ala. 223; Carmen v. Ala. Nat. Bank, 101 Ala. 189; McKleroy v. Cantey, 95 Ala. 295; Aderhold v. Blumenthal, 95 Ala. 66; Bingham v. Vandegrift, 93 Ala. 283. See citations to section 2703.

2718 (3071). **Affidavit and bond for attachment.**—Before such attachment is issued, the plaintiff, or his agent or attorney, must make affidavit, setting forth the amount that is, or will be due for the rent, that one of the causes for issuing an attachment prescribed in the preceding section exists, and that the attachment is not sued out for the purpose of vexing or harassing the defendant; and must also execute a bond in double the amount claimed, payable to the defendant, with sufficient surety, and with condition that the plaintiff will prosecute the attachment to effect, and pay the defendant all such damages as he may sustain from the wrongful or vexatious suing out of such attachment.

2719 (3072). **On what property leviable; priority of lien.**—Such attachment may be levied on so much of the goods, furniture and effects of the tenant as will satisfy the plaintiff's demand for rent; and such levy shall have priority over the levy of any other attachment on such goods, furniture and effects, in favor of any other creditor.

Abraham v. Nicrosi, 87 Ala. 173; Stephens v. Adams, 93 Ala. 117.

2720 (3073). **By what law attachment proceedings governed.** The law governing the issue, levy, trial and other proceedings in attachment suits in general, not inconsistent with the provisions of this article, shall govern in all cases arising under this article.

2721 (3074). **Lien and remedy vests in assignee.**—The lien provided in this article shall vest in any assignee of the claim for rent; and such assignee shall be invested with all the rights of the landlord, and entitled to all his remedies for their enforcement.

ARTICLE 3.

USE AND OCCUPATION.

2722 (2715) (2956) (2607) (2206). **When action sustained.**—A

reasonable satisfaction may be recovered for the use and occupation of land—

1. When there has been a demise by deed, or by parol, and no specific sum agreed on as rent.

2. When the defendant has been let into possession upon a supposed sale of the lands, which, from the act of the defendant, has not been consummated.

3. When the tenant remains on the land by sufferance of the owner. When after a demise the tenant, having had thirty days' previous notice, holds over without the consent of his landlord, he shall pay to such landlord double the value of the customary rent of the property so withheld.

To support this action, a contract, express or implied, either **creating the technical relation of landlord and tenant, or bringing the parties into a relation importing like rights and duties, is indispensable.**—Davidson v. Ernest, 7 Ala. 817; Smith v. Houston, 16 Ala. 111; Catterlin v. Spinks, Ib. 467; Tully v. Dunn, 42 Ala. 262; Crommelin v. Thiess, 31 Ala. 412; Wolffe v. Wolff, 69 Ala. 549; Fielder v. Childs, 73 Ala. 567; Stringfellow v. Curry, 76 Ala. 394; Powell v. Mortgage Co., 89 Ala. 490; Grady v. Ibach, 94 Ala. 152. See citations to section 2703.

CHAPTER 71.

LIENS.

ARTICLE 1.—MECHANICS AND MATERIAL-MEN. 2723–2752.
2.—BLACKSMITHS AND WOOD-WORKMEN. 2753–2757.
3.—ON SHIPS, STEAMBOATS AND OTHER WATER-CRAFT. 2758, 2759.
4.—TENANTS IN COMMON. 2760, 2761.
5.—AGRICULTURAL SUPERINTENDENTS AND LABORERS, AND RAILROAD EMPLOYES. 2762–2773.
6.—LIVERY-STABLE KEEPERS. 2774, 2775.
7.—OWNERS OF STALLIONS, JACKS, BULLS, RAMS, HE-GOATS AND BOARS. 2776–2779.
8.—FOR STUMPAGE. 2780–2783.
9.—OWNERS OF BOOMS AND BULKHEADS. 2784–2787.
10.—PUBLIC GINNERS. 2788–2792.

ARTICLE 1.

MECHANICS AND MATERIAL-MEN.

As amended Feb. 18, 1895, p. 1288, §1.

2723 (3018) (3440, 3441). **Lien declared.**—Every mechanic, person, firm or corporation who shall do or perform any work or labor upon, or furnish any material, fixture, engine, boiler or machinery for any building or improvement on land, or for repairing, altering or beautifying the same, under or by virtue of any contract with the owner or proprietor thereof, or his agent, architect, trustee, contractor or subcontractor, upon complying with the provisions of this article, shall have a lien therefor on such building or improvement, and on the land on which the same is situated, to the extent in

ownership of all the right, title and interest therein of the owner or proprietor, and to the extent in area of the entire lot or parcel of land in a city, town or village; or, if not in a city, town, or village, of one acre; or, if employes of the contractor or persons furnishing material to him, the lien shall extend only to the amount of any unpaid balance due the contractor by the owner or proprietor, and such employes and material-men shall also have a lien on such unpaid balance. But if the person, firm or corporation, before furnishing any material, shall notify the owner or his agent in writing that such certain specified material will be furnished by him to the contractor for use in the building or improvements on the land of the owner or proprietor at certain specified prices, unless the owner or proprietor or his agent objects thereto, the furnisher of such material shall have a lien for the full price thereof as specified in the notice to the owner or proprietor without regard to whether the amount of the claim for such material so furnished exceeds the unpaid balance or not, unless on the notice herein provided for being given, the owner or proprietor or his agent shall notify such furnisher in writing before the material is used, that he will not be responsible for the price thereof.

Who has lien.—Randolph v. Builders', etc., Co., 106 Ala. 501. **Mechanics and material-men.**—Randolph v. Builders', etc., Co., 106 Ala. 501; Wadsworth v. Hodge, 88 Ala. 500; Eufaula Water Co. v. Addyston, 89 Ala. 552; Cook v. The Rome Brick Co., 98 Ala. 409; Hawkins Lumber Co. v. Brown, 100 Ala. 217; Ex parte Schmidt, 62 Ala. 252; Schmidt v. Joseph, 65 Ala. 475; Osborn v. Johnson Wall Paper Co., 99 Ala. 309; Welch v. Porter, 63 Ala. 225; Wimberly v. Mayberry, 94 Ala. 240; Turner v. Robbins, 78 Ala. 592; Willingham v. Long, 70 Ala. 587; Rothe v. Bellingrath, 71 Ala. 55; Lane & Bodley v. Jones, 79 Ala. 156; Tyler v. Jewett, 82 Ala. 93; Florence G. E. L. & P. Co. v. Hanby, Receiver, 101 Ala. 15; May & Thomas Hardware Co. v. McConnell, 102 Ala. 577; Leftwich L. Co. v. Florence B. L. & S. Asso., 104 Ala. 584; Geiger v. Hussey, 63 Ala. 338; Hughes v. Torgerson, 96 Ala. 346. **When substituted contractor has.**—Pensacola R. Co. v. Schaffer, 76 Ala. 233. **Architects.**—Hughes v. Torgerson, 96 Ala. 346. **Whether lien attaches to work of quasi public** corporation, quære.—Eufaula Water Co. v. Addyston, 89 Ala. 552. **Extent of lien.**—Hughes v. Torgerson, 96 Ala. 346; Pensacola R. Co. v. Schaffer, 76 Ala. 233; Bedsole v. Peters, 79 Ala. 133; Wimberly v. Mayberry, 94 Ala. 240; Lee v. King, 99 Ala. 246; Porter & Blair Hardware Co. v. Lee, 105 Ala. 361; Leftwich L. Co. v. Florence M. B. L. & S. Asso., 104 Ala. 584; Cook v. Rome Brick Co., 98 Ala. 409; Florence G. E. L. & P. Co. v. Hanby, Receiver, 101 Ala. 15; Welch v. Porter, 63 Ala. 225; Turner v. Robbins, 78 Ala. 592; Willingham v. Long, 70 Ala. 587; Davis v. Betz, 66 Ala. 206; Rothe v. Bellingrath, 71 Ala. 55; Montgomery Iron Works v. Dorman, 78 Ala. 218; Childers v. Greenville, 69 Ala. 103; Geiger v. Hussey, 63 Ala. 338; Wadsworth v. Hodge, 88 Ala. 500; Nunnally v. Dorand, 110 Ala. 539. **When it attaches.**—Welch v. Porter, 63 Ala. 225; Young v. Stoutz, 74 Ala. 574; Ex parte Schmidt, 62 Ala. 252; Rothe v. Bellingrath, 71 Ala. 55; Davis v. Betz, 66 Ala. 206; Osborn v. Johnson Wall Paper Co., 99 Ala. 309; Porter v. Miles, 67 Ala. 130; Lane & Bodley Co. v. Jones, 79 Ala. 156; Leftwich L. Co. v. M. B. L. & S. Asso., 104 Ala. 584. **Extent of owner's liability.**—May & Thomas Hardware Co. v. McConnell, 102 Ala. 577; Florence G. E. L. & P. Co. v. Hanby, Receiver, 101 Ala. 15; Lee v. King, 99 Ala. 246; Hawkins L. Co. v. Brown, 100 Ala. 217; Cook v. Rome Brick Co., 98 Ala. 409; Eufaula Water Co. v. Addyston, 89 Ala. 552; Wimberly v. Mayberry, 94 Ala. 240; Wadsworth v. Hodge, 88 Ala. 500; Trammell v. Hudmon, 78 Ala. 222; Willingham v. Long, 70 Ala. 587; Geiger v. Hussey, 63 Ala. 338; Copeland v. Kehoe, 67 Ala. 594; Rothe v. Bellingrath, 71 Ala. 55; Tyler v. Jewett, 82 Ala. 93; Cutcliff v. McAnally, 88 Ala. 507. **May be created by wife on separate estate without husband's consent.**—McAnally v. Hawkins L. Co., 109 Ala. 397; Wadsworth v. Hodge, 88 Ala. 500; Youngblood v. McAnally, 88 Ala. 512; Cutcliff v. McAnally, 88 Ala. 507. **But not by husband except as authorized agent.** Wadsworth v. Hodge, 88 Ala. 500; Hawkins L. Co. v. Brown, 100 Ala. 217; Smith v. Joseph, 65 Ala. 475; Ex parte Schmidt, 62 Ala. 252. **Created rather by the law than by contract.**—Wadsworth v. Hodge, 88 Ala. 500; Osborn v. Johnson Wall Paper Co., 99 Ala. 309. **Neither acceptance of note for material nor stay of execution destroys lien.**—Leftwich L. Co. v. Florence M. B.

L. & S. Asso., 104 Ala. 584; Ross v. Perry, 105 Ala. 533; Lane & Bodley Co. v. Jones, 79 Ala. 156. **Effect of destruction of building by fire** before completion.—Cutcliff v. McAnally, 88 Ala. 507. **Materials must have been furnished for the particular building** on which a lien is sought.—Cook v. Rome Brick Co., 98 Ala. 409. **Burden on plaintiff to show that the materials were used in the building.**—May & Thomas Hd. Co. v. McConnell, 102 Ala. 578.

2724 (3019) (3442). **Priority of lien.**—Such lien, as to the land, shall have priority over all other liens, mortgages, or incumbrances created subsequently to the commencement of the work on the building or improvement; and, as to the building or improvement, it shall have priority over all other liens, mortgages, or incumbrances, whether existing at the time of the commencement of such work, or subsequently created; and the person entitled to such lien may, when there is a prior lien, mortgage, or incumbrance on the land, have it enforced by a sale of the building or improvement under the provisions of this article, and the purchaser may, within a reasonable time thereafter, remove the same.

As between mortgagees and attaching creditors; burden of proof.—Leftwich L. Co. v. Florence M. B. L. & S. Asso., 104 Ala. 584; Wimberly v. Mayberry, 94 Ala. 240; Birmingham B. & L. Co. v. May & Thomas Hardware Co., 99 Ala. 276; Welch v. Porter, 63 Ala. 225; Turner v. Robbins, 78 Ala. 592; Young v. Stoutz, 74 Ala. 574. **Prevails over claim of homestead exemption.** Tyler v. Jewett, 82 Ala. 93; McAnally v. Hawkins L. Co., 109 Ala. 397.

2725 (3020) (3443). **When building is on leased land.**—When the building or improvement is erected under or by virtue of any contract with a lessee in possession, and the erection thereof is not in violation of the terms or conditions of the lease, the lien shall attach to such building or improvement, and to the unexpired term of the lease, and the holder of the lien shall have the right to avoid a forfeiture of the lease by paying rent to the lessor, as it becomes due and payable, or by the performance of any other act or duty to which the lessee may be bound; and if the lien is enforced by a sale of the building or improvement, the purchaser may, at his election, become entitled to the possession of the demised premises, and to remain therein for the unexpired term, by paying rent to the lessor, or performing any other act or duty to which the lessee was bound, as if he were the assignee of the lease; or he may, within sixty days after the sale, remove such building or improvement from the premises; and if he elects to take possession and to remain therein until the expiration of the term of the lease, he may, within a reasonable time after the expiration of the term, remove such building or improvement from the premises. If, before a sale, the holder of the lien has made any payments of rent, or other pecuniary compensation to the lessor, which ought to have been paid by the lessee, he shall be reimbursed such payments from the proceeds of the sale.

Lien, extent of.—Rothe v. Bellingrath, 71 Ala. 55.

2726 (3021). **Right of lessor to discharge lien or prevent removal of building.**—When a lien attaches under the preceding section, the lessor, at any time before a sale of the property, shall have a right to discharge the same, by paying to the holder the amount secured thereby, including costs and all moneys he may have paid to the lessor to prevent a forfeiture of the lease; and after a sale, he

shall have the right to prevent the removal of the building or improvement from the premises by paying to the purchaser the value of such building or improvement; and upon such payment, either to the holder of the lien or to the purchaser, such building or improvement shall become the property of the lessor.

2727 (3022) (3444). **Verified statement to be filed in the office of the judge of probate.**—It shall be the duty of every original contractor within six months, and of every journeyman and day-laborer within thirty days, and of every other person entitled to such lien within four months, after the indebtedness has accrued, to file in the office of the judge of probate of the county in which the property upon which the lien is sought to be established is situated, a statement in writing, verified by the oath of the person claiming the lien or of some other person having knowledge of the facts, containing a just and true account of the demand secured by the lien, after all the just credits have been given, a description of the property on which the lien is claimed, and the name of the owner or proprietor thereof; but no error in the amount of the demand or in the name of the owner or proprietor shall affect the lien; and unless such statement is so filed, the lien shall be lost.

Feb. 18, 1895, p. 1288, §2.

Claims properly filed, subsequent withdrawal permissible.—Bell v. Teague, 85 Ala. 211. **Verification of demand, when sufficient.**—Leftwich L. Co. v. Florence M. B. L. & S. Asso., 104 Ala. 584. **When not sufficient.**—Globe I. R. & C. Co. v. Thacher, 87 Ala. 458; Florence B. & I. Asso. v. Schall, 107 Ala. 531; McConnell v. Meridian Sash & Blind Factory, 112 Ala. 582. **Statement of account filed, when sufficient.**—Greene v. Robinson, 110 Ala. 503; Garrison v. Hawkins L. Co., 111 Ala. 308; Leftwich L. Co. v. Florence M. B. L. & S. Asso., 104 Ala. 584; Bell v. Teague, 85 Ala. 211; Hughes v. Torgerson, 96 Ala. 346; Bedsole v. Peters, 79 Ala. 133; Lane & Bodley Co. v. Jones, Ib. 156; Montgomery Iron Works v. Dorman, 78 Ala. 218; Turner v. Robbins, 78 Ala. 592; Welch v. Porter & Co., 63 Ala. 225; Cook v. Rome Brick Co., 98 Ala. 409; Cutcliff v. McAnally, 88 Ala. 507.

2728 (3023). **By what officers oath administered out of state.** If the oath to such statement is made beyond this state, it may be administered by any officer authorized to take acknowledgments and proofs of conveyances beyond the state.

2729 (3024) (3445). **Record of statement and fee therefor.** The judge of probate shall indorse on such statement the date of its filing, and shall record the same in a book kept for that purpose, which shall be properly labeled and indexed, and note thereon the date of filing; for all which he shall receive fifteen cents a hundred words, which shall be secured to the party filing the statement by such lien.

As amended Feb. 19, 1889, p. 88.

Effect as notice.—Bell v. Teague, 85 Ala. 211.

2730 (3025). **Selection when tract exceeds one acre.**—When the land on which the building or improvement is situated is not in a city, town or village, and exceeds in area one acre, any person having a lien, or his personal representative, may at any time prior to filing his statement in the office of the judge of probate, select the one acre which shall be subject to the lien; such selection to include the site of such building or improvement and the land contiguous thereto, and to constitute but one lot or parcel.

Feb. 18, 1895, p. 1288, §3.

Ib. §4. **2731** (3026) (3457). **When lien claimed by other than contractor; notice to owner; unpaid balance subject.**—Every person, except the original contractor, who may wish to avail himself of the provisions of this article, shall, before filing his statement in the office of the judge of probate, give ten days' notice in writing to the owner or proprietor, or his agent, that he claims a lien on such building or improvement, setting forth the amount thereof, for what and from whom it is owing; and after such notice, any unpaid balance in the hands of the owner or proprietor shall be held subject to such lien. But the provisions of this section shall not apply to the case of any material furnished for such building or improvement of which the owner was notified in advance as provided in section 2723 (3018).

Subcontractor's lien; extent of.—Greene v. Robinson, 110 Ala. 503; Mobile St. Ry. v. Turner, 91 Ala. 213; Trammell v. Hudmon, 86 Ala. 472.

Ib. §5. **2732** (3027) (3458). **List of employes furnished owner; effect of failure.**—The original contractor shall, when so required, furnish to the owner or proprietor a complete list of all the material-men, laborers and employes who have furnished any material, or have done any labor, or performed any service, or who may be under any contract or engagement to furnish any material, or to do or perform any service for such contractor for or on such building or improvement, with the terms and price thereof; and if he fails or refuses to furnish such list or to give such information, or if he shall fail to pay any material-man, subcontractor, laborer or employe in accordance with any special contract made with the owner or proprietor, he shall thereby forfeit his right to a lien under this article.

Notice to owner.—Osborn v. Johnson Wall Paper Co., 99 Ala. 309; Trammell v. Hudmon, 86 Ala. 472; Seibs v. Engelhardt, 78 Ala. 508; Nunnally v. Dorand, 110 Ala. 539.

Ib. §6. **2733** (3028, 3048). **Jurisdiction of suits.**—When the amount involved exceeds fifty dollars, actions for the enforcement of liens under this article may be brought in the circuit court or court having like jurisdiction, or in the chancery court, of the county in which the property is situated, and where resort is had to the chancery court, no special ground of equitable jurisdiction need be alleged or proved. In all other cases actions to enforce such liens shall be brought before justices of the peace.

When in court of equity.—Colby v. St. James Church, 99 Ala. 259; Walker v. Daimwood, 80 Ala. 245; Wimberly v. Mayberry, 94 Ala. 240; Chandler v. Hanna, 73 Ala. 390; Birmingham B. & L. Asso. v. May & Thomas Hardware Co., 99 Ala. 276; McAnally v. Hawkins L. Co., 109 Ala. 397; Garrison v. Hawkins L. Co., 111 Ala. 308; Wadsworth v. Hodge, 88 Ala. 500. As to employes and material-men of subcontractor, only in equity.—Nunnally v. Dorand, 110 Ala. 539; Trammell v. Hudmon, 78 Ala. 222.

2734 (3029) (3446). **How suits brought; pleadings and practice.** Such actions, when brought in the circuit court or court of like jurisdiction, shall be commenced by summons and complaint, and when brought before justices of the peace, by summons. The complaint, or, when brought before justices of the peace, the statement indorsed on the summons, shall contain a description of the prop-

erty on which the lien is claimed, and shall allege the facts necessary to entitle the plaintiff to the lien and the enforcement thereof; in all other respects, the pleadings, practice and proceedings shall be the same as in ordinary civil actions at law.

Florence B. & I. Asso. v. Schall, 107 Ala. 531; Chandler v. Hanna, 73 Ala. 390; Globe I. R. & C. Co. v. Thacher, 87 Ala. 458; Porter v. Miles, 67 Ala. 130; Colby v. St. James Church, 99 Ala. 259; Osborn v. Johnson Wall Paper Co., 99 Ala. 309; Cook v. Rome Brick Co., 98 Ala. 409; Hughes v. Torgerson, 96 Ala. 346.

2735 (3030) (3447). **Parties to such actions.**—In such actions, all persons interested in the matter in controversy, or in the property charged with the lien, may be made parties; but such as are not made parties shall not be bound by the judgment or proceedings therein.

Proper parties, who are.—Roman v. Thorn, 83 Ala. 443; Trammell v. Hudmon, 78 Ala. 222; Trammell v. Hudmon, 86 Ala. 472; Young v. Stoutz, 74 Ala. 574; Hughes v. Torgerson, 96 Ala. 346; Wimberly v. Mayberry, 94 Ala. 240; Porter v. Miles, 67 Ala. 130; Lee v. Wimberly, 102 Ala. 539; Leftwich L. Co. v. Florence M. B. L. & S. Asso., 104 Ala. 584; Florence B. & I. Asso. v. Schall, 107 Ala. 531; Pensacola R. Co. v. Schaffer, 76 Ala. 233.

2736 (3031) (3448). **Revivor in case of death.**—On the death of any party to such suit, his personal representative shall be made a party thereto, plaintiff or defendant, as the case may be, and it shall not be necessary to make his heirs or devisees parties; but if he has no personal representative, and it is not desired to have one appointed, his heirs or devisees may be made parties.

If owner dies before suit, heirs necessary parties.—Hughes v. Torgerson, 96 Ala. 346.

2737 (3032) (3448). **Infants, lunatics; service on; guardian ad litem; judgment.**—When infants or persons non compos mentis are made parties defendant in such suit, the court must appoint a guardian ad litem to represent them and to protect their interests therein; and the judgment and proceedings in any such suit shall be as binding on them as on adults or persons of sound mind. If the infants are fourteen years of age, or over, service shall be made on them personally; if under the age of fourteen years, it shall be made for them on the person having charge or custody of them.

2738 (3033). **Service by publication.**—When any defendant is absent from, or a non-resident of the state, or secretes himself so that service of process cannot be had upon him, upon affidavit being made of such fact, publication shall be made as to such defendant, as in cases commenced by attachment.

2739 (3034). **Issues, verdict and judgment.**—Any defendant, by appropriate plea, may put in issue the fact of indebtedness, or the existence of the lien, or both, and may interpose any other defense applicable to the suit; and if the court by its finding, or the jury by their verdict, as the case may be, ascertain that the plaintiff has a lien as claimed, judgment shall be rendered for the amount secured thereby, interest and costs, against the party liable for the same, and establishing the lien, and condemning the property to sale for the satisfaction thereof; but if the finding or verdict is for the plain-

tiff only on the issue of indebtedness, a judgment shall be rendered in his favor for the amount thereof as in other cases.

Judgment, what must recite.—Porter v. Miles, 67 Ala. 130; Turner v. Robbins, 78 Ala. 592; Hughes v. Torgerson, 96 Ala. 346; Florence B. & I. Asso. v. Schall, 107 Ala. 531; Lee v. Wimberly, 102 Ala. 539. **Sufficiency of verdict.** Bedsole v. Peters, 79 Ala. 133; Ex parte Schmidt v. Smith, 62 Ala. 252.

2740 (3035) (3450). **Judgment by default.**—Judgment by default may be rendered against any defendant, except infants and persons non compos mentis, who, after service has been perfected on him, fails to appear within the time required by law in other cases.

2741 (3036) (3453). **Enforcement of judgments.**—Judgments establishing the lien, and ordering the property sold for the satisfaction thereof, may be enforced by writs of fieri facias or venditioni exponas; but if by fieri facias, the clerk shall indorse thereon the fact that the lien has been established and a description of the property.

2742 (3037). **Enforcement of judgment when rendered by justice of the peace.**—Upon the rendition of such judgment by a justice of the peace, he shall transmit all the papers and a certified transcript of the judgment to the clerk of the circuit court, or court of like jurisdiction; and thereupon such clerk shall enter the cause on the execution-docket, record the judgment, and issue a writ of fieri facias or venditioni exponas, as on judgments rendered in that court.

2743 (3038) (3459). **Suits by employes, etc.; contractor necessary party; garnishment against owner.**—If the suit is by an employe of the contractor, or by any person who has furnished to him material for the building or improvement, the contractor shall be a necessary party defendant thereto; and in such suit, on motion of the plaintiff, the owner or proprietor may be cited to answer under oath how much was owing by him to the contractor, at the time of the service on him of the notice required by section 2731 (3026), on his contract with such contractor; and such answer may be controverted, and proceedings had and judgment rendered as in garnishment cases.

2744 (3039) (3459). **When contractor must defend suit, and owner entitled to withhold or recover money from contractor.** When the lien is sought to be enforced by any person other than the contractor, it shall be the duty of the contractor to defend the suit at his own expense; and after notice of an intention to file a statement of the lien, and pending the suit, the owner or proprietor may withhold from the contractor money sufficient to cover the amount claimed, and the probable costs and expense of suit; and in case of recovery against the owner or proprietor, or his property, he shall be entitled to deduct from the amount owing by him to the contractor the amount of such judgment, costs and expense; and if he shall have settled with the contractor, he shall be entitled to recover from the contractor the amount recovered of, and paid by him; and such recovery may be had in the same court, on motion, on three days' notice.

Porter v. Miles, 67 Ala. 130.

2745 (3040) (3461). **Liens of employes, etc., on equal footing.** All liens arising under this article, except in favor of the original contractor, shall stand on an equal footing, and be first paid out of the proceeds of the sale of the property, or money collected from the owner or proprietor; and if such proceeds and money are insufficient to satisfy such liens in full, the same shall be distributed pro rata among the holders thereof; but no person shall be entitled to participate in such distribution until he has obtained judgment establishing his lien.

Lee v. Wimberly, 102 Ala. 539.

2746 (3041) (3454). **Limitation.**—Except in cases hereinafter provided, all liens arising under this article shall be deemed lost, unless suit for the enforcement thereof is commenced within six months after the maturity of the entire indebtedness secured thereby. As amended Feb. 18, 1895, p. 1238, §7.

Begins to run, when.—Garrison v. Hawkins L. Co., 111 Ala. 308; Cutcliff v. McAnally, 88 Ala. 507. **Must be pleaded.**—Garrison v. Hawkins, L. Co., 111 Ala. 308. **Applies to new parties by amendment.**—Seibs v. Engelhardt, 78 Ala. 508.

2747 (3042). **Additional time to representative for filing statement and bringing suit.**—If any person entitled to a lien under this article shall die before the time has elapsed for filing his statement in the office of the judge of probate without filing it, his personal representative may file the same within three months after the grant of letters; and if such person shall die before commencing suit for the enforcement of his lien, and the lien is not lost at the time of his death, his personal representative may bring suit for the enforcement thereof at any time within six months after the grant of letters.

2748 (3043). **Suits against representatives within six months after grant of letters.**—The provisions of this Code prohibiting the bringing of suits against personal representatives within six months after the grant of letters, shall not apply to suits brought under the provisions of this article.

2749 (3044) (3455). **Satisfaction acknowledged of record.** Whenever any such lien has been fully satisfied, the holder thereof must acknowledge satisfaction of the same on the margin of the record in the office of the judge of probate.

2750 (3045) (3456). **Penalty for failure.**—Any holder of such lien who, after having been fully paid, fails for ten days after demand to so acknowledge satisfaction thereof, shall be liable to any person thereby injured to the amount of such injury.

2751 (3046) (3460). **"Owner or proprietor" defined.**—Every person, including married women and cestuis que trust, for whose use, benefit, or enjoyment any building or improvement shall be made, is embraced within the words "owner or proprietor," as used in this article.

Includes married women and cestuis que trust.—Youngblood & Ehrman v. McAnally, 88 Ala. 512; Cutcliff v. McAnally, Ib. 507; Wadsworth v. Hodge, Ib. 500; Copeland v. Kehoe, 67 Ala. 594; Schmidt v. Joseph, 65 Ala. 475; Ex parte Schmidt, 62 Ala. 252.

2752 (3047). **Lien may be assigned.**—Any claim for which a lien

is provided in this article may be assigned; and the assignee shall be thereby invested with all the rights of the original holder of the lien, and be entitled to all his remedies to enforce them.

Leftwich L. Co. v. Florence M. B. L. & S. Asso., 104 Ala. 584; Lee v. Wimberly, 102 Ala. 539; Westmoreland v. Foster, 60 Ala. 448.

ARTICLE 2.

BLACKSMITHS AND WOOD-WORKMEN.

2753 (3049) (3462). **Lien declared.**—Any blacksmith, wood-workman, or other mechanic, who contributes his labor and material, or either, to the production, manufacture, or repair of any vehicle, implement, machine, or article of any kind, shall have a lien thereon in the hands of any person for whom such vehicle, implement, machine, or article was made or repaired, or to whom sold, and in the hands of any purchaser with notice of such lien, for the agreed price, or the value if no price was agreed upon, of the labor and material, or either, contributed to the production, manufacture, or repair of the same.

2754 (3050) (3464). **Attachment to enforce lien; bond and affidavit.**—Any person entitled thereto may enforce such lien in any court of law, of competent jurisdiction, by attachment issued by any officer authorized to issue such writs, upon executing bond as in other cases of attachment, and upon making affidavit that the attachment is not sued out for the purpose of vexing or harassing the defendant, and describing the property on which the lien is claimed, and setting forth all the facts necessary to the creation of the lien under the preceding section, and the amount due, and that one of the following causes of attachment exists:

1. That the person for whom such vehicle, implement, machine, or article was made or repaired, or to whom sold, is the owner thereof, and that the price, if agreed on, or if not, the value of the same, or of the repair thereof, or some part of either, is due and unpaid.

2. That the person for whom such vehicle, implement, machine, or article was made or repaired, or to whom sold, has transferred or sold the same to a purchaser with notice of the lien, and that the price, if agreed on, or if not, the value of the same, or of the repair thereof, or of some part of either, is due and unpaid.

Affidavit before unauthorized officer; objection too late after judgment. Ballard v. Mayfield, 107 Ala. 396.

2755 (3051) (3463). **Joinder of persons having liens on same property; verdict, judgment and distribution.**—Persons having liens under the provisions of this article, on the same property, may join in the same action for the enforcement of their respective liens; and when there is such joinder, the court or jury trying the cause must ascertain the amount due to each of the plaintiffs secured by the lien, and judgment must be rendered accordingly; but the failure of one or more of the plaintiffs to establish his or their liens

shall not defeat a recovery by the others. The proceeds of the sale of the property levied on, if not sufficient to satisfy the demands of all the plaintiffs, shall be distributed, after payment of the costs, pro rata among them.

2756 (3052) (3463). **Proceedings when one or more fail to join in action.**—When persons having such liens on the same property, refuse, after notice in writing, to join in such action, the persons giving the notice may proceed without them, on making affidavit of the fact of such notice and refusal; and notice of the levy of the attachment must be served on the persons refusing to join in the manner and within the time required for the service of such notice on the defendant; and such persons, either at the trial, or at any time prior thereto, on making affidavit setting forth all facts necessary to the creation of their liens, and the amounts thereof, may be made plaintiffs in the action, and the cause shall then proceed as if commenced jointly by them with the original plaintiffs; but on their failure to thus join, the cause shall proceed for the benefit of the original plaintiffs, who shall, in that event, be entitled to priority of satisfaction.

2757 (3053) (3464). **Limitation.**—Proceedings for the enforcement of any lien created by the provisions of this article must be commenced within six months after the demand becomes due; and unless commenced within that time, the lien is lost.

ARTICLE 3.

ON SHIPS, STEAMBOATS AND OTHER WATER-CRAFT.

2758 (3054) (3465). **Lien declared.**—A lien is hereby declared on any ship, steamboat, or other water-craft, whether registered, enrolled, or licensed, or not, that may be built, repaired, fitted, furnished, supplied, or victualed, within this state, for work done, or material supplied by any person within this state, in or about the building, repairing, fitting, furnishing, supplying, or victualing such ship, steamboat or other water-craft, and for the wages of the masters, laborers, stevedores and ship-keepers of such ship, steamboat, or other water-craft, in preference to other liens thereon for debts contracted by, or owing from the owners thereof; and for wharfage and dockage; and such lien may be asserted in any court of competent jurisdiction.*

No distinction between the two classes of creditors named.—McClure v. Dellett, 38 Ala. 336.

2759 (3055) (3466). **Limitation.**—Proceedings to enforce such lien must be commenced within six months after the demand becomes due; and unless commenced within that time, the lien is lost.

*As amended by joint committee.

ARTICLE 4.

TENANTS IN COMMON.

2760 (3075) (3479). **Lien of tenant in common on crop of cotenant.**—Persons farming on shares, or raising crops by joint contributions, in such manner as to make them tenants in common in such crops, or their assignees, shall each have a lien upon the interest of the other in such crops for any balance due for provisions, supplies, teams, materials, labor, services and money, or either, furnished to aid in cultivating and gathering such crops, under contract, or furnished when the interest of such crops requires it, in case of a failure of either to contribute the amount and means as agreed upon by the parties.

Statute liberally construed.—Mooney v. Hough, 84 Ala. 80; Winslow v. State, 97 Ala. 68.

2761 (3076) (3480). **Lien enforceable by attachment; grounds; remedy cumulative.**—Such lien may be enforced by attachment upon the grounds, and in the manner provided for the enforcement of the landlord's lien on crops grown on rented lands; but this section shall not prevent the enforcement of such lien by any other remedy.

Irregularities in proceedings before justice not available on appeal.—Horton v. Miller, 84 Ala. 537; Knowles v. Steed, 79 Ala. 427. Affidavit sufficiency. Reese v. Rugely, 82 Ala. 267; Horton v. Miller, 84 Ala. 537; Watts v. Womack, 44 Ala. 605; Ballard v. Stevens, 92 Ala. 616.

ARTICLE 5.

AGRICULTURAL SUPERINTENDENTS AND LABORERS, AND RAILROAD EMPLOYES.

2762 (3077) (3481). **Lien in favor of railroad laborers and employes.**—Laborers and employes of each railroad company operated in this state, except the officers thereof, shall have a lien for all debts due to them for work and labor done and performed by them for such company, which shall extend to, and cover all the property, rights, effects and credits of every description belonging to such company, and situate in this state.

2763 (3078) (3482). **Lien in favor of agricultural laborers and superintendents.**—Agricultural laborers and superintendents of plantations shall have a lien upon the crops grown during the current year in and about which they are employed, for the hire and wages due them for labor and services rendered by them in and about the cultivation of such crops under any contract for such labor and services; but such lien shall be subordinate to the landlord's lien for rent and advances, and to any other lien for supplies furnished to make the crops.

Embraces services rendered under implied contract.—Wilson v. Taylor, 82 Ala. 368; Johnston v. Hannah, 66 Ala. 127. Judgment at law not a bar to other remedies.—Wilson v. Taylor, 89 Ala. 368. Against whom it prevails. Townsend v. Brooks, 76 Ala. 308; Scaife v. Stovall, 67 Ala. 237; Starke v. Bernheim, 102 Ala. 464.

2764 (3079) (3484). **Limitation.**—The liens created by this article shall be held to have been waived or abandoned, unless proceedings to enforce the same are commenced within six months after the work shall have been completed.

2765 (3080) (3485). **Liens enforced by attachment.**—For the enforcement of such liens the persons entitled may sue out attachments before any officer authorized to issue such writs, returnable before any court of competent jurisdiction; but before any attachment shall issue, the plaintiff, his agent or attorney, must make affidavit of the amount due, that the same remains unpaid, and that the attachment is not sued out for the purpose of vexing or harassing the defendant, and must describe therein the property on which the lien is claimed.

Not lost by taking judgment at law.—Wilson v. Taylor, 89 Ala. 368.

2766 (3081) (3486). **When attachment issues whether debt due or not; additional affidavit.**—An agricultural laborer or superintendent of a plantation may sue out an attachment, whether his demand is due or not; but, in either event, he shall, in addition to the affidavit required in the preceding section, make affidavit that such demand is or will be due, as the case may be, and that the defendant, without the consent of, and contrary to his agreement with the plaintiff, is about to remove the crop from the premises without paying such demand, or that the defendant has so removed such crop, or some portion thereof.

Wilson v. Taylor, 89 Ala. 368.

2767 (3082) (3487). **Bond required before issue of attachment.** Before any attachment shall be issued under the provisions of this article, the plaintiff, his agent or attorney, must also execute a bond in double the amount claimed, payable to the defendant with sufficient surety, to be approved by the officer issuing the attachment, with condition that the plaintiff will prosecute the attachment to effect, and pay the defendant all such damages as he may sustain from the wrongful or vexatious suing out of such attachment.

2768 (3083) (3483). **Attachment to be levied only on crop sufficient to pay demand.**—When an attachment is sued out by an agricultural laborer or a superintendent of a plantation, it shall not be levied on a greater portion of the crop than is sufficient to satisfy the plaintiff's demand and the costs of the suit.

2769 (3084) (3488). **Time, notice and manner of trial.**—Cases arising under this article shall stand for trial at the time, and shall be tried in the manner, and upon the notice required in other attachment cases.

2770 (3085) (3490). **Property or proceeds subject to garnishment.**—All the property upon which a lien is created under the provisions of this article, or the proceeds thereof, in the hands of third parties, shall be subject to garnishment for the enforcement and satisfaction of such lien; and such garnishment, and the pro-

ceedings thereunder, shall be governed by the laws of force relating to other garnishments, so far as the same are applicable.

2771 (3086) (3491). **Other remedies.**—Nothing in this article contained shall be so construed as to prevent any person having a lien thereunder from resorting to any other remedy, legal or equitable, which he may have for the enforcement of his lien or the collection of his demand.

2772 (3087) (3492). **When crop not to be removed.**—No part of any crop levied on under the provisions of this article shall be removed from the premises on which it was raised until all claims for rent and advances for the current year have been satisfied.

2773 (3088) (3493). **When prior liens must be satisfied.**—Any officer enforcing the satisfaction of any lien under the provisions of this article, shall first apply the proceeds of the crop or property in his hands to the payment of any debt or claim of any third party which constitutes a prior lien upon such crop or property, if the priority of such lien has been established, and the claim ordered to be paid by the court before which the case is tried.

ARTICLE 6.

LIVERY-STABLE KEEPERS.

2774 (3089) (3494). **Lien declared.**—Any keeper, owner, or proprietor of a livery-stable shall have a lien on all stock kept and fed by him, for the payment of his charges for keeping and feeding such stock, and he shall have the right to retain the stock, or so much thereof as may be necessary, for the payment of such charges.

At common law an agistor had no lien for pasturage.—Pearce v. Jennings, 94 Ala. 524. Subordinate to prior recorded mortgage.—Chapman v. First Nat. Bk., 98 Ala. 528.

2775 (3090) (3495). **Sale to satisfy lien.**—If the charges when due, are not paid within ten days after demand therefor, such keeper, owner or proprietor is authorized, on giving thirty days' notice of the time and place of such sale, by advertisement in some newspaper published in the county in which the stable is located, once a week for three successive weeks, or, if there be no such paper, by posting the notice in three conspicuous places in the county, to sell the stock for the payment of the charges and expense of keeping and of the sale; and the balance, if any there be, he shall pay over to the owner.

ARTICLE 7.

OWNERS OF STALLIONS, JACKS, BULLS, RAMS, HE-GOATS AND BOARS.

As amended Feb. 2. 1895, p. 367.

2776 (3091) (3496). **Lien declared.**—The owner of every stallion, jack, bull, ram, he-goat, or boar, who keeps it for profit and charges a price for the service thereof, shall have a lien, for the amount of

the stipulated price thereof, on any mare, jenny, cow, ewe, she-goat or sow, to which such stallion, jack, bull, ram, he-goat or boar is put, and also on the colt, calf, lambs, kids, or pigs born next after such service or contract therefor, and such lien shall be paramount to, and have precedence over, all other liens on the colt, calf, lambs, kids, or pigs born next after such service.

Subordinate to prior recorded mortgage.—Mayfield v. Spiva, 100 Ala. 223.

2777 (3092). **Attachment; grounds for.**—For the enforcement of such lien the owner of any such animal may have process of attachment from any court having jurisdiction of the amount claimed, leviable on the animal or animals upon which the lien exists—

1. When such claim is due, and the defendant, on demand, fails or refuses to pay.

2. Whether such sum is due or not, when the defendant has traded off, or otherwise disposed of, or there is good reason to believe he is about to trade off, or otherwise dispose of, or remove from the county, any of the animals on which the lien exists, without paying the stipulated price for such service.

2778 (3093). **Affidavit and bond required.**—Before such attachment shall issue, the plaintiff, his agent or attorney, must make affidavit of the amount of such stipulated price, whether the same is, or is not due, and if not due, when the same will become due, that the attachment is not sued out for the purpose of vexing or harassing the defendant, and that some one of the enumerated causes for such attachment exists, and must describe therein the property on which the lien is claimed; and he must also execute bond as prescribed by section 2767 (3082).

2779 (3094). **Time, notice and manner of trial.**—Cases arising under this article shall stand for trial at the time, and shall be tried in the manner, and upon the notice required in other attachment cases.

ARTICLE 8.

FOR STUMPAGE.

2780. Lien declared.—Owners of land, or their assignees, shall have a lien upon timber sold therefrom for purposes of rafting, shipment, or manufacture, for the stipulated price or value thereof, commonly known as stumpage. Dec. 17, 1894, p. 250, §1.

2781. Attachment; grounds.—For the enforcement of such lien, the owners of such land, or their assignees, may have process of attachment from any court having jurisdiction of the amount claimed leviable upon the timber upon which the lien exists— Ib. §2.

1. When such claim is due and the defendant, on demand, fails or refuses to pay the same.

2. Whether such claim is due or not, when the defendant has removed any part of such timber from such land without paying the stipulated price, or the value thereof when no price has been stipu-

lated, and without the consent of the owners of such lands, or, if the claim has been assigned, without the consent of the assignee.

3. Whether such claim is due or not, when the plaintiff has good cause to believe that the defendant is about to remove any part of such timber from such land without paying the stipulated price thereof, or, in the event no price has been stipulated, the value thereof, and without the consent of the owners of such lands, or, if the claim has been assigned, without the consent of the assignee.

2782. Affidavit and bond required.—Before such attachment shall issue, the plaintiff, his agent or attorney, must make affidavit setting forth the amount of such claim, that one of the causes for issuing attachment prescribed in the preceding section exists, and that the attachment is not sued out for the purpose of vexing or harassing the defendant, and must also execute a bond in double the amount claimed with sufficient sureties payable to the defendant and with condition that the plaintiff will prosecute the attachment to effect and pay the defendant all such damages as he may sustain from the wrongful or vexatious suing out of such attachment.

2783. Time, notice and manner of trial.—Cases arising under this article shall stand for trial at the time, and shall be tried in the manner, and upon the notice required in other attachment cases, and shall be barred unless brought within six months from the accrual of the lien.

ARTICLE 9.

OWNERS OF BOOMS AND BULKHEADS.

Feb. 18, 1895, p. 992.

2784. Lien declared.—Any riparian proprietor who has lawfully erected or maintains in front of his property, in any water of this state, any boom, bulkhead, piles, or other structure, shall have the right to charge any person who shall fasten thereto any vessel, boat, flatboat, raft, log or stick of timber or wood, five dollars a day for every vessel or boat other than a flatboat; two dollars a day for each flatboat; five cents a day for every pole, log or stick of timber or wood, and shall have a lien for the collection of such charges upon such vessel, boat, flatboat, raft, log or stick of timber or wood.

2785. Attachment; grounds.—For the enforcement of such lien, the owner of such boom, bulkhead, piles, or other structure, may have process of attachment from any court having jurisdiction of the amount claimed leviable upon the vessel, boat, flatboat, raft, log or stick of timber or wood upon which the lien exists—

1. When such claim is due and the defendant, on demand, fails or refuses to pay the same.

2. Whether such claim is due or not, when the defendant has removed, or there is good reason to believe he is about to remove, any of the property on which the lien declared in the preceding section exists, without paying such charges.

2786. Affidavit and bond required.—Before such attachment

shall issue, the plaintiff, his agent or attorney, must make affidavit of the amount of such charge, whether the same is or is not due, and if not due, when the same will become due, that the attachment is not sued out for the purpose of vexing or harassing the defendant, and that some one of the enumerated causes for such attachment exists, and must describe therein the property on which the lien is claimed, and he must also execute bond as prescribed by section 2767 (3082).

2787. Time, notice and manner of trial.—Cases arising under this article shall stand for trial at the time, and shall be tried in the manner, and upon the notice required in other attachment cases; and shall be barred unless brought within six months from the time of accrual.

ARTICLE 10.

PUBLIC GINNERS.

2788. Lien declared.—Any public ginner who shall give public notice of the price for ginning, and the price at which bagging and ties will be furnished, by posting the same at the gin and at three public places in the county, shall have a lien paramount to all other liens upon all cotton ginned and baled by him under any contract with the owner of such cotton for the amount agreed upon for such ginning and baling, or, in the event no price was agreed upon, then for the advertised price, so long as the cotton ginned and baled remain at the gin or in possession of the owner of the gin, and if such cotton should be removed without the knowledge and consent of the ginner, the lien herein declared shall follow the cotton. The ginner shall have the right to hold any cotton ginned by him until the full amount of the charges due thereon shall have been paid. Feb. 18, 1895, p. 589.

2789. Sale to satisfy lien.—If the charges when due are not paid within ten days after demand therefor, the ginner is authorized, if he has retained possession of the cotton subject to the lien, on giving thirty days' notice of the time and place of such sale by advertisement in some newspaper published in the county in which the gin is located, once a week for three successive weeks, or, if there be no such paper, by posting the notice in three public places in the county, to sell the cotton to the highest bidder for the payment of the expenses of such sale and the charges for ginning and baling; and the residue, if any there be, he shall pay over to the owner.

2790. If cotton removed, attachment.—If the cotton subject to the lien declared in this article shall have been removed without the knowledge and consent of the ginner and without paying the charges for ginning and baling, the ginner may have process of attachment from any court having jurisdiction of the amount claimed, leviable on the cotton ginned and baled.

2791. Affidavit and bond required.—Before such attachment shall issue, the plaintiff, his agent or attorney, must make affidavit

of the amount due, that the attachment is not sued out for the purpose of vexing or harassing the defendant, and that the enumerated grounds for such attachment exist, and must describe therein the property on which the lien is claimed, and he must also execute bond as prescribed by section 2767 (3082).

2792. Time, notice and manner of trial.—Cases of attachment arising under this article shall stand for trial at the time, and shall be tried in the manner, and upon the notice required in other attachment cases, and shall be barred unless brought within six months from accrual.

CHAPTER 72.

LIMITATION OF ACTIONS.

ARTICLE 1.—TIME IN WHICH SUITS MUST BE BROUGHT. 2793-2802.
2.—GENERAL RULES. 2803-2824.

ARTICLE 1.

TIME IN WHICH SUITS MUST BE BROUGHT.

2793 (2612) (3223) (2898) (2474). **Limitation of actions.**—Civil suits must be commenced, after the cause of action has accrued, within the period prescribed in this chapter, and not afterwards.

The statute does not annul contracts, nor extinguish debts; merely bars the remedies specified.—Ware v. Curry, 67 Ala. 274; Molton v. Henderson, 62 Ala. 426; Jones v. Jones, 18 Ala. 248; Towns v. Bardwell, 1 Stew. & Port. 36. **Statute liberally construed.**—Martin v. Tally, 72 Ala. 23. **Bar, when complete, not affected by change of statute.**—Ala. State Land Co. v. Beck, 108 Ala. 71. **One remedy may be barred without affecting others.**—Ware v. Curry, 67 Ala. 274; Chapman v. Lee, 64 Ala. 483; Ivey v. Owens, 28 Ala. 641. **As to property, statute operates on the title,** defeating that of the true owner and vesting it in the adverse possessor.—Molton v. Henderson, 62 Ala. 426; Brown v. Brown, 5 Ala. 508; Doyle v. Bouler, 7 Ala. 246; Jones v. Jones, 18 Ala. 248; Farmer v. Eslava; 11 Ala. 1028; Howell v. Hair, 15 Ala. 194; Newcombe v. Leavitt, 22 Ala. 631; Lay v. Lawson, 23 Ala. 377; Burks v. Mitchell, 78 Ala. 61; Alexander v. Wheeler, Ib. 167. **Statute does not run against the state.**—Ware v. Swann & Billups, 79 Ala. 330; Swann & Billups v. Lindsey, 70 Ala. 507; Swann & Billups v. Larmore, Ib. 555; Wright v. Swan, 6 Porter, 84; Kennedy v. Townsley, 16 Ala. 239; Iverson v. Dubose, 27 Ala. 418; Ware v. Greene, 37 Ala. 494. **Nor against the federal government.**—Wagnon v. Fairbanks, 105 Ala. 527; Wiggins v. Kirby, 106 Ala. 262; Stephens v. Moore, Ala. (22 So. 542). **Nor against action to abate a public nuisance.**—Webb v. Demopolis, 95 Ala. 116; Reed v. May. & Ald. of Birmingham, 92 Ala. 339; Olive v. State, 86 Ala. 88; Wright & Rice v. Moore, 38 Ala. 593. **Nor against express, continuing trusts,** until there has been a repudiation of the trust, and that fact brought to the knowledge of the beneficiary.—DeBardelaben v. Stoudenmire, 82 Ala. 574; McCarthy v. McCarthy, 74 Ala. 546; Whetstone v. Whetstone, 75 Ala. 495; Hastie v. Aiken, 67 Ala. 313; Causler v. Whorton, 62 Ala. 358; Blackwell v. Blackwell, 33 Ala. 57. **Nor against remainder-man,** until the termination of life-estate.—Pickett v. Pope, 74 Ala. 122; Bass v. Bass, 88 Ala. 408; Gindrat v. Western Ry., 96 Ala. 162; McLeod v. Bishop, 110 Ala. 640. **Implied or constructive trusts** are within the statute.—Nettles v. Nettles, 67 Ala. 599; Maury v. Mason, 8 Porter, 211; Wood v. Wood, 3 Ala. 756; Kimbro v. Waller, 21 Ala. 376; Tarleton v. Goldthwaite, 23 Ala. 346; Martin v. Branch Bank, 31 Ala. 115; Lockard v. Nash, 64 Ala. 385. **When perfect**

against trustee, beneficiary also barred.—Molton v. Henderson, 62 Ala. 426; Colburn v. Broughton, 9 Ala. 351; Bryan v. Weems, 29 Ala. 423; Fleming v. Gilmer, 35 Ala. 62; Love v. Love, 65 Ala. 554. **Statute runs against grantee of the government.**—Dillingham v. Brown, 38 Ala. 311. **And against state when a mere trustee.**—Miller v. State, 38 Ala. 600; Molton v. Henderson, 62 Ala. 426; Ware v. Swann & Billups, 79 Ala. 330. **And against political subdivisions of the state.**—Wyatt v. Tindall, 97 Ala. 594; Miller v. State, 38 Ala. 600. **When statute begins to run**—generally, **not until there is some one entitled to sue,** and some one against whom suit may be brought.—Manning v. Pippen, 86 Ala. 357; S. A. & M. R. Co. v. Buford, 106 Ala. 303; Baker v. Barclift, 76 Ala. 414; Swann v. Lindsey, 70 Ala. 507; Underhill v. Mobile Ins. Co., 67 Ala. 45; Wyatt v. Rambo, 29 Ala. 510; Lawson v. Lay, 24 Ala. 184; Hopper v. Steele, 18 Ala. 828; Bohannon v. Chapman, 17 Ala. 696; Chambers v. Marks, 93 Ala. 412; Phillips v. Taylor, 96 Ala. 426. When begins to run **between guardian and ward.**—Taylor v. Kilgore, 33 Ala. 214; Alston v. Alston, 34 Ala. 15; Garrett v. Garrett, 69 Ala. 429. In favor of **sureties on bond of personal representative.**—Bonner v. Young, 68 Ala. 35; Fatman v. Fatman, 82 Ala. 223; Fretwell v. McLemore, 52 Ala. 124; Baker v. Barclift, 76 Ala. 414; Montgomery v. Gordon, 51 Ala. 377; Pugh v. Youngblood, 69 Ala. 296. In favor of **stockholder for unpaid subscription** for stock in private corporation. Semple v. Glenn, 80 Ala. 159; s. c., 91 Ala. 245; Lehman v. Glenn, 87 Ala. 618; Com. Fire Ins. Co. v. Board of Rev., 99 Ala. 1; McDonnell v. Ala. G. L. Ins. Co., 85 Ala. 401; Garner v. Hall, Ala. (21 So. 835). In favor of **mortgagee in possession.**—Smith v. Ga. Pac. R. Co., 88 Ala. 538; McCoy v. Gentry, 73 Ala. 105; Byrd v. McDaniel, 33 Ala. 18; Newburn v. Bass, 82 Ala. 622. In favor of **mortgagor, or his assignee.**—Ohmer v. Boyer, 89 Ala. 273; Relfe v. Relfe, 34 Ala. 500; O'Neal v. Seixas, 85 Ala. 80. **Between tenants in common.**—Beadle v. Seat, 102 Ala. 532; Brady v. Huff, 75 Ala. 80. **Between partners.**—Stovall v. Clay, 108 Ala. 105; Haynes v. Short, 88 Ala. 562; Cary v. Simmons, 87 Ala. 524; Chandler v. Wynne, 85 Ala. 301; Wells v. Brown, 83 Ala. 161; Brewer v. Brown, 68 Ala. 210; Bradford v. Spyker, 32 Ala. 134. **Between principal and agent.**—Baucum v. George, 65 Ala. 259. **In favor of vendee holding under executory contract** of purchase.—Carter v. Chevalier, 108 Ala. 563; Sample v. Reeder, 107 Ala. 227; Hancock v. Kelly, 81 Ala. 368; Ormond v. Martin, 37 Ala. 598; Relfe v. Relfe, 34 Ala. 500. **Against action on county warrants.**—Grayson v. Latham, 84 Ala. 546; Candwell v. Guynn, 54 Ala. 64. **Between original vendor and subpurchaser.**—Walker v. Crawford, 70 Ala. 567; Beard v. Ryan, 78 Ala. 37; Woodstock Iron Co. v. Roberts, 87 Ala. 436. **Between coterminous landowners**—agreed boundary line.—Davis v. Caldwell, 107 Ala. 526; Alexander v. Wheeler, 69 Ala. 332; s. c., 78 Ala. 167; Humes v. Bernstein, 72 Ala. 546; Bernstein v. Humes, 75 Ala. 241; Brown v. Cockrell, 33 Ala. 38. **Computation of time—exclude first day and include last.**—L. & N. R. Co. v. Watson, 90 Ala. 68; Beard v. Ryan, 78 Ala. 37. **When last day falls on Sunday that is also excluded.**—Allen v. Elliott, 67 Ala. 432. Statute **suspended during civil war**—January 11, 1861, to September 21, 1865.—Black v. Pratt Coal & Coke Co., 85 Ala. 504; Coleman v. Holmes, 44 Ala. 124; Fox v. Lawson, Ib. 319; Jones v. Nelson, 51 Ala. 471. **But not the rule of repose.**—Black v. Pratt Coal & Coke Co., 85 Ala. 504; Harrison v. Heflin, 54 Ala. 552; Garrett v. Garrett, 69 Ala. 429. **Creditor's bill to set aside fraudulent conveyance**—when barred.—Werborn v. Kahn, 93 Ala. 201; Lockard v. Nash, 64 Ala. 385; Scruggs v. Decatur Mfg. Co., 86 Ala. 173; Proskauer v. Peo. Sav. Bank, 77 Ala. 257; Martin v. Bank, 31 Ala. 115; Snodgrass v. Bank, 25 Ala. 161. **Exceptions mentioned in the statute are exclusive.** Barclay v. Smith, 66 Ala. 230; Howell v. Hare, 15 Ala. 194; Newbern v. Bass, 82 Ala. 622. **Statute a personal defense.**—Stoutz v. Huger, 107 Ala. 248; McCreary v. Jones, 96 Ala. 592; Greenlee v. Greenlee, 62 Ala. 330. **Personal representative cannot affect running of statute in favor of heirs.**—Lee v. Downey, 68 Ala. 98; Scott v. Ware, 64 Ala. 174; Steele v. Steele, Ib. 438; Pollard v. Scears, 28 Ala. 484. **Statute runs in favor of heirs against personal representative.**—Chandler v. Wynne, 85 Ala. 301; Lee v. Downey, 68 Ala. 98. **Cestuis que trust cannot set up statute against each other,** unless the trustee could make the same defense against them.—Hastie v. Aiken, 67 Ala. 313; Daniel v. Day, 51 Ala. 431. **Statute must be specially pleaded.**—Sands v. Hammell, 108 Ala. 624; Lassiter v. Thompson, 85 Ala. 223; Parker v. Jones, 67 Ala. 234; Bolling v. Jones, Ib. 508. **But not in actions for the recovery of property,** real or personal.—Bynum v. Gold, 106 Ala. 427; Molton v. Henderson, 62 Ala. 426; Lay v. Lawson, 23 Ala. 377; Traun v. Keiffer, 31 Ala. 136. **At law asserted by plea, not by demurrer.**—McCreary v. Jones, 96 Ala. 592; Huss v. Central R. Co., 66 Ala. 473. **In equity may be asserted by plea, answer, or demurrer.**—Stovall v. Clay, 108 Ala. 105; Lovelace v. Hutchinson, 106 Ala. 417; Stevenson v. Anderson, 87 Ala. 228; Cameron v. Cameron, 82 Ala. 392; Espy v. Comer, 76 Ala. 501; Thompson v. Parker, 68 Ala. 387; Underhill v. Mobile Ins. Co., 67 Ala. 45; Bercy v. Lavretta, 63 Ala. 374; Ragland v. Mor-

ton, 41 Ala. 344. **When well pleaded in equity.**—Love v. Love, 65 Ala. 554. **Computation of time as against amended complaint, or amended bill.**—L. & N. R. Co. v. Woods, 105 Ala. 561; Birmingham Mfg. Co. v. Gross, 97 Ala. 220; Turner v. White, Ib. 545; Winston v. Mitchell, 93 Ala. 554; Barker v. Anniston R. Co., 92 Ala. 314; Annis. & Atlan. R. Co. v. Ledbetter, Ib. 326; A. G. S. R. Co. v. Thomas, 89 Ala. 294; Elyton L. Co. v. Mingea, Ib. 521; Telegraph Co. v. Way, 83 Ala. 542; A. G. S. R. Co. v. Chapman, Ib. 453; A. G. S. R. Co. v. Smith, 81 Ala. 229; Dowling v. Blackman, 70 Ala. 303; Lansford v. Scott, 51 Ala. 557. **Vendor's lien, statute does not affect.**—Driver v. Hudspeth, 16 Ala. 348; Flinn v. Barber, 61 Ala. 530; Chapman v. Lee, 64 Ala. 483; Ware v. Curry, 67 Ala. 274; Relfe v. Relfe, 34 Ala. 500. **Nor mortgage.**—Coyle v. Wilkins, 57 Ala. 108; Goodwin v. Baldwin, 59 Ala. 127; Cook v. Parham, 63 Ala. 456. **Nor bar widow's claim of dower.**—Robert Graves Co. v. McDade, 108 Ala. 420; Elyton Land Co. v. Denny, 96 Ala. 336; Barksdale v. Garrett, 64 Ala. 277. **Stale demands—rule of repose.**—First Nat. Bank v. Nelson, 106 Ala. 535; Beadle v. Seat, 102 Ala. 532; Semple v. Glenn, 91 Ala. 245; Solomon v. Solomon, 83 Ala. 394; McCarthy v. McCarthy, 74 Ala. 546; Garrett v. Garrett, 69 Ala. 429; Nettles v. Nettles, 67 Ala. 599. **As bar to settlements by administrators, guardians, and other trustees.**—Semple v. Glenn, 91 Ala. 245; Gerard v. Futterer, 84 Ala. 323; Greenlees v. Greenlees, 62 Ala. 330; Harrison v. Heflin, 54 Ala. 552; McCartney v. Bone, 40 Ala 533. **Against mortgages and other liens.**—Ohmer v. Boyer, 89 Ala. 273; Solomon v. Solomon, 83 Ala. 394; Goodwin v. Baldwin, 59 Ala. 127. **Against claim for dower.**—Robert Graves Co. v. McDade, 108 Ala. 420; Barksdale v. Garrett, 64 Ala. 277; Elyton Land Co. v. Denny, 96 Ala. 336. **No prescription against action to abate a public nuisance.**—Reed v. Birmingham, 92 Ala. 339; Wright v. Moore, 38 Ala. 593; Webb v. City of Demopolis, 95 Ala. 116.

2794 (2613) (3224) (2899) (2475). **Limitation of twenty years.** Within twenty years,—

1. Actions at the suit of the state against a citizen thereof, for the recovery of real or personal property.

2. Actions by or for the use of any township, for the recovery of sixteenth section or other school lands belonging to the township.

3. Actions upon a judgment or decree of any court of this state, of the United States, or of any state or territory of the United States.

Subdivision 1.—Prestwood v. Watson, 111 Ala. 604; Swann v. Gaston, 87 Ala. 569; Swann v. Lindsey, 70 Ala. 507; Wyatt v. Tisdale, 97 Ala. 594; Miller v. State, 38 Ala. 600. **Subdivision 2.**—Gaston v. State, 88 Ala. 459; Wyatt v. Tisdale, 97 Ala. 594; Burks v. Mitchell, 78 Ala. 61.

2795 (2614) (3225) (2900) (2476). **Limitation of ten years.** Within ten years,—

1. Actions founded upon any contract or writing under seal.

2. Actions for the recovery of lands, tenements, or hereditaments, or the possession thereof, except as herein otherwise provided.

3. Motions and other actions against sheriffs, coroners, constables, and other public officers, for nonfeasance, misfeasance, or malfeasance in office.

Subdivision 1.—Garner v. Toney, 107 Ala. 352; Cobb v. Garner, 105 Ala. 467; M. & M. R. Co. v. Gilmer, 85 Ala. 422; Cotton v. Cotton, 75 Ala. 345; Blackman v. Hamilton, 47 Ala. 470; Moore v. Lessuer, 18 Ala. 606. **Subdivision 2.—Adverse possession, what is.**—Ivey v. Reddingfield, 107 Ala. 616; Wood v. Montevallo Coal Co., 84 Ala. 560; M. & M. R. Co. v. Gilmer, 85 Ala. 422; Lipscomb v. McLellan, 72 Ala. 151; Clark v. Snodgrass, 66 Ala. 233; Wiggins v. Kirby, 106 Ala. 262; Doe v. Eslava, 11 Ala. 1029; Rawls v. Doe, 23 Ala. 240; Beard v. Ryan, 78 Ala. 37; Burks v. Mitchell, Ib. 61; Dothard v. Penson, 72 Ala. 541; Stevenson v. Anderson, 87 Ala. 228; Newton v. L. & N. R. Co., 110 Ala. 474. **Extent of, when under color of title.**—Woods v. Montevallo Coal Co., 84 Ala. 560; Ryan v. Kilpatrick, 66 Ala. 332; Baucum v. George, 65 Ala. 259; Stovall v. Fowler, 72 Ala. 77; Woodstock Iron Co. v. Roberts, 87 Ala. 436; Carter v. Chevalier, 108 Ala. 563. **When without color of title.**—Ryan v. Kilpatrick, 66 Ala. 332; Burks v. Mitchell, 78 Ala. 61; Bell v. Denson, 56 Ala. 444; Hawkins v. Hudson, 45 Ala. 482; Herbert v. Hanrick, 16 Ala. 581; Smith v. Roberts, 62 Ala.

83. **Continuity of possession.**—Hollinsworth v. Walker, 98 Ala. 553; L. & N. R. Co. v. Philyaw, 88 Ala. 264; Carter v. Chevalier, 108 Ala. 563; Gary v. Woodham, 103 Ala. 421; Davidson v. Iron & Steel Co., 109 Ala. 383; Eureka Co. v. Norment, 104 Ala. 625; Riggs v. Fuller, 54 Ala. 141; Haden v. Ivey, 51 Ala. 381; Brady v. Huff, 75 Ala. 80; Marston v. Rowe, 43 Ala. 571. **Bona fides in asserting claim of title not necessary.**—Smith v. Roberts, 62 Ala. 83; State v. Conner, 69 Ala. 212; Alexander v. Wheeler, Ib. 332; Dothard v. Denson, 72 Ala. 541; Baucum v. George, 65 Ala. 259. **Adverse possession, as between husband and wife.**—Wells v. Amer. Mort. Co., 109 Ala. 430; Harper v. Rudd, 89 Ala. 371; Duncan v. Williams, Ib. 341; Scruggs v. Decatur M. & L. Co., 86 Ala. 173; Newbrick v. Dugan, 61 Ala. 251; Tompkins v. Nickols, 53 Ala. 197; Bragg v. Massie, 38 Ala. 105. **Adverse possession will not defeat dower.** Elyton Land Co. v. Denny, 108 Ala. 553; s. c., 96 Ala. 336; Barksdale v. Garrett, 64 Ala. 277. **Admission against claim of adverse possession after bar complete,** does not divest title; but evidence of nature of prior possession. Jones v. Williams, 108 Ala. 282; Lee v. Thompson, 99 Ala. 95; Trufant v. White, Ib. 526. See citations to section 2612.

2796 (2615) (3226) (2901) (2477). **Limitation of six years.** Within six years,—

1. Actions for any trespass to person or liberty, such as false imprisonment or assault and battery.

2. Actions for any trespass to real or personal property.

3. Actions for the detention or conversion of personal property.

4. Actions founded on a promise in writing not under seal.

5. Actions for the recovery of money upon a loan, upon a stated or liquidated account, or for arrears of rent due upon a parol demise.

6. Actions for the use and occupation of land.

7. Motions and other actions against the sureties of any sheriff, coroner, constable or any public officer, or actions against the sureties of executors, administrators, or guardians, for any misfeasance or malfeasance whatever of their principal; the time to be computed from the act done or omitted by their principal, which fixes the liability of the surety.

8. Motions and other actions against attorneys at law, for failure to pay over money of their clients, or for neglect or omission of duty.

9. Actions founded upon judgments obtained before justices of the peace of this state.

10. Actions upon any simple contract or specialty, not herein specifically enumerated.

Subdivision 3.—Campbell v. Woodstock Iron Co., 83 Ala. 351; Johnson v. Wrenn, 3 Stew. 172; Maury v. Mason, 8 Porter, 211; Powell v. Wragg, 13 Ala. 161; Sullivan v. Lawler, 72 Ala. 74; Strange v. Graham, 56 Ala. 614; Lockard v. Nash, 64 Ala. 385; Underhill v. Mobile Ins. Co., 67 Ala. 45. **Subdivision 4.** A. G. S. R. Co. v. Eichofer, 100 Ala. 224; Smith v. Harrison, 33 Ala. 706; Presslar v. Stalworth, 37 Ala. 402; Slaughter v. Mobile Co., 73 Ala. 134. **Subdivision 5.**—Hairston v. Sumner, 106 Ala. 381; Smith v. Branch Bank, 7 Ala. 880; Owen v. Henderson, Ib. 641; Bradford v. Spyker, 32 Ala. 134; Smith v. Harrison, 33 Ala. 706; Flinn v. Barber, 61 Ala. 530; Wise v. Faulkner, 45 Ala. 471; Cleveland v. Williamson, 57 Ala. 402; Causler v. Wharton, 62 Ala. 358; Brewer v. Browne, 68 Ala. 210; Nooe v. Garner, 70 Ala. 443. **Subdivision 6.** Boynton v. Sawyer, 35 Ala. 497; Slatter v. Meek, Ib. 528; James v. James, 55 Ala. 525; Kirkland v. Trott, 75 Ala. 321. **Subdivision 7.**—Governor v. Stonum, 11 Ala. 679; Ragland v. Calhoun, 36 Ala. 606; Rivers v. Flinn, 47 Ala. 481; Fretwell v. McLemore, 52 Ala. 124; Greenlees v. Greenlees, 62 Ala. 330; Vanderveer v. Ware, 65 Ala. 606; Harrison v. Heflin, 54 Ala. 552; Wright v. Lang, 66 Ala. 389; Adams v. Jones, 68 Ala. 117; Bonner v. Young, Ib. 35; Martin v. Tally, 72 Ala. 23. **Subdivision 8.**—Kimbro v. Waller, 21 Ala. 376. **Subdivision 9.** Field v. Sims, 96 Ala. 540. **Subdivision 10.**—Griel Bros. v. Pollak, 105 Ala. 249; Hairston v. Sumner, 106 Ala. 381.

2797 (2616) (3227) (2902) (2478). **Limitation of five years.** Within five years, all actions founded on equities of redemption, where lands have been sold under a decree of the court of chancery, existing in any person not a party to the proceedings, who claims under the mortgagor or grantor in the deed of trust.

Hunt v. Ellison, 32 Ala. 173; Aiken v. Bridgeford, 84 Ala, 195.

2798 (2617) (3228) (2903) (2479). **Limitation of four years.** Within four years, all actions or motions against any surety to any writ of error, appeal, replevy, or forthcoming bond, executed in any cause in any of the courts of the United States, or of any other state or country except this state.

2799 (2618) (3229) (2904) (2480). **Limitation of three years.** Within three years, actions to recover money due by open or unliquidated account, the time to be computed from the date of the last item of the account, or from the time when, by contract or usage, the account is due.

What is open account.—Sheppard v. Wilkins, 1 Ala. 62; Hoodwin v. Harrison, 6 Ala. 438; Mims v. Sturdevant, 18 Ala. 359. **What is not.**—Smith v. Branch Bank, 7 Ala. 880; Cairville v. Reynolds, 9 Ala. 969; Caruthers v. Mardis, 3 Ala. 599; Bradford v. Barclay, 39 Ala. 33; Taylor v. Forsey, 56 Ala. 426; Battle v. Reid, 68 Ala. 149. **Mutual accounts.**—Wilson v. Carvert, 18 Ala. 274; Todd v. Todd, 15 Ala. 743; Bradford v. Spyker, 32 Ala. 135; McCulloch v. Judd, 20 Ala. 703. **Action to recover value of services rendered under written contract.**—Chambers v. Seay, 87 Ala. 558; Hood v. League, 102 Ala. 228. **Plea of the statute.**—Lassiter v. Thompson, 85 Ala. 223; Winston v. University, 1 Ala. 124; Brooks v. McFarland, 20 Ala. 483; Harrison v. Harrison, 39 Ala. 489; Wright v. Presston, 55 Ala. 570; Galbreath v. Cole, 61 Ala. 139; Battle v. Reed, 68 Ala. 149; Gayle v. Johnson, 72 Ala. 254.

2800. Limitation of two years.—Action by representative to recover damages for wrongful act, omission or negligence causing death of the decedent, under section 27 (2589).

2801 (2619) (3231) (2905) (2481). **Limitation of one year.** Within one year,—

1. Actions for malicious prosecutions.

2. Actions for criminal conversation, for seduction, or breach of marriage promise.

3. Actions qui tam, or for a penalty given by statute to the party aggrieved, unless the statute imposing it prescribes a different limitation.

4. Actions of libel or slander.

5. Actions for damages for wrongful act or omission, causing personal injury to, or death of a minor, under section 26 (2588).

6. Actions for any injury to the person or rights of another, not arising from contract, and not herein specifically enumerated.

Subdivision 6.—K. C. M. & B. R. Co. v. Whitehead, 109 Ala. 495; O'Keif v. M. & C. R. Co., 99 Ala. 524; L. & N. R. Co. v. Orr, 91 Ala. 548; Roundtree v. Brantley, 34 Ala. 544; McGill v. Monette, 37 Ala. 49; Polly v. McCall, Ib. 20; Nicholson v. M. & M. R. Co., 49 Ala. 205; Eagle Co. v. Gibson, 62 Ala. 369; M. & M. R. Co. v. Crenshaw, 65 Ala. 566; Huss v. Central R. Co., 66 Ala. 472; Hughes v. Anderson, 68 Ala. 280; A. G. S. R. Co. v. Hawk, 72 Ala. 112; Sheffield v. Harris, 101 Ala. 564; s. c., 112 Ala. 614.

2802. Agreement or stipulation to shorten statute of limitations void.—Any agreement or stipulation, verbal or written, whereby the

time for the bringing of any action is limited to a time less than that prescribed by law for the bringing of such action, is void.

ARTICLE 2.

GENERAL RULES.

2803 (2620) (3232) (2906) (2482). **When entry on lands presumed.**—When a right of entry on lands accrues, the entry must be considered as having been made, and the cause of action as having then accrued.

2804 (2621) (3233) (2907) (2483). **When right of entry not tolled.**—The right of entry is not tolled by a descent cast.

2805 (2622) (3234) (2908) (2484). **Time of absence from state deducted.**—When any person is absent from the state during the period within which a suit might have been brought against him, the time of such absence must not be computed as a portion of the time necessary to create a bar under this chapter.

Stevenson v. Anderson, 87 Ala. 228; Smith v. Bond, 8 Ala. 386; Bohannon v. Chapman, 13 Ala. 641; State Bank v. Seawell, 18 Ala. 616; oleman v. Holmes, 44 Ala. 124; Scruggs v. Orme, 46 Ala. 533; Wright v. Preston, 55 Ala. 570; Minniece v. Jeter, 65 Ala. 222; Huss v. Central R. Co., 66 Ala. 472; Wright v. Strauss, 73 Ala. 227.

2806 (2623) (3235). **On arrest or reversal of judgment, suit brought within a year.**—If any action is brought before the time limited has expired, and judgment is rendered for the plaintiff, and such judgment is arrested or reversed on appeal, the plaintiff or his legal representative may commence suit again within one year from the reversal or arrest of such judgment, though the period limited may in the meantime have expired; and, in like manner, if more than one judgment is arrested or reversed, suit may be recommenced within one year.

Bynum v. M. & C. R. Co., 100 Ala. 311; Napier v. Foster, 80 Ala. 379; Roland v. Logan, 18 Ala. 307; Young v. Davis, 30 Ala. 213; Bercy v. Lavretta, 63 Ala. 374; Morrison v. Stevenson, 69 Ala. 448; Hill v. Huckabee, 70 Ala. 183.

2807 (2624) (3236). **Additional time allowed infants, etc.**—If any one entitled to bring any of the actions enumerated in this chapter, or to make an entry on land, or defense founded on the title to real property, be, at the time such right accrues, within the age of twenty-one years, or insane, or imprisoned on a criminal charge for any term less than for life, he or she shall have three years, or the period allowed by law for the bringing of such action if it be less than three years, after the termination of such disability to bring suit, or make entry or defense; but no disability shall extend the period of limitation so as to allow such action to be commenced, or entry or defense made, after the lapse of twenty years from the time the cause of action or right accrued.*

Exception extends to all actions enumerated in this chapter.—Thompson v. Hartline, 105 Ala. 263; Woodstock Iron Co. v. Roberts, 87 Ala. 436; Taylor v. Forsey, 56 Ala. 426; McCartney v. Bone, 40 Ala. 533; Greenwood v. Coleman, 34 Ala. 150. **Does not apply to infant, who has a trustee capable of suing.**—Lee v. Wood, 85 Ala. 169; Martin v. Tally, 72 Ala. 23; Molton v. Hen-

*As amended by joint committee.

derson, 62 Ala. 426; Bryan v. Weems, 29 Ala. 423; Fleming v. Gilmer, 35 Ala. 62. **Does not suspend running of statute; three years' extension may be a part of period necessary to create the bar.**—Black v. Pratt Coal & Coke Co., 85 Ala. 504; Tayloe v. Dugger, 66 Ala. 444; Riggs v. Fuller, 54 Ala. 141; Daniel v. Day, 51 Ala. 431. **Exceptions mentioned are exclusive.**—Barclay v. Smith, 66 Ala. 230; Alexander v. Hill, 88 Ala. 487; Newburn v. Bass, 82 Ala. 622; Howell v. Hair, 15 Ala. 194. **Infants allowed a reasonable time after maturity to disaffirm and redeem from a trustee purchasing at his own sale.** Lovelace v. Hutchinson, 106 Ala. 417; Alexander v. Hill, 88 Ala. 487; James v. James, 55 Ala. 525.

2808 (2625) (3237) (2911) (2487). **Effect of bar of foreign statute.**—When the statute of limitations of another state or foreign country has created a bar to an action upon a contract made or act done in such state or country, whilst the party sought to be charged thereby was a resident of such state or country, the bar thus created is effectual in this state against any suit brought thereon, in the same manner it would have been in the state or country where the act was done or contract made.

Minniece v. Jeter, 65 Ala. 222; Wright v. Strauss, 73 Ala. 227; Howell v. Hair, 15 Ala. 194.

2809 (2626) (3238) (2912) (2488). **Limitations not applicable to current accounts between merchants.**—The limitations in this chapter provided do not apply to such actions as concern the trade of merchandise between merchants and merchants, their agents and factors, while the accounts between them are current.

McCulloch v. Judd, 20 Ala. 703; Bradford v. Spyker, 32 Ala. 134; Shaw v. Yarborough, 3 Ala. 588.

2810 (2627) (3239) (2913) (2489). **How time reckoned on mutual accounts.**—When there are mutual accounts between persons who are not merchants, the time must be computed from the date of the last item, unless the account is liquidated, and a balance struck.

Wilson v. Calvert, 18 Ala. 274; Todd v. Todd, 15 Ala. 743; Ware v. Manning, 86 Ala. 238.

2811 (2628) (3240) (2914) (2490). **What necessary to remove bar.**—No act, promise, or acknowledgment is sufficient to remove the bar to a suit created by the provisions of this chapter, or is evidence of a new or continuing contract, except a partial payment made upon the contract by the party sought to be charged before the bar is complete, or an unconditional promise in writing, signed by the party to be charged thereby.

Partial payments.—Cameron v. Cameron, 95 Ala. 344; Chapman v. Barnes, 93 Ala. 433; Wright v. Payne, 62 Ala. 340; Minniece v. Jeter, 65 Ala. 222; Steele v. Steele, 64 Ala. 438; Scott v. Ware, Ib. 174; Acklen v. Hickman, 60 Ala. 568; Harwood v. Harper, 54 Ala. 659; Knight v. Clements, 45 Ala. 89; Taylor v. Perry, 48 Ala. 240; Lewis v. Ford, 67 Ala. 143; Royston v. May, 71 Ala. 398; Curtis v. Daughdrill, Ib. 590; Watson v. Dale, 1 Porter, 247; McGehee v. Greer, 7 Porter, 537. **New promise.**—Crawford v. Childress, 1 Ala. 482; Chapman v. Barnes, 93 Ala. 433; Scott v. Ware, 64 Ala. 174; Jordan v. Hubbard, 26 Ala. 433; Bumgardner v. Taylor, 28 Ala. 687; Evans v. Carey, 29 Ala. 99; Duffie v. Phillips, 31 Ala. 571; Bradford v. Spyker, 32 Ala. 134; Pearson v. Darrington, Ib. 227; Strickland v. Walker, 37 Ala. 385; Greening v. Brown, Minor, 353; Grimball v. Mastin, 77 Ala. 553. **Effect of partial payment or new promise by one joint obligor against another.**—Lowther v. Chappell, 8 Ala. 353; Moore v. Lessuer, 18 Ala. 606; Myatt v. Bell, 41 Ala. 222; Espy v. Comer, 76 Ala. 501. **By personal representative on estate.**—Townes v. Ferguson, 20 Ala. 147; Pitts v. Wooten, 24 Ala. 474; Hall v. Darrington, 9 Ala. 502. **By personal representative on rights of heirs.**—Steele v. Steele, 64 Ala.

438; Starke v. Wilson, 65 Ala. 576; Lee v. Downey, 68 Ala. 99; Grimball v. Mastin, 77 Ala. 553.

2812 (2629) (3241) (2915) (2491). **How time computed when demand necessary to enforcement of a right.**—When a right exists, but a demand is necessary to entitle the party to an action against any officer, agent, or attorney, the limitation commences from the commission or omission of the act giving the right of action, and not from the date of the demand.

Wright v. Paine, 62 Ala. 340; Massie v. Boyd, 87 Ala. 672; Owens v. Henderson, 7 Ala. 641; Mobile Savings Bk. v. McDonnell, 83 Ala. 595.

2813 (2630) (3242) (2916) (2492). **In actions seeking relief on ground of fraud.**—In actions seeking relief on the ground of fraud, where the statute has created a bar, the cause of action must not be considered as having accrued until the discovery by the aggrieved party of the facts constituting the fraud, after which he must have one year within which to prosecute his suit.

What fraud within saving clause of the statute.—Heflin v. Ashford, 85 Ala. 125; Scruggs v. Decatur M. & L. Co., 86 Ala. 173; Duncan v. Williams, 89 Ala. 341; Tillison v. Ewing, 91 Ala. 467; Henry v. Allen, 93 Ala. 197; Underhill v. Mobile Ins. Co., 67 Ala. 45; McCarthy v. McCarthy, 74 Ala. 546; Holt v. Wilson, 75 Ala. 58. **Saving of statute may be pleaded at law;** not grounds for equitable relief.—Henry v. Allen, 93 Ala. 197; Tillison v. Ewing, 87 Ala. 350; Proskauer v. Peo. Sav. Bank, 77 Ala. 257; Curry v. Peebles, 83 Ala. 225; Smith v. Cockrell, 66 Ala. 64; Porter v. Smith, 65 Ala. 169.

2814 (2631) (3243) (2917) (2493). **Commencement of suit.**—The suing out of a summons is the commencement of a suit, whether it be executed or not, if the suit be continued by an alias, or recommenced at the next term of the court.

West v. Engle, 101 Ala. 509; Ware v. Swann & Billups, 79 Ala. 330.

2815 (2632) (3244) (2918) (2494). **What time after death and before grant of letters not computed.**—The time between the death of a person and the grant of letters testamentary or of administration, not exceeding six months, is not to be taken as any part of the time limited for the commencement of actions by or against his executors or administrators.

McNeill v. McNeill, 35 Ala. 30; Pickett v. Hobdy, 63 Ala. 609; Allen v. Elliott, 67 Ala. 432; Lewis v. Ford, Ib. 143; Lee v. Downey, 68 Ala. 98.

2816 (2633) (3245) (2919) (2495). **Nor six months personal representative exempt from suit.**—The six months, during which an executor or administrator is exempt from suit after the grant of letters, is not to be taken as any part of the time limited for the commencement of an action against him.

Steele v. Steele, 64 Ala. 438; Allen v. Elliott, 67 Ala. 432; Hood v. League, 102 Ala. 228.

2817. Presentation of claim against estate of decedent suspends statute until notice given to sue.—When a claim against the estate of a decedent has been duly presented, the limitation for the commencement of suit thereon is suspended until the personal representative, or heir, or devisee of such decedent shall, by notice in writing, require such claimant, or any one having the beneficial interest in such claim, to bring suit thereon.

2818. Personal representative may require suit brought on disputed claim within six months.—The personal representative of the estate of a decedent may give notice in writing to the claimant, or any one having the beneficial interest in a claim against the estate of the decedent, that such claim is disputed in whole or in part, if in part, specifying the part disputed, and require suit to be brought thereon; and if suit is not brought thereon pursuant to such notice within six months from the time of giving the notice, or, if the claim be not due, within six months from the time it becomes due, and prosecuted with diligence according to the ordinary course of law, such claim, or, if disputed only in part, the part so disputed, is barred. But if the personal representative and the claimant or person having the beneficial interest shall, at any time before the bar herein prescribed is complete, agree upon the amount of such claim, suit thereon need not be brought or prosecuted under this section. If the plaintiff in such suit shall fail to recover upon the disputed part of his claim, he must be taxed with the costs of the suit. This section does not apply to claims against estates declared insolvent.

2819 (2634) (3246) (2920) (2496). **In action by principal against deputy or agent for latter's act or omission.**—When an injury arises from the act or omission of a deputy or agent, the time for the limitation of an action by the principal against such deputy or agent does not commence to run until the liability of the principal, for the act or omission of such deputy or agent, is ascertained by suit of the party aggrieved against the principal.

2820 (2635) (3247) (2921) (2497). **Time of injunction or prohibition not computed.**—When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not computed as part of the time.

2821 (2636) (3248) (2922) (2498). **When operation of statute not suspended.**—A disability which did not exist when the cause of action accrued does not suspend the operation of the limitation, unless the contrary is expressly provided.

Black v. Pratt Coal & Coke Co., 85 Ala. 504; Caldwell v. Thorp, 8 Ala. 253; Branch Bank v. Donelson, 12 Ala. 741; Lowe v. Jones, 15 Ala. 545; Lee v. Leachman, 22 Ala. 452; Reed v. Minell, 30 Ala. 61; Daniel v. Day, 51 Ala. 431; Smith v. Roberts, 62 Ala. 83; Molton v. Henderson, Ib. 426; Underhill v. Mobile Ins. Co., 67 Ala. 45.

2822 (2637) (3249) (2923) (2499). **All disabilities to cease before time begins.**—When two or more disabilities coexist at the time the cause of action accrued, the limitation does not attach until all are removed.

2823 (2638) (3250) (2924) (2500). **When war suspends statute.** When the United States is at war with a foreign country, and either party to a contract is a subject or citizen thereof, the time of the continuance of the war is not computed as part of the time limited for the commencement of the suit.

2824 (2639) (3251) (2925) (2901). **Notes put in circulation as money.**—The provisions of this chapter do not apply to actions to

enforce payment of bills, notes, or other evidences of debt issued or put in circulation as money.

CHAPTER 73.

MANDAMUS, PROHIBITION, CERTIORARI AND OTHER REMEDIAL WRITS OF A SUPERVISORY NATURE. 2825–2833.

2825 (3158). **Application for; pleadings and right of amendment.**—All applications for mandamus, prohibition, certiorari, or other remedial writ of a supervisory nature, shall be commenced by a petition verified by affidavit, in which the facts shall be stated as briefly and succinctly as the case will admit of; and any defendant may demur, plead, or answer as to all such matters as may be necessary to his defense; and any of the pleadings in such proceedings may be amended as often as occasion may require to attain the ends of justice, and by striking out parties and adding new parties; and upon the issues thus presented, the court shall award the relief, if any, to which the petitioner is entitled.

Mandamus as a civil remedy remains as at common law; the statute provides machinery.—Leigh v. O'Bannon, 69 Ala. 261. **Issues in name of the state** and is designed to prevent a failure of justice.—State v. Williams, 69 Ala. 311. **Lies only against officers,** public or corporate.—Taylor v. Kolb, 100 Ala. 603; Winter v. Baldwin, 89 Ala. 483; Foster v. White, 86 Ala. 467. **Office of writ.**—State v. Hamil, 97 Ala. 107; State v. Williams, 69 Ala. 311; Ex parte State Bar Asso., 92 Ala. 113; Taylor v. Kolb, 100 Ala. 603. **Practice under statute;** what relator must show.—Speed v. Cocke, 57 Ala. 209; Foster v. White, 86 Ala. 467. **Motion entertained in supreme court,** without petition.—Ex parte Tower Mfg. Co., 103 Ala. 415; Ex parte Garland, 42 Ala. 559. **Though original petition** may be there filed.—Ex parte Charleston, 107 Ala. 688. **The jurisdiction exercised by the supreme court** in mandamus to review non-appealable interlocutory orders **is appellate in its character** and cannot be invoked by strangers.—Garrison v. Webb, 107 Ala. 499. **When such jurisdiction exercised.**—Ex parte Sayre, 95 Ala. 288; Jennings v. Pearce, 99 Ala. 303; Bridgeport E. & I. Co. v. Bridgeport L. & I. Co., 104 Ala. 276; Ex parte Nicrosi, 103 Ala. 104; Ex parte Fechheimer, 103 Ala. 154; Ex parte Tower Mfg. Co., 103 Ala. 415; Knight v. Farrell, Ala. (20 So. 974). **Discretion** in granting or refusing writ.—Taylor v. Kolb, 100 Ala. 603. **Mandamus to compel performance of corporate duty;** parties and proof.—M. & G. R. Co. v. Comr's Court, 97 Ala. 105. **Common-law certiorari;** application; proof.—Ind. Pub. Co. v. Am. Press Asso., 102 Ala. 475.

2826 (3159). **Truth or sufficiency of answer may be put in issue.** In any such proceeding, the return or answer shall not be conclusive, but the truth or sufficiency thereof may be put in issue and controverted.

2827 (3160). **Appeal to supreme court; a preferred case to be decided at first term.**—From the final judgment of any circuit court or other court exercising the jurisdiction of such court, in any such proceeding, an appeal shall lie to the supreme court as in other cases; but such appeal must be taken within thirty days after the final judgment is rendered, and shall be a preferred case in the supreme court, and shall be decided at the first term to which it is taken.

Right of appeal existed prior to statute.—Withers v. State, 36 Ala. 252, 260.

2828 (3161). **Bill of exceptions taken; judgment on appeal.** In addition to the questions which may be presented on such appeal to the supreme court for review under existing laws and rules of court, either party may, by a bill of exceptions, also present for review the judgment of the court upon the evidence; and the supreme court shall review the same, and, in case there is error, shall render such judgment in the cause as the primary court should have rendered, or reverse and remand the same for further proceedings, as to the supreme court may seem right.

2829 (3162). **Revivor in case of vacancy in office.**—If any officer against whom such proceedings are had, should die, or otherwise vacate his office, while the same are pending, whether on appeal or otherwise, the same may be revived against his successor in office, in the manner in this chapter provided.

2830 (3163). **Proceedings to revive, when against one officer.** If such proceedings are against one officer only, and pending the same he shall die, or otherwise vacate his office, the petitioner shall in writing, addressed to his successor in office, briefly and succinctly set forth the character and then condition of the proceedings and the relief thereby sought, and demand of such successor the performance of the duty sought to be enforced, which writing must be personally handed to him; and if he shall fail or refuse to speedily perform the same, upon proof that such writing has been served on him, and that he has failed or refused to perform such duty properly, the court shall forthwith revive the proceedings against him, and proceed to a final determination thereof in all respects in the same manner as if no such vacancy had occurred.

2831 (3164). **Proceedings abate on performance of duty by successor; costs.**—If such successor, upon such demand, shall speedily perform the duty therein demanded, the proceedings shall thereby abate, and the court may render judgment for the costs of the proceedings against the person who has vacated the office, or, if he is dead, against his executor or administrator; and to this end, the court shall have the power to make his executor or administrator a party by appropriate process; but all questions of costs under this chapter shall rest in the discretion of the court.

2832 (3165). **Proceedings to revive, when against several officers; costs.**—If such proceedings are against more than one officer, and pending the same any of them shall die, or otherwise vacate the office, the proceedings may be revived against his or their successors in the same manner as if the same had been against one officer only; and if such successor or successors, not failing or refusing on demand to perform the required duty, shall in writing state his or their willingness to perform the same, and it shall appear to the court that he or they cannot perform such duty because of the failure or refusal of his or their associates in office and co-defendants to co-operate in the performance thereof, he or they shall not, in that event, be liable for any part of the costs.

2833 (3166). **Common law not repealed; certain proceedings excepted from operation of this chapter.**—The common law, as now in force in this state, touching any of the matters embraced in this chapter, is not repealed, but left in full force; the true intent and meaning of this chapter being to provide a plain, more speedy and less expensive mode of procedure in all cases to which it applies; nor shall the provisions of this chapter be held to apply to a certiorari obtained in the supreme court, upon a suggestion of diminution of the record; nor is anything in this chapter contained intended to repeal, alter, or change any statute of this state, now in force, in reference to proceedings for habeas corpus or mandamus.

CHAPTER 74.

MARKS AND BRANDS. 2834–2836.

2834 (1361) (1583) (1278) (1094). **Earmarks and brands.** Every person in this state, owning any cattle, hogs, sheep, or goats running at large, must have an earmark or brand different from that of his neighbors.

It is larceny to steal a hog running at large, although it be not marked or branded.—Bazell v. State, 89 Ala. 14.

2835 (1362) (1584) (1279) (1095). **Recorded in the office of probate judge.**—Such marks and brands must be recorded in the office of the judge of probate of the county in which such cattle, hogs, sheep, or goats run; but the same brand or mark must not be recorded to more than one person in the same locality.

2836 (1363) (1585) (1280) (1096). **Books open to inspection.** When a dispute occurs as regards a brand or mark, the person who has first recorded the same is entitled thereto; and the judge of probate must allow all citizens of the county to inspect, without charge, the book in which the marks or brands are recorded.

CHAPTER 75.

MARRIAGE. 2837–2851.

2837 (2307) (2670) (2331) (1942). **Incestuous marriages forbidden.**—The son must not marry his mother or stepmother, or the sister of his father or mother, or the widow of his uncle. The brother must not marry his sister or half-sister, or the daughter of his brother or half-brother, or of his sister or half-sister. The father must not marry his daughter or granddaughter, or the widow of his

son. No man shall marry the daughter of his wife, or the daughter of the son or daughter of his wife; and all such marriages are hereby declared incestuous.

2838 (2308) (2671) (2332) (1943). **Applies to illegitimate relatives.**—The provisions of the preceding section apply to illegitimate, as well as to legitimate children and other relations.

2839 (2309) (2672) (2333) (1944). **What minors incapable of marriage.**—A man under the age of seventeen, and a woman under the age of fourteen years are incapable of contracting marriage.

Marriage voidable merely.—Beggs v. State, 55 Ala. 108; Cooley v. State, Ib. 162.

2840 (2310) (2673) (2334) (1945). **When issue not illegitimate.** The issue of any incestuous marriage, before the same is annulled, shall not be deemed illegitimate.

2841 (2311) (2674) (2335) (1946). **By whom solemnized.**—Marriages may be solemnized by any licensed minister of the gospel, in regular communion with the Christian church or society of which he is a member; by a judge of the supreme, circuit, or city court, or by a chancellor within this state; or by a judge of probate, or any justice of the peace within his county.

2842 (2312) (2675) (2336) (1947). **By pastor of any religious society.**—Also by the pastor of any religious society according to the rules ordained, or custom established by such society; and the clerk or keeper of the minutes of such society must keep a register, and enter therein a particular account of all marriages solemnized by the society; which register, or a sworn copy thereof, is presumptive evidence of the fact.

2843 (2313) (2676) (2337) (1948). **By Quakers, or other Christian society.**—The people called Mennonists, or Quakers, or any other Christian society, having similar rules or regulations, may solemnize marriage according to their forms by the consent of the parties, published and declared before the congregation assembled for public worship.

2844 (2314) (2677) (2338) (1949). **Not to be solemnized without license.**—No marriage shall be solemnized without a license, to be issued by the judge of probate of the county in which the woman resides; which license is an authority to any one qualified to solemnize marriage, to join together in matrimony the persons therein named.

A marriage good at common law is valid here.—Campbell v. Gullatt, 43 Ala. 57; Williams v. State, 54 Ala. 131; Beggs v. State, 55 Ala. 108; Farley v. Farley, 94 Ala. 501. **License must be issued by the judge** or his duly qualified clerk; authority cannot be otherwise delegated.—Ashley v. State, 109 Ala. 48.

2845 (2315) (2678) (2339) (1950). **When consent of parents and bond required.**—If the man intending to marry be under twenty-one, and the woman under eighteen years of age, and have not had a former wife or husband, the judge of probate must require the consent of the parents or guardians of such minors to the marriage, to be given either personally or in writing; and if the latter, the execution thereof must be proved. The judge of probate must

also require a bond to be executed in the penal sum of two hundred dollars, payable to the State of Alabama, with condition to be void if there is no lawful cause why such marriage should not be celebrated.

Cotten v. Rutledge, 33 Ala. 110; Fitzsimmons v. Buckley, 59 Ala. 539.

2846 (2316) (2679) (2340) (1951). **Registry of licenses.**—The judge of probate must keep a book, in which is to be registered all licenses issued by him, and must state whether the parties, or either of them, were of the age specified in the preceding section. If not, he must also state whether either of them had been previously married, or if consent had been given to the marriage by the parent or guardian. If such consent was in writing, he must transcribe it on the same page on which he records the license; and the record so made, or a certified copy thereof, is presumptive evidence of the facts.

Beggs v. State, 55 Ala. 108.

2847 (2317) (2680) (2341) (1952). **Marriage certificate recorded with license.**—All persons or religious societies, solemnizing marriage in virtue of a license, or according to their peculiar forms, must, within one month thereafter, certify the fact in writing to the judge of probate, setting forth the names of the parties, and the time and place of the celebration thereof; which certificate must be recorded in the book kept for the registry of licenses; and a certified copy thereof is presumptive evidence of the fact.

2848 (2318) (2681) (2342) (1953). **Penalty for issuing license improperly.**—A judge of probate, issuing a license for the marriage of a minor contrary to the provisions of this chapter, forfeits two hundred dollars to the parent, or to the guardian of such minor for the use of his ward, for which the parent or guardian may sue.

Cotten v. Rutledge, 33 Ala. 110; Wood v. Farnell, 50 Ala. 546; Fitzsimmons v. Buckley, 59 Ala. 539; Roberts v. Pippen, 75 Ala. 103; Fulghum v. Roberts, Ib. 341; Bell v. Wallace, 81 Ala. 422; Riley v. Bell, 89 Ala. 597; Battles v. Tallman, 96 Ala. 403; Jeffreys v. Malone, 105 Ala. 489.

2849 (2319). **Penalty, when not recoverable.**—If it be shown that the parent or guardian consented to the marrriage, or that the judge of probate issuing the license was misled as to the age of such minor by his or her personal appearance, and that at the time of the issue of the license an affidavit was made before him by such minor, or by some other credible person claiming to know the fact, that such minor was of the age required by law, the penalty given by the preceding section is not recoverable.

2850 (2320) (2682) (2344) (1955). **Penalty for marrying persons without license.**—Any judge, minister of the gospel, or justice of the peace, who joins persons in marriage without a license, as required by this chapter, or who goes out of the state and marries persons, one or both of whom reside in this state, without such license, or a license from the state in which the marriage is celebrated, forfeits one thousand dollars, one half to the use of the state, and the other half to the use of any person who may sue for the same.

2851 (2321) (2683) (2348) (1959). **Fees for marrying.**—Any judge, justice of the peace, or licensed minister of the gospel, celebrating the rites of matrimony, is entitled to two dollars.

CHAPTER 76.

MILITIA. 2852–2896.

Feb. 18, 1897, p. 1308, §1.

2852. Alabama National Guard; the governor commander-in-chief.—The active volunteer organized military forces of the state shall constitute and be known as the "Alabama National Guard," and may consist of not more than four regiments of infantry, one regiment of cavalry, one regiment of artillery and a signal-corps, and the governor of the state shall be the commander-in-chief thereof.

Ib. §2.

2853. The staff of the commander-in-chief.—The staff of the commander-in-chief shall consist of the following officers to be appointed by and commissioned as officers of the Alabama National Guard, holding office at his pleasure: One adjutant-general, who shall be the chief of the staff; one inspector-general, one judge-advocate general who shall be a counsellor at law of a supreme court of at least five years' standing; one surgeon-general who shall be a graduate of some incorporated school of medicine and of at least five years' practice; one chief of engineers; one quartermaster-general; one chief of ordnance; one paymaster-general; one commissary-general of subsistence, and one inspector-general of rifle practice, each of the grade of colonel of cavalry; one assistant adjutant-general of the grade of lieutenant-colonel of cavalry; four aides-de-camp each of the grade of lieutenant-colonel of cavalry.

Ib. §3.

2854. Duties of adjutant-general.—The adjutant-general is chief of staff to the governor. He shall preserve the arms, and other military stores of the state, and distribute them to the state guard at the expense of the state; keep a roster of all the officers of the Alabama National Guard and keep on file in his office all reports made to him. He shall as often as may be necessary, cause so much of the laws relating to the volunteer forces of the state as may be in force, to be printed, bound and distributed, a copy to each commissioned officer, and prepare and publish all necessary blank books, forms, notices and stationery, and furnish them to the state guard at the expense of the state; and the auditor shall draw a warrant on the treasurer therefor. The adjutant-general shall perform such other duties as may be required of him by the commander-in-chief. The assistant adjutant-general shall assist the adjutant-general, and in his absence, perform all his duties. The several staff-officers shall perform the same duties, as nearly as the circumstances of the case will permit, as are performed by the staff-officers of like rank in the United States army, and any and all such other duties as may be re-

quired of them by the commander-in-chief. The adjutant-general must, ten days before each session of the general assembly, report to the governor the number and condition of the state guard and of the public arms and accoutrements of the state.

2855. Military forces formed into a brigade; election and term of office of brigadier-general.—The organized military forces of this state shall be formed into a brigade, and be under the direct command of the brigadier-general, who shall hereafter be elected by the field-officers by ballot, or in such other manner as may be determined upon by the governor in his discretion, and his office shall be for a term of four years and until his successor is duly qualified. Ib. §4.

2856. Brigadier-general to appoint subordinate officers.—The brigadier-general shall appoint one assistant adjutant-general who shall be chief of the brigade staff; one chaplain, one inspector, one judge-advocate, one surgeon, one ordnance officer, one quartermaster, one commissary of subsistence, and one inspector of rifle practice, each of the grade of major of infantry, and four aides-de-camp of the grade of captain of infantry. Ib. §5.

2857. Duties of assistant adjutant-general and brigade staff-officers.—The duties of the assistant adjutant-general of the brigade staff shall be to keep a roster of all the officers of the Alabama National Guard, and keep on file in his office all reports made to him, and such other duties as may be required of him by the brigadier-general. The several brigade staff-officers shall perform the same duties as are performed by such staff-officers under United States army regulations, and all such other duties as may be required of them by the brigadier-general. Ib. §6.

2858. Regiments, field and staff officers, etc.—Each regiment of infantry, cavalry, or artillery shall consist of not less than eight nor more than twelve companies, troops, or batteries. The field-officers of the regiment shall consist of one colonel, one lieutenant-colonel, and three majors who shall be elected by the line-officers of the regiment by ballot, or in such other manner as may be determined upon by the governor in his discretion, whose term of office shall be for four years and until their successors are duly qualified. The colonel of a regiment shall appoint his commissioned and non-commissioned staff-officers as follows: One adjutant, one chaplain, one quartermaster, one commissary of subsistence, one inspector of rifle practice and surgeon, each of the grade of captain, and one assistant surgeon with the grade of first lieutenant, and the non-commissioned staff as follows: One sergeant-major, one quartermaster-sergeant, one trumpeter, one band-leader, one commissary-sergeant, one ordnance sergeant and two hospital stewards, who shall have the grade of first sergeant and hold office subject to the pleasure of the colonel. The commissioned staff-officers shall be commissioned as in the case of other commissioned officers upon certificate of appointment from the colonel, and who shall hold office for the term of the officer making the appointment, or at the pleasure of such officer, and the colonel may also detail a color-bearer and such clerks for the Ib. §7.

adjutant's office as he may deem necessary. Each squadron or battalion shall consist of not more than four nor less than two companies, troops, or batteries. The majors of a battalion or squadron shall appoint the commissioned and non-commissioned staff thereof as follows: One adjutant, one assistant surgeon, of the grade of first lieutenant, and the non-commissioned staff as follows: One hospital steward with the grade of second sergeant, and may in his discretion detail one color-bearer, provided that when such battalion or squadron is not a part of a regiment the major may appoint an adjutant, surgeon, quartermaster and commissary of subsistence, with the grade of captain, and a quartermaster-sergeant, trumpeter, hospital steward, and commissary-sergeant, with the grade of second sergeant.

Ib. §8. **2859. Officers of company, troop, or battery.**—The line-officers of each company, troop, or battery, shall consist of a captain and two lieutenants, who shall be elected by the non-commissioned officers, and enlisted men of such company, troop, or battery, and who shall hold office for a term of three years and until their successors are duly qualified. The brigadier-general may in his discretion authorize any company or troop of the Alabama National Guard to elect, in addition to the other commissioned officers, an additional second lieutenant, and a battery to elect one first lieutenant and one second lieutenant, in addition to the other commissioned officers, who shall be elected, commissioned and qualified as in the case of other commissioned officers. The company, troop, or battery commanders shall appoint the non-commissioned officers as follows: For company, five sergeants, one quartermaster-sergeant and four corporals; for troop, five sergeants, one quartermaster-sergeant, one veterinary-sergeant, one guidon-sergeant, one trumpeter and four corporals; for battery, five sergeants, one quartermaster-sergeant, one veterinary-sergeant, one guidon-sergeant, one trumpeter and eight corporals.

Ib. **2860. Number of men requisite to each company, troop, or battery.**—Each company, troop, or battery shall in addition to its commissioned and non-commissioned officers, have the following number of enlisted men who must be over eighteen years of age: For company or troop, not less than twenty-six nor more than eighty-six; for battery, not less than twenty-six nor more than one hundred and four, and should the number at any time be below the minimum required by this section, then such company, troop, or battery shall be declared by the commander-in-chief inefficient for such service and must be disbanded.

Ib. **2861. How new company, troop, or battery formed, assigned and equipped.**—Upon the petition of forty or more men liable to military duty addressed to the adjutant-general, setting forth the residence of the petitioners, and that they desire to form a military company, troop, or battery, the governor may in his discretion order any officer of the state guard to organize the petitioners into a company, troop, or battery, and said officer must superintend an election

by ballot at a time and place selected by such officer. The officer elected to command such troop, company, or battery must forthwith appoint from his enlisted men the non-commissioned officers as provided in this chapter; said non-commissioned officers shall receive a certificate or warrant of their grade signed by the commanding officer and countersigned by the adjutant of the regiment or squadron or battalion if not part of a regiment. After a company, troop, or battery is duly organized it must be assigned to one of the regiments, squadrons, or battalions of the Alabama National Guard and the officers commissioned; and the adjutant-general shall, from the undistributed arms of the state, issue to the commanding officer of the company, at the expense of the state, upon his giving satisfactory bond for the safe custody and return thereof, suitable arms and equipments and camp equipage, and may prescribe by general or special order, rules for the use and preservation thereof.

2862. Non-liability of officers for arms and other property lost by fire, riot, etc.—No commissioned officer giving bond for the safe-keeping of arms or other public property, is liable for loss by fire or riot, or insurrection or other casualty of the services, unless held liable by a board of survey, to be appointed by and whose finding is approved by the governor. Ib.

2863. Allowance; how and when drawn.—In commutation of the expense which each active company of the Alabama National Guard bears in providing drill-rooms and a place for the safe-keeping of arms and ammunition and in defraying the necessary expenses, there shall be allowed to the commanding officer of each company, troop, or battery, the sum of sixteen dollars and sixty-six and two-third cents per month, payable quarterly, if the company, troop, or battery number at least twenty-five uniformed privates and non-commissioned officers, has such parades and drills, at which not less than twenty-five, rank and file, attend, as the governor may prescribe in general orders, not less than one public or private drill a month, and otherwise keep in such state of efficiency as the governor may deem necessary to constitute an active military organization. To secure such allowance for any quarter, the commanding officer must make affidavit before any officer authorized to administer oaths, that his company, troop, or battery during the time for which the allowance is claimed, had the number of drills and parades required, with the number of men prescribed therein, and was, during such period, an active and efficient military organization. Such claim so verified shall be forwarded to the commanding officer of the regiment to which the company, troop, or battery is attached, and by him to the adjutant-general, with such recommendation as he deems proper. If satisfied that it is just, the governor shall approve the same, and direct the auditor to draw his warrant for such amount in favor of the commanding officer of the company, troop, or battery. Ib.

2864. County commissioners may appropriate money to pay expenses of companies.—The county commissioners in each county Ib.

are hereby authorized and empowered, in their discretion, to appropriate a sufficient sum out of the moneys in the county treasury not otherwise appropriated, to pay the necessary expenses of the companies, troops, or batteries of the Alabama National Guard located in their respective counties, not to exceed the sum of twenty-five dollars per month for such expenses of any one company.

Ib. **2865. Monthly drills, etc.**—The commanding officer of any company, troop, or battery may, and on the direction of the regimental, squadron, or battalion commander, must order at least one drill a month, and officers and members failing, without good excuse, to attend such drill, shall be subject to a fine in the discretion of a company, troop, or battery court martial, not exceeding twenty dollars. The commanding officer of a regiment, squadron, or battalion, when two or more companies, troops, or batteries are stationed at the same place, must order a squadron or battalion drill or dress parade once in each month, and on Memorial day, and on the occasion of the funeral of any officer or member of the state guard, and any officer or member of the state guard failing, without good excuse, to obey such order, shall be fined, in the discretion of a regimental, squadron, battalion, or summary court martial, not exceeding thirty dollars, and may be dishonorably dismissed from the service of the state.

Ib. **2866. Badge of honor.**—Any officer, non-commissioned officer, or private, who shall have faithfully served in the state guard, in any grade, for six consecutive years, shall have conferred upon him the right to wear a veteran's badge, which shall be prescribed by the governor.

Ib. **2867. Movement of troops.**—No company, troop, or battery, shall go out of the county in which it is stationed as a military organization, except by permission of the regimental, squadron, or battalion commander, or the brigadier-general, or the governor; nor shall any company, troop, or battery, or regiment, squadron, or battalion go out of the state, except by permission of the governor.

Ib. §9. **2868. Signal-corps.**—The brigadier-general may, upon the approval of the governor, organize a signal-corps, which shall consist of one signal-officer of the grade of first lieutenant, and such corps shall not exceed forty non-commissioned officers and privates.

Ib. §10. **2869. Band of musicians.**—The commanding officer of a regiment, or a squadron, or battalion not a part of a regiment, may organize and uniform at the expense of the regiment, or squadron, or battalion, a band of musicians to be under his direction and command, who, while on duty, shall be subject to all laws and regulations for the government of the Alabama National Guard, and they shall be mustered in as prescribed by this chapter for enlisted men, and shall be counted in the aggregate force, and such commanding officer may, in his discretion, disband such band and revoke the warrant of the band-leader.

Ib. §11. **2870. Absence from four consecutive monthly drills forfeits right to vote.**—No officer, non-commissioned officer, or enlisted man

shall be entitled to vote at any election for commissioned officers of the Alabama National Guard who has been absent for four consecutive monthly musters of the company, troop, or battery of which he may be a member; *Provided*, that nothing in this section shall apply to field-officers.

Ib. §12. **2871. Election upon the expiration of term of field or line officer; certificate to governor.**—Upon the expiration of the term of office of any field-officer, or any vacancy occurring by reason of death, resignation, removal, or other cause, the brigadier-general, upon orders from the governor, shall order the commanding officer of a regiment, squadron, or battalion, if not a part of a regiment, to elect such field-officer under such rules and regulations as provided by this chapter, of which action at least fifteen days' notice must be given to the commanding officers of the companies, troops, or batteries in which regiment, squadron, or battalion said election is to be held, and in event there is a tie vote for any office, the brigadier-general shall cast the deciding vote for such field-officer. Upon the expiration of the term of office of any line-officer, or whenever there is a vacancy by reason of death, resignation, removal, or other cause, the colonel shall order the company officers to elect such officer in the manner required by this chapter, and must give at least ten days' notice of such election by orders published at the armory of such company, troop, or battery, where said election is to take place. A certificate must be forwarded through military channels to the commander-in-chief, stating that such elections as required by this chapter were held in accordance with the orders received, which certificate must be accompanied by such oath of office as may be prescribed by the adjutant-general.

Ib. **2872. When grade lost by resignation.**—Whenever the resignation of any officer is forwarded, and is approved by the commander-in-chief, such officer loses his grade if elected his own successor; *Provided, however*, if such officer is elected to another organization he may accept such second election and be commissioned accordingly, taking grade from the date of his original commission, but the acceptance of the second election shall vacate the office to which he was first elected.

Ib. **2873. Transfers.**—Any non-commissioned officer or enlisted man may be transferred at the request of his company, troop, or battery commander to any other company, troop, or battery, upon the approval of the brigadier-general.

Ib. **2874. Company may adopt rules and regulations, etc.**—Each company may adopt such rules as to admission of members as it deems best, and may provide for the discharge of any of its members by rules or by-laws, provided that such rules or by-laws are first approved by the brigadier-general, and any person discharged in accordance with such rule or by-laws after the same shall have been approved by the brigadier-general, ceases to be a member of the Alabama National Guard.

Ib. **2875. Discharge.**—No non-commissioned officer nor enlisted man shall be discharged from the Alabama National Guard except as provided in the preceding section, or upon order of the governor, or by application therefor approved by his company and regimental commander.

Ib. **2876. Term of enlistment and oath.**—The term of enlistment in the Alabama National Guard shall be for three years, and the following oath of enlistment must be administered by the commanding officer of any company, troop, or battery, to persons enlisting: "I do solemnly swear that I will support the constitution of the State of Alabama, and obey all lawful orders of my superior officers while I remain a member of the Alabama National Guard."

Ib. §13. **2877. System of discipline.**—The system of discipline and exercises of the Alabama National Guard shall conform generally to that of the army of the United States as is now or may hereafter be prescribed by congress, and to all provisions of the laws of the United States, except as otherwise provided in this chapter, or may hereafter be provided for by the laws of this state.

Ib. §14. **2878. When company, troop, or battery may be disbanded.**—Any company, troop, or battery of the Alabama National Guard may be disbanded in the discretion of the brigadier-general or the commander-in-chief upon a petition signed by a majority of such company, troop, or battery approved by the regimental commander, or the commander of the squadron or battalion not a part of a regiment, or when the commanding officer of any regiment, or squadron, or battalion not a part of a regiment reports that such a company, troop, or battery is inefficient and ought to be disbanded for the good of the service, or whenever a board of officers who shall be appointed by the brigadier-general, and shall consist of not less than three from such regiment, squadron, or battalion not a part of a regiment shall report that it would be to the good of the service to disband such organization.

Ib. §15. **2879. Uniform.**—Uniform of officers, non-commissioned officers and enlisted men shall conform in style and material to that of the United States army, excepting as follows: 1. The collar ornament of the undress uniform of commissioned officers shall be the letters "ALA." embroidered in gold-bullion instead of the letters "U. S.," and the cap ornament shall have the coat of arms of the State of Alabama instead of that of the United States; the eagle on such ornament shall be embroidered in gold-bullion and the shield in silver-bullion. 2. The trousers for the enlisted men shall have one-half inch stripes extending the length of the outer seam, the color to be in accordance with the branch of service to which such enlisted man belongs.

Ib. **2880. Governor may issue public arms to chartered institutions, etc.**—The governor may in his discretion issue public arms and equipments received from the United States to chartered institutions of learning which adopt a military system, upon bond, with sureties,

for the preservation and return thereof when called for by him, and upon such terms as he may require.

2881. Selling or detaining military property.—Any person who sells, purchases, retains, or has in his possession or custody, without right, any military property belonging to the state, or any regiment, squadron, or battalion, or company, troop, or battery of Alabama National Guard, who, after proper demand, refuses to deliver the same to any officer entitled to take possession thereof, is guilty of a misdemeanor; and any person belonging to the Alabama National Guard who, contrary to the lawful order of the proper officer, retains in his possession or control any military property of the state, is guilty of a misdemeanor; and any commanding officer may take possession of such military property mentioned in this section, wherever the same may be found. Ib.

2882. Undistributed military property; clerk of the adjutant-general; duties; salary.—The governor shall, whenever necessary, designate a repository for the undistributed military property of the state, and appoint a competent person, whose duty it shall be to keep such property in serviceable order, and to have mended at the expense of the state such small arms and property of the state as may need repair. Such appointee shall be the clerk of the adjutant-general, and shall receive a salary of not less than fifty nor more than seventy-five dollars a month, at the discretion of the governor, to be paid monthly, and shall execute a bond in the sum of one thousand dollars, payable to the state, for the faithful performance of his duties, to be approved by the adjutant-general and renewable at his discretion. Ib.

2883. All officers to be commissioned by the governor; qualifications.—All officers shall be commissioned by the commander-in-chief, and no person shall be commissioned in the Alabama National Guard who is not a citizen of this state nor above the age of twenty-one years, nor until such officer shall have passed a satisfactory examination before a military board which shall be appointed by the brigadier-general, to consist of not less than three members, who shall have the power to compel the attendance of witnesses, administer oaths and take testimony as is possessed by general courts martial, and no person shall be eligible for election or appointment to office in the Alabama National Guard for a period of sixty days after he shall have been reported adversely by the examining board. The report of such examining board must be forwarded through the proper military channels to the commander-in-chief; *Provided*, that nothing in this section shall apply to the staff of the commander-in-chief. Ib. §16.

2884. Commanding officer may reduce to ranks, etc.—The commanding officer of any company, troop, or battery may reduce a non-commissioned officer to the ranks for cause satisfactory to himself and approved by the regimental, squadron, or battalion commander, not a part of a regiment. The report of such reduction, and the Ib. §17.

reasons therefor, must be forwarded through military channels to the adjutant-general.

Ib. §18. **2885. Discharge for removal from state, etc.**—Any officer, non-commissioned officer or enlisted man who cannot after due diligence be found, or who shall remove his residence from the state, or to such distance from the armory of his organization as to render it impracticable for him to perform military duty, or who shall be convicted of a felony, may be discharged by the commander-in-chief upon request of the commanding officer of the regiment, squadron, or battalion not part of a regiment, with the approval of the brigadier-general.

Ib. §19. **2886. Courts martial; findings to be approved by the governor; expenses; procedure.**—For the administration of military justice there may be general courts martial, regimental courts martial, squadron or battalion courts martial, not part of a regiment, summary courts martial, and company courts martial, to be appointed and have authority as follows: 1. General courts martial shall consist of not less than three nor more than five officers, exclusive of the judge-advocate, which court shall be appointed by the brigadier-general, or the governor in his discretion. Such court shall have jurisdiction of all military offenses committed by officers of the Alabama National Guard, and may cashier or dismiss them from service, and may also impose a fine not exceeding five hundred dollars, and in default of the payment of the fine may sentence the offender to imprisonment in the county jail for a period not exceeding six months. 2. Regimental, squadron or battalion courts martial, not part of a regiment, shall be appointed by the commanding officer of such regiment, squadron, or battalion, not part of a regiment, and shall have jurisdiction of all military offenses committed by non-commissioned officers and privates of such regiment, squadron, or battalion, not part of a regiment, and shall consist of not less than three nor more than five commissioned officers exclusive of the judge-advocate, who shall have power to sentence to dishonorable discharge from the Alabama National Guard, and may also impose a fine of not exceeding one hundred dollars, and imprisonment for not more than sixty days in the county jail, either or both. 3. Summary courts martial shall consist of not more than three officers to be appointed by the commanding officer of any regiment, squadron, or battalion, not a part of a regiment, who may have jurisdiction of all military offenses committed by a non-commissioned officer and privates of such regiment, squadron, or battalion, not a part of a regiment, as may be brought before it by the commanding officer of the regiment, squadron, or battalion, not a part of a regiment, and such summary court shall have power to impose a fine not exceeding twenty-five dollars and imprisonment for not more than six days in the county jail, either or both. 4. Company courts martial: Every company in such manner as its by-laws may prescribe, which by-laws must first be submitted to and approved by the brigadier-general, may provide for company courts martial for minor offenses

against its by-laws and such company courts martial may dismiss any non-commissioned officer or private from the service, and may also impose fines not exceeding twenty-five dollars and imprisonment for not more than ten days in the county jail, either or both. 5. No finding of any court martial shall be executed until approved by the brigadier-general and commander-in-chief, and whenever the findings of a court martial is so approved the commander-in-chief shall cause the proper orders to be issued to the sheriff of the county in which such court is held to carry the fine of the court into effect in such manner as provided in civil cases, and if any person is sentenced to imprisonment in the county jail, the commander-in-chief shall order the commanding officer of such person to cause his arrest and delivery to the jailer of the nearest jail, to be therein confined for the term of the sentence. 6. All expenses incurred in the conduct of any court martial, including the payment of one stenographer, witnesses—who shall be allowed the same fees as in civil cases—and officers of the court—who shall be paid one-half of the pay and allowance which such officers of like grade are entitled by law to receive in the United States army—shall be paid by a warrant on the auditor upon the approval of the brigadier-general and commander-in-chief. 7. The proceedings of all courts martial shall be in accordance with United States army regulations, or customs of the service prevailing in the United States army. 8. The following offenses committed by any officer, non-commissioned officer, or private of the Alabama National Guard, are offenses against the military law within the meaning of this article, to wit: Desertion, cowardice, insubordination, drunkenness while on duty or in uniform, resistance to, or disrespect of any guard, or patrol, or sentinel, disrespect of, or resistance to, a superior officer in the execution of any lawful power of his office, violation or neglect of any lawful order, or of any camp or police regulation, or of any duty enjoined upon any officer, non-commissioned officer, or private, by this chapter, or misappropriation of any funds or property of the state, or of any regiment, squadron or battalion or company, troop or battery of the state guard, or of any offense involving moral turpitude, and any conduct unbecoming an officer or a gentleman, or any violation of the state law or articles of war are military offenses, to be tried by court martial as prescribed by this chapter. 9. Courts martial shall have power to subpœna any witness residing within one hundred miles of the place where the court is sitting, to appear and testify before it; and it shall be the duty of any sheriff receiving any subpœna issued by direction of a court martial and signed by the judge-advocate thereof, to make service and return of service as provided by law in civil cases; and any person failing to appear and testify according to such subpœna, without lawful excuse, is guilty of a misdemeanor, and shall upon conviction be fined not more than one hundred dollars and may be imprisoned not more than sixty days in the county jail, either or both.

Ib. §20. **2887. Expenses incurred by traveling in obedience to governor's orders; how paid.**—Any person traveling in obedience to the orders of the governor shall be paid all actual expenses incurred in the performance of such duty, and the governor shall prescribe rules and regulations for the presentation, verifying and paying of all expenses authorized by this chapter, and upon his direction in writing to the auditor he shall draw his warrant in favor of such person for the amount due him as approved by the governor.

Ib. §21. **2888. Medical supplies; how paid for; penalty for fictitious claims.**—The surgeon of each regiment will be allowed to purchase with the approval of the commander-in-chief at the expense of the state all necessary medicines, bandages, surgical instruments, etc., that may be necessary for the proper taking care of the troops while in active service, and for the expenses so contracted such surgeon shall file his claim with the adjutant-general, not later than three months after the accrual of such expenses, and the auditor shall at once draw a warrant on the treasurer for the payment of the same, and any surgeon filing false or fictitious claims under this section shall be guilty of a misdemeanor, and shall on conviction be fined not more than one hundred dollars, and may be imprisoned in the county ja. for a period of sixty days, either or both.

2889. Exemption from poll-tax and jury duty; how membership proved.—Every officer, commissioned or non-commissioned, musician and private of the Alabama National Guard is exempt from poll-tax and jury duty, during his active membership; any local or special laws to the contrary notwithstanding. The commanding officer of each company, troop, or battery, shall furnish each member of his command with a certificate of membership as may be prescribed by the adjutant-general, signed by each commanding officer, which shall prove such exemption in any court, but such certificate shall be revoked whenever the holder is absent from four consecutive drills or parades without good excuse, and which shall be good only during the calendar month for which it bears date. The commanding officer of a regiment, squadron, or battalion shall furnish a similar certificate to each of his staff and non-commissioned staff and musicians.

2890 (176). Pay in active service.—All officers of the Alabama National Guard, ordered into the service of the state to aid in the enforcement of the laws thereof, shall receive one-half of the pay and allowance which officers of like rank in the United States army are entitled by law to receive, and non-commissioned officers and privates shall receive double the pay and the same allowances provided by law for the same rank of non-commissioned officers and men in the United States army.

2891 (177). Preservation of order when in active service.—The commanding officer of troops in camp, or in other active service, may establish a guard-house. In such guard-house he may incarcerate any non-commissioned officer or private, or any commissioned officer, refusing to submit to arrest, and any civilian guilty of drunk-

enness, breach of the peace, disorderly conduct in camp, or within one-eighth of a mile thereof. The commanding officer may cause the removal from the camp, and grounds within one-eighth of a mile of its boundary, of any drunk or disorderly, or any disreputable person. If such person return to such limits without the permission of the commanding officer, or if he resists removal, he may be confined in the guard-house until he submits to leave, or may be turned over to a civil officer. The commanding officer shall prevent the sale or giving away of spirituous, vinous, or malt liquor within the camp, or one-eighth of a mile thereof. He may use the whole force at his command for the proper police of his camp and the enforcement of order and discipline.

Feb. 28, 1889, p. 99.

2892. Commanding officer may close places where intoxicating liquors are sold.—Whenever any part of the Alabama National Guard are actually on duty by order of the governor, or other civil magistrate, to aid in the enforcement of the laws, the commanding officer of such troops may order the closing of any place where intoxicating liquors, arms, ammunition, dynamite, or other explosives are sold, and forbid the selling, bartering, lending or giving away of any of said articles so long as any of the troops remain on duty in the city, town, or village, or in the vicinity, where such place may be located, whether any civil officer has forbidden the same or not; and the commanding officer of such troops may continue the prohibition in force until the departure of the troops, although the sheriff, mayor or intendant of the county, town or village may have prescribed an earlier date at which such occupation may be carried on.

2893 (178). **Encampments.**—The governor may annually order into active service the whole, or such portion of the Alabama National Guard as he may deem proper, for the purpose of perfecting them in military discipline and drill; the period of such service being fixed by the governor. When so ordered into service, the state shall furnish rations for officers and men, and pay such expenses of such encampment as the governor may deem proper, including the traveling expenses of officers and men incurred in obeying such orders.

2894 (180). **Enforcing attendance.**—Whenever any part of the Alabama National Guard are called into the active service of the state for any purpose whatsoever, the commanding officer shall have power to enforce the attendance of officers and men; and any officer or man failing to report when ordered, without sufficient excuse, to be judged by the court martial, shall be deemed and treated a deserter.

2895 (179). **Government of encampments.**—Whenever any portion of the said troops are ordered into active service, either for the purpose of perfecting them in military discipline and drill, or to aid in the enforcement of the laws of this state, officers and men so ordered into service shall, during such time, be governed by the articles of war and the rules and regulations of the United States army then in force, so far as consistent with the constitution of this state.

2896 (197). **Forfeiture of quarterly allowance, etc.**—Any company ordered into camp for the purpose of perfecting it in military discipline and drill, and failing to attend such camp with not less than twenty-five rank and file, shall, unless excused by the commanding officer of the regiment, forfeit all right to any quarterly allowance for the remainder of the year, including such as may be then due and unpaid; and any such company failing, without good excuse, to be judged of by the regimental commander, to attend two consecutive encampments, shall be disbanded.

CHAPTER 77.

MILLS AND MILLERS. 2897, 2898.

2897 (1376) (1598) (1293) (1110). **Rotation in grinding.**—The owners and keepers of public mills, and their employes, must grind the grain brought to their mills in rotation, as it is received, and as well as the condition of the mill and water will permit; and may take and receive for toll one-eighth of the grain, and no more; but nothing in this section is to be so construed as to prevent the owner of any mill from grinding his own grain any time.

2898 (1377) (1599) (1294) (1112). **Public mills defined.**—All grist-mills, which grind for toll, are public mills, within the meaning of this chapter.

CHAPTER 78.

MINES AND MINING. 2899–2936.

Feb. 16, 1897, p. 1099, §1.

2899. Inspectors of mines appointed by the governor; terms; salaries.—There shall be appointed by the governor of Alabama three inspectors of coal-mines, within ten days from the first day of May, 1897, one of whom shall be designated as chief mining-inspector, and the other two shall be designated as associate mining-inspectors. The chief mining-inspector shall hold his office for three years from said date, one of the associate mining-inspectors shall hold his office for two years, and the other associate mining-inspector shall hold his office one year from said date; *Provided, however*, that at the expiration of said term of office, as above provided, the successors of said inspectors, respectively, shall hold office for term of three years. The salary of the chief inspector shall be one thousand five hundred dollars per annum, and the salaries of each of the associate inspectors shall be one thousand dollars per annum.

2900. Qualifications of mine-inspectors.—The chief mining-inspector shall be a practical miner of at least five years' experience, and his two associates, who shall be practical miners of at least five years' experience. No one shall be appointed mine-inspector who, or the wife of whom, owns and operates, in whole or in any part, mining property. Ib. §2.

2901. Duties of mine-inspectors.—The mine-inspectors shall give their whole time and attention to the duties of their offices. It shall be the duty of mine-inspectors to examine all the mines in this state at least every three months, to see that all the requirements of this chapter are strictly observed and carried out; inspectors shall particularly examine the works and machinery belonging to any mine, examine into the state of the mines as to ventilation, circulation and condition of air, drainage and general security; they shall make a record of all examinations of mines, showing the date when made, the condition in which the mines are found, the extent to which the laws relating to mines and mining are observed or violated, the progress made in the improvements and security of life and health sought to be secured by the provisions of this chapter, number of accidents, injuries received, or deaths in and about the mines, the number of persons employed in or by each mine, together with all such other facts and information of public interest concerning the condition of mines, development and progress of mining in this state, as he may think useful and proper, and so much thereof as may be of public interest, to be included in his biennial report. Ib. §26.

2902. Governor may remove inspector for incompetency or malfeasance and appoint successor.—The governor may discharge a mine-inspector at any time, upon the filing of a written complaint substantiated by sufficient proof for unfairness, unfitness, incompetency, or malfeasance, and appoint his successor for the unexpired term. Ib. §28.

2903. Inspectors must make biennial report to governor.—The inspectors of mines shall, biennially, prior to the assembling of the general assembly, make a written report to the governor, stating the condition of the mining interests in this state, with such suggestions and information as may be of interest to the mining industry, and said report to be printed on the order of the governor. Ib. §31.

2904. Appropriation.—For the purpose of defraying the expenses of the inspector as provided under this chapter, the sum of nine hundred dollars shall be, and the same is hereby appropriated out of any money in the state treasury; said appropriation shall be paid to the chief inspector of mines on his application, showing to the state auditor the amounts necessary to be expended for the actual expenses of the board of inspectors, quarterly. Ib. §35.

2905. Board for examination of mine-bosses; examination and certificate; fee; compensation of members.—The chief inspector of mines, who shall be chairman of the board, together with two practical miners, and two operators of mines (a majority of whom may act), shall constitute a board of examiners, to examine and give Ib. §8.

certificates of fitness to persons as mine-bosses in any coal-mine in this state. A fee of five dollars shall be paid to the chief-inspector of mines by each person examined, to be used as an examiners' fund, before the examination is begun. Out of the examiners' fund there shall be paid to each member of the board, except the chief inspector of mines, who shall serve without extra pay, four dollars per day. Said board shall meet every six months at the office of the chief inspector, and remain in session not longer than three days. The members of such board, except the chief inspector of mines, shall hold office for two years from the first day of May, 1897, and shall be appointed by the governor.

Ib. §16. **2906. Qualifications of applicants for certificates; classification.** Applicants for first and second class mine-foreman's certificates shall be at least twenty-three years of age, and shall have at least five years' practical experience after having attained to the age of fifteen years, as miners, superintendents at or inside of any coal-mine, and shall be citizens of this state and men of good moral character, and men of known temperate habits. The said board shall be entitled to grant certificates of competency of two grades, namely: Certificates of the first class to persons who have had experience in mines generating gases, and who shall have the necessary qualifications to fulfill the duties of mine-foreman in such mines; and certificates of the second class to persons who give satisfactory evidence of their ability to act as mine-foreman in mines not generating explosive gases.

Ib. §5. **2907. Mine owner or operator must provide standard scales for weighing coal.**—The owner or operator of each coal-mine at which the miners are paid by weight, shall provide such mines with suitable scales, of standard make, for the weighing of all coal, when contracted for to be weighed.

Ib. §4. **2908. Coal to be weighed and full weight credited to miner at two thousand pounds a ton.**—All coal mined in this state contracted for payment by the ton or other weight, shall be weighed, and the full weight thereof shall be credited to the miner of such coal, and two thousand pounds of coal shall constitute a ton.

Ib. §6. **2909. Check-weighman, with access to scales, weights and accounts.**—In all mines the miners employed and working therein may furnish a check-weighman, who shall at proper times have full access and examination of such scales and seeing all measures and weights, and accounts kept of the same; *Provided*, that not more than one person shall have such right of access, examination and inspection of scales, measures and accounts at the same time.

Ib. §7. **2910. Chief inspector to procure, at expense of state, standards, balances and other means of adjusting scales.**—The chief mine-inspector shall procure from the state, at the state's expense, a full and complete set of standards, balances and other means of adjustment such as are necessary in the comparison and adjustment of scales, beams and other necessary apparatus to be used for a just weighing of coal and other materials at the mines according to the state stand-

ard of weights; and it shall be the duty of said inspector to examine, test, and adjust, as often as occasion demands, all scales and other apparatus used in weighing at mines.

2911. Mine-inspector, miners, owners of the mine and other interested persons may inspect scales and record of weights.—The mine-inspector, miners employed in the mines, and the owner of the land or persons interested in the rental and royalty of such mines, shall at all proper times have full right of access to scales used at said mines, including bank book in which the weight of coal is kept, to examine the amount of coal mined for the purpose of testing the accuracy thereof. Ib. §25.

2912. Who may act as foreman; fees for examinations and certificates.—No person shall act as foreman in any coal-mine in this state generating explosive gases unless he is in possession of a first-class certificate of competency. The fee for examination and issuing a first-class certificate shall be five dollars, and for a second-class certificate, three dollars. Ib. §17.

2913. Mine-operator must make annual report to chief inspector of mines.—On or before the twenty-fifth day of January in each year the operator or superintendent of every coal-mine shall send to the chief inspector of mines a correct report if required, specifying with respect to the year ending the thirty-first day of December, preceding, the name of the operator and location of office of the mine, and the quantity of coal mined. The report shall be in such form and give such information regarding such mine as may be from time to time required and prescribed by the chief inspector of mines. Blank forms for such report shall be furnished by the chief inspector of mines. Ib. §18.

2914. Ventilation of mines.—The operator or superintendent of every coal-mine, whether shaft, slope, or drift, shall provide and hereafter maintain, ample means of ventilation for the circulation of air through the main entries and all other working-places to an extent that will dilute, carry off, and render harmless the noxious gases generated in the mines. It shall be the special duty of the inspector and his assistants to carry out the provisions of this section; and it shall also be the duty of each and every mine-operator and mine-boss to assist the inspector and his assistants in carrying into effect said provisions. Ib. §8.

2915. Duty of mine-inspector when informed of insufficient ventilation.—If at any time the inspector or his assistants are notified that the ventilation in any coal-mine within this state is insufficient, the said chief inspector, or one of his assistants shall proceed within five days to investigate said complaint or complaints by personal inspection of any mine or mines in which the quality or quantity of air is complained of, and if on investigation he finds that the air in any mine is insufficient, he shall direct the operator or operators of this mine to adopt such measures for the proper ventilation of such mine, as he deems necessary. In the event that the inspector or one of his assistants fails, without sufficient cause, or refuses to make the in- Ib.

vestigation herein provided for, in addition to the penalty prescribed by law, he may be removed from office by the governor.

Ib. §9. **2916. State to furnish necessary instruments for testing air in mines.**—The chief mine-inspector shall be furnished by the state all necessary instruments for measurement of air in mines, and whatever chemical instruments the said inspector may recommend from time to time.

Ib. §10. **2917. Stretchers, blankets, oil, bandages, etc., to be kept at mines.**—It shall be the duty of the operator, agent or superintendent of each mine to keep at the mouth of the mine, or at any such other place about the mine as shall be designated by the chief mine-inspector, a stretcher, properly constructed, and a woolen and waterproof blanket in good condition for use in carrying away any person who may be injured at the mines; *Provided*, that where more than two hundred men are employed, two stretchers and two woolen and waterproof blankets shall be kept in mines generating fire-damp. A sufficient quantity of linseed or olive oil, bandages and linen shall be kept in the store at the mines for use in emergencies and bandages shall be kept at all mines.

Ib. §11. **2918. Breaks-through.**—It shall be the duty of the chief mine-inspector to require the proper breaks-through to be made in all room-pillars, at such distances apart, as, in the judgment of the mine-inspectors may be deemed requisite; said breaks-through to be made and paid for according to the contract existing between the said owners and operators of the mine and the miners, at the time the said breaks-through are ordered to be made.

Ib. 12. **2919. Props and other timber to be supplied by operators.**—The owners, agents and operators of any coal-mine shall keep a sufficient supply of props and other timber used in the mines, so that the workmen may at all times be able to prop their working-places, and the owner, agent or operator shall afford the miners working in their mines proper facilities for the delivery of props and other timber needed by them in their respective working-places.

Ib. §13. **2920. Safety-lamps must be furnished by operator; how kept; duty to report injury.**—All safety-lamps used for examining mines, or for working therein, shall be the property of the operator, and shall be in the care of the mine-foreman, his assistant or fire-boss, or other competent persons, who shall fill, trim and examine and deliver the same locked in a safe condition to the men when entering the mines before each shift, for which service a charge not exceeding cost of labor and material may be made by the operator. A sufficient quantity of safety-lamps, but not less than twenty-five per centum of those in use, shall be kept at each mine where gas has at any time been generated in sufficient quantities to be detected by ordinary safety-lamps, for use in case of emergency. It shall be the duty of every person who knows his safety-lamp to be injured or defective to promptly report such fact to the party authorized herein to receive and care for said lamps, and it shall be the duty of that person to promptly report such fact to the mine-foreman.

2921. Each mine must have at least two available openings when required by the inspector.—Whenever required by the chief mine-inspector it shall be the duty of the owner, operator or manager of all coal-mines to have and maintain at least two available openings to the surface from each seam or stratum of the coal worked in such mine, one of said openings to be known as a manway or escapeway in case of accident. Said manway or escapeway shall be kept in good condition and shall be at all times reasonably safe for entering and leaving the mines; reasonable time, however, shall be given to the said operator, owner or general manager to prepare the second opening, in no case exceeding one year, from the time such order is made, unless, in the opinion of the chief mine-inspector, a longer time is required, in which case they shall allow the additional time necessary and so ordered. Ib. §14.

2922. Not more than twenty men to work without escapeway. Not more than twenty men shall be allowed to work in any new mine hereafter to be opened until an escapeway is provided for. Ib. §15.

2923. Maps of underground mines.—The owner, agent or operator of all underground mines in this state shall make or cause to be made by a competent engineer, an accurate and exact map of such mine, showing the exact position of such mine in reference to the section lines which shall be connected with some known boundary corner of the section, or subdivision of the section. Said map shall show accurately the position of any branches, creeks or river under which said mine may extend; also, as near as possible, the position of any old mine near by, and said map shall be sworn to by the engineer making same. The new work inside of mines must be added to said map or a new map filed at least in every twelve months. Said map shall be filed in the office of the chief inspector of mines who shall provide a suitable and safe place for keeping it. The chief inspector of mines, with the approval of the board of examiners, may refuse to receive maps made by persons claiming to be mining engineers, who are not known to be such and of good standing and character in their profession. The mine-boss in charge of such mine shall certify to the correctness of said map. The map shall be made on a uniform scale of not less than two hundred feet to the inch; any person may secure a copy of any map on file in the inspector's office by paying reasonable charges for making such map, and such copy, when certified by the inspector, shall be evidence in any court in this state. Ib. §19.

2924. Chief inspector to give written instructions as to the manner of working gaseous mines and examine machinery.—The chief inspector of mines shall give directions to the mine-operators, owners and general managers as to the method of working gaseous mines, and the manner of working and propping the roof in any and all mines, and shall examine the machinery and appliances used in working the same. All such directions shall be given in writing, subject, however, to the approval of the board of examiners, as herein provided. Ib. §20.

Ib. §21. **2925. Doors used in ventilating system to be self-closing.**—The doors used in a system used in ventilating or regulating the ventilation of mines shall be so hung and adjusted that they will close themselves, or by supplying them with springs and pulley so that they cannot be left standing open.

Ib. §22. **2926. Safety-catches, brakes, props and indicators to be attached to cages.**—Approved safety-catches shall be attached to the cage used for the purpose of hoisting and lowering persons into and out of the mines. An adequate brake shall be attached to every brake, drum or machine for lowering and hoisting persons into and out of the mines, and also props and indicators which shall show to the person who works the machine the position of the cage or load in the shaft or on the roadway.

Ib. §24. **2927. Character of engineers; must not allow unauthorized interference with engine.**—The owner, agent or operator, or agent of any coal-mine shall place in charge of any engine used for conveying into and hoisting out of said mine, none but an experienced, competent and sober engineer. No engineer in charge of such an engine, or machinery, shall allow any person except such as may be deputed for that purpose, by the owner, agent, or operator to interfere with it, and no person shall interfere with or intimidate the engineer in the discharge of his duty.

Ib. §23. **2928. Precautions against dangerous accumulations of gas.** When a place is likely to obtain a dangerous accumulation of gases or water, works, when approaching such places shall not exceed eight feet in width, and there shall be constantly kept at a sufficient distance ahead, not less than three yards in advance, one bore-hole near the center of the working, and sufficient flank bore-holes on each side, six feet apart and six feet in depth.

Ib. §26. **2929. When gas is known to exist in mine a competent fire-boss must be employed; his duties.**—When gas is known to exist, the owner, agent or operator of any coal-mine shall employ a competent fire-boss, whose duties it shall be to examine every place in the mine before the men are permitted to enter for work. Said fire-boss shall be at some convenient place each day to inform every man as to the state and condition of his working-place before entering. Said work shall be carefully examined every morning with a safety-lamp by the fire-boss before the workmen are allowed to enter therein.

Ib. §29. **2930. Explosions and accidents causing personal injury must be forthwith reported to inspector, who must investigate and make record of same.**—When by reason of any explosion or accident in any mine in this state, or the machinery connected therewith, loss of life or serious personal injury shall occur, it shall be the duty of the person having charge of such mine to give notice thereof forthwith to the chief inspector of mines or any inspector, and it shall be the duty of the chief mine-inspector or any inspector upon being notified of any fatal accident, as herein provided, to immediately repair to the scene of the accident and make such suggestions as may appear necessary to secure the safety of any persons who may be en-

dangered. The said mine-inspector shall keep on file a list of all fatal accidents, and to enable them to make the investigation, he shall have the power to compel the attendance of persons to testify.

2931. Rules to be posted for information of employes.—For the purpose of making known the rules and provisions of this chapter to all persons employed in or about the mines to which this chapter applies, an abstract of the chapter and rules shall be posted up in legible characters in some conspicuous place or places at or near the mines where they may be conveniently read by the persons employed, and so often as they become obliterated or destroyed, the owner, operator or superintendent shall cause them to be renewed with all reasonable dispatch. Any person who pulls down, injures or defaces such abstract of the chapter or rules when up in pursuance of the provision of this chapter shall be guilty of an offense against this chapter. Ib. §32.

2932. Rules.—RULE 1. No unauthorized person shall enter the mine without permission from the superintendent or mine-foreman. Ib. §33.

RULE 2. All employes shall inform the mine-foreman or his assistant of the unsafe condition of any working-place, hauling-roads or traveling-ways, or of damages to doors, brattices or stoppings, or of obstructions in the air-passages when known to him.

RULE 3. Every workman employed in the mine shall examine the working-place before commencing work, and after any stoppage of work during the shift he shall repeat the examination.

2933. Women and boys under twelve not to work in mines.—No woman, nor any boy under the age of twelve years, shall be employed to work or labor in or about any mine in this state. Ib. §27.

2934. Controversies between operators and inspectors; how settled; discretion of inspectors.—In case of any controversy or disagreement between inspectors and the owner or operator of any mines, or the persons working therein, or in case of conditions of emergency requiring counsel, the chief mine-operator may call on the board of examiners for such assistance and counsel as may be necessary. Should the mine-inspector find any of the provisions of this chapter violated or not complied with by the owner or lessee or agent in charge of any mines, he shall immediately notify such owner, lessee or agent in charge of such neglect or violation; unless the same is within a reasonable time rectified, or the provisions of this chapter are fully complied with, he shall institute a prosecution. The inspector shall exercise a sound discretion in enforcement of provisions of this chapter, and if in any respect which is not provided against by or may result from any rigid enforcement of any expressed provision of this chapter, the inspector finds any matter, thing, or practice in or connected with any such mines to be dangerous or defective, so as to, in his opinion, threaten or tend to the bodily injury of any person, the inspector may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in such notice the particulars in which he considers such mine or any part thereof, or any matter, thing or practice, to be dangerous Ib. §37.

or defective and require the same to be remedied, giving a reasonable time to have the same done. For the purpose of making the inspection and examination provided for in this section the mine-inspector and board of examiners shall have the right to enter any mine at a reasonable time by day or night, but in such manner as shall not unnecessarily obstruct the workings of the mine, and the owner or agent of such mine is hereby required to furnish the means of such inquiry and inspection if within their power.

Ib. §38. **2935. Controversies between chief mine-inspector and operator referred to the judge of probate; appeal; penalty.**—Whenever any agent or operator of any mines shall refuse or fail to comply with any order or direction of the chief mine-inspector after the expiration of a reasonable time, it shall be the duty of the mine-inspector to refer the matter to the judge of probate of the county in which the mine is located. Upon such reference the judge of probate shall set a day for the hearing of the same, and issue citation to the owner or operator of the mine to appear and contest the same if he sees proper; said citation to be served by the sheriff of the county at least ten days before the day of trial. Upon the application of either party the judge of probate must issue subpœna for witnesses, to be served by the sheriff as in other cases. After hearing the case the probate judge must render such decision as he may deem just and equitable, from which decision either party may appeal to the circuit court within sixty days. From the decision of the circuit court either party may appeal to the supreme court of Alabama. If no appeal is taken the decision shall be final and binding on said operator or mine-owner, and any mine owner or operator who refuses to carry out the final order or determination of the case after a reasonable time shall be guilty of a misdemeanor, and must on conviction be fined not more than one thousand dollars.

Feb. 8, 1893, p. 331. **2936. When adjacent owner may inspect mine.**—Whenever the owner or lessee of any land adjacent to other land upon which any mine is being worked, shall have reason to believe that such mine is being so worked as to encroach upon his land, and has been refused by the owner, operator, or manager of the mine permission at reasonable times to enter upon said mine with a competent engineer for the purpose of inspecting and surveying such mine, he may make application under oath to the probate court of the county in which the mine is situated, setting out the facts and praying for an order that such mine shall be surveyed. Upon the hearing, after such notice to the owner, operator or manager of the mine as the court may prescribe, the court may make an order requiring the sheriff of the county to employ a competent engineer to make a survey of such mine and file such survey in the office of the judge of probate, and such survey, when filed, shall be received in any court as prima facie correct. The court may at any time during the progress of the proceeding require such security for costs, and may tax the costs in such manner, as may be just and equitable.

CHAPTER 79.

MUNICIPAL CORPORATIONS.

ARTICLE 1.—INCORPORATION AND POWERS OF TOWNS. 2937–2967.
2.—PROVISIONS APPLICABLE TO ALL CITIES AND TOWNS. 2968–2973.

ARTICLE 1.

INCORPORATION AND POWERS OF TOWNS.

2937 (1486) (1763) (1483) (1220). **Mode of incorporating a town.**—When the inhabitants of a town not incorporated, the population of which is not less than one hundred nor more than three thousand, shall desire to be organized into a town, they may file with the judge of the probate court of the county in which they reside, a petition in writing signed by twenty or more adult male inhabitants, stating the name and the boundaries of the town proposed to be incorporated.

2938 (1487) (1764) (1484) (1221). **Election directed.**—The judge of the probate court must direct an election to be held within thirty days after the filing of the petition, at a place within the limits of the proposed town to be designated by him, and shall give notice of the time and place of such election to the inhabitants of the territory affected thereby by publication in a newspaper or in such other way as may seem to him proper. He shall also appoint three inspectors of election who shall manage the election.

2939 (1488) (1765) (1485) (1222). **Who may vote.**—Every qualified elector who has resided within the boundaries of the proposed town for three months next preceding the election may vote at such election.

2940 (1489) (1766, 1767) (1486, 1487) (1223, 1224). **How election conducted.**—The election to determine whether or not the proposed town shall be incorporated must be conducted in all respects as provided by the general election laws and under the same sanctions and penalties, except that no official ballot need be provided, but every voter may furnish his own ballot and must write or print thereon "corporation" or "no corporation."

2941 (1490) (1768) (1488) (1225). **If majority vote for "corporation," town declared incorporated.**—The inspectors must, within five days thereafter, certify the result to the judge of probate; and, if a majority of the votes cast at the election are for "corporation," he must, within three days, make an entry of record that the inhabitants of such town are incorporated by the name, and with the boundaries designated in the petition; whereupon, the inhabitants of the town are incorporated, and invested with the rights incident to such corporations.

2942 (1491) (1769–1775) (1489–1495) (1226–1232). **Corporate authority vested in intendant and aldermen.**—The corporate authority of towns incorporated under the provisions of this chapter is vested in an intendant and five aldermen, who shall hold office for one year and until their successors are elected and qualified.

2943 (1492) (1776) (1496) (1233). **Who eligible.**—No person can hold the office of intendant, in such corporation, who has not resided within its limits one year next preceding his election; and no person can hold the office of alderman who has not resided therein six months next preceding his election.

2944 (1493) (1770, 1771) (1490, 1491) (1227, 1228). **Inspectors for election of corporate authorities; notice.**—The judge of probate must notify the sheriff of the entry of record of such incorporation, and the sheriff must, within ten days, appoint three inspectors, a place of voting in such corporation, and a day not more than fifteen days from such notification, for the election of the intendant and aldermen. Notice of the day and place of such election must be by the sheriff posted at two public places in the town at least five days before the election.

2945 (1494) (1772, 1773, 1774) (1492, 1493, 1494) (1229, 1230, 1231). **Election.**—The qualification of electors and oath of inspectors must be as in the election for incorporation. If no choice is made, by reason of two or more persons receiving the same number of votes for the same office, the inspectors must decide between such persons by lot.

2946 (1495) (1777) (1497) (1234). **Subsequent elections.**—All elections after the first are to be ordered, and inspectors and voting-places appointed by the corporate authorities of the town; and the qualifications of voters must be the same as at the first election. All ties must be determined by lot.

2947 (1497) (1779) (1499) (1236). **On failure of election, officers hold over.**—Should the election not take place on the day appointed, the corporation is not for that cause dissolved; but the corporate authorities must appoint some other day, as early as practicable, for holding the election.

2948 (1498) (1780) (1500) (1237). **Quorum of board; removal of officers.**—A majority of the whole number of intendant and aldermen constitute a quorum for the transaction of business; but a smaller number may make adjournments, and have power to compel the attendance of absent members by imposing fines. Two-thirds of the whole number of the corporate authorities may remove any officer or member for malconduct or disorderly behavior.

2949 (1499) (1781) (1501) (1238). **Increase of aldermen.**—Whenever, in the opinion of the corporate authorities, it is expedient to increase the number of aldermen to nine, they may direct nine to be elected at the next and every succeeding annual election, and may, in like manner, reduce the number to five again.

2950 (1500) (1782) (1502) (1239). **Powers of the corporate au-**

thorities.—The corporate authorities of the town have the following powers:

1. To pass such by-laws and ordinances as may be necessary to enforce the powers in this article to them granted, and for their own government, not contrary to law.

2. To prevent and remove nuisances at the expense of the person causing the same, or upon whose property the same may be found.

3. To license, tax, regulate and restrain theatrical and other shows and amusements, and the retailing of spirituous, vinous and malt liquors within the corporate limits.

May prohibit sale of liquor.—Smith v. Warrior, 99 Ala. 481.

4. To restrain and prohibit gaming, houses of ill-fame, disorderly conduct and breaches of the peace.

5. To establish night and day watches and patrols, and to appoint captains thereof.

6. To establish and regulate markets and town prisons; sink and repair public wells, and make all needful provisions for furnishing the town with water; and keep in repair all necessary streets, alleys and drains.

McCain v. State, 62 Ala. 138; Webb v. Demopolis, 95 Ala. 116; Harn v. Dadeville, 100 Ala. 199.

7. To license and regulate wagons, carts, drays, hacks and carriages running in such town for hire.

8. To appoint a marshal, treasurer, clerk, and all necessary officers, prescribe their duties, and fix their compensation, and fix the compensation of the intendant.

9. To impose fines, not exceeding fifty dollars, for breaches of their by-laws or ordinances, and to collect the same by execution against the property of the offender; and any person failing to pay such fine may be sentenced to hard labor on the streets of the town for a period not exceeding thirty days; to punish disorderly conduct or a breach of the peace by imprisonment for a period not exceeding thirty days.

Ex parte Moore, 62 Ala. 471; Ex parte Russellville, 95 Ala. 19.

10. To supply all vacancies in their own body, and the persons so appointed shall hold until their successors are elected at the next election and qualified.

11. To purchase, hold and dispose of real property and such personal property as may be necessary for the use of the corporation.

12. To exercise such other powers as are conferred on them by law.

No power to make and enforce quarantine regulations.—New Decatur v. Berry, 90 Ala. 432. Or to engage in wharfing.—Webb v. Demopolis, 95 Ala. 116.

2951 (1501) (1783) (1503). **Intendant acts as justice.**—The intendant has the powers and jurisdiction of a justice of the peace in all matters, civil or criminal, arising within the corporate limits.

2952 (1502) (1784) (1504) (1240). **Authority of marshal.**—The marshal has authority, within the corporate limits, to execute the lawful ordinances of such corporate authorities, and must, without

warrant, arrest all persons breaking the peace, or violating any ordinance, and bring the offenders before the intendant.

2953 (1503) (1785) (1505) (1241). **Ordinances not enforced until published.**—No by-law or ordinance of the town must be enforced until it has been published at least ten days in three public places in the town, and also in a newspaper, if any is published within the corporate limits.

Pitts v. Opelika, 79 Ala. 527.

2954 (1504) (1786) (1506) (1242). **Powers of taxation.**—On all real property situate within the boundaries of such town, and on all personal property of the inhabitants thereof, the corporate authorities may levy annually a tax, not exceeding one-half of one per cent., on the value thereof, as assessed for state taxation during the preceding year; a poll-tax of not exceeding two dollars on each adult male inhabitant who has resided therein three months next preceding such levy; on each vehicle used for the transportation for hire of persons or property within the corporate limits, a license-tax not exceeding thirty dollars; on each retailer of spirituous, vinous, or malt liquors, a license-tax not less than twenty nor more than five hundred dollars; on each dealer in drugs or medicines, goods, wares or merchandise, a license-tax not exceeding twenty-five dollars; on each auctioneer, a license-tax not exceeding fifty dollars; on each pack of playing-cards sold or exchanged, a tax not exceeding one dollar.

2955 (1505) (1787) (1507) (1243). **Assessment annual.**—The corporate authorities may cause an assessment of all property subject to taxation to be made annually, the assessment naming the owner of the property, when known; if not known, assessing it to owner unknown.

2956 (1506) (1788) (1508) (1244). **Notice of meeting to correct errors in assessment.**—The assessment must be returned to the intendant, who must cause ten days' notice of the time and place when the corporate authorities will correct mistakes in such assessment, to be given by advertisement in a newspaper, if any is published in such town, and, if not, the notice must be posted at some public place therein, at least ten days before the time for such correction.

2957 (1507) (1789) (1509) (1245). **Errors corrected; assessment approved.**—The corporate authorities must attend at such time and place and correct all mistakes in the assessment, and, when corrected, mark upon the same, "approved," and deliver it to the person appointed to collect the taxes.

2958 (1508) (1790) (1510) (1246). **Assessment has force of judgment.**—The assessment, when so approved, has the force and effect of a judgment and execution, and the person appointed to collect the taxes may, on a failure to pay, collect the same by levy and sale of the property of the person so failing, or, if the assessment be to owner unknown, by a sale of the property.

2959 (1509) (1791, 1792) (1511, 1512) (1247, 1248). **Notice of**

sale.—Of all sales of personal property under the preceding section, ten days' notice of the time and place must be posted at a public place in the town; and of all sales of real property for the non-payment of taxes, thirty days' notice must be given by advertisement in a newspaper published in the town, or, if there be none, the notice must be posted at some public place therein for thirty days before the sale.

2960 (1510) (1793) (1513) (1549). **Contents of notice.**—Such notice must state—

1. The description of the property.

2. The name of the person to whom assessed, unless assessed to owner unknown, in which case it must be so stated.

3. The amount of taxes assessed and the costs, including expenses of the notice.

2961 (1511) (1794) (1514) (1250). **Hours of sale.**—All sales of property for the non-payment of taxes under this article must commence between the hours of ten and twelve in the morning, and not continue past the hour of four in the afternoon, and may continue from day to day until completed.

2962 (1512) (1795) (1515) (1251). **Certificate of purchase of real estate.**—The collector or person making the sale must give to the purchaser of real estate a certificate of purchase, stating the authority under which the sale was made, the time and place of sale, the notice thereof which was given, the amount of the taxes and costs for the payment of which the sale was made, the name of the owner to whom such taxes were assessed, if known, and if unknown, the fact that he is unknown, a description of the property, the name of the purchaser, the amount bid, and the payment of the bid.

2963. Deed to purchaser.—After the expiration of two years from the date of the sale of any real estate for taxes the intendant of the town then in office must execute and deliver to each purchaser, or person to whom the certificate of purchase has been assigned, upon the surrender of the certificate, a deed to the real estate purchased as described in the certificate; and such deed, when properly acknowledged and recorded, shall convey to and vest in the grantee all the right, title, interest and estate of the former owner of such real estate, and shall be in all the courts of the state, prima facie evidence of the facts recited therein.

2964 (1513) (1796) (1516) (1252). **Redemption.**—Real estate so sold for taxes may be redeemed at any time within two years from the sale, on payment of the amount for which the property sold, with interest at the rate of ten per cent. per annum, and all taxes which have accrued subsequently; and if the purchaser does not reside within the corporate limits, payment may be made into the corporation treasury for him.

2965 (1514) (1797) (1517) (1253). **By persons under disability.** Infants, married women and persons of unsound mind may redeem their real property so sold on the same terms, on application to the

court of chancery within one year after the removal of their respective disabilities.

2966 (1515) (1798) (1518) (1254). **Inhabitants exempt from road duty.**—The inhabitants of such town are exempt from working on roads without the corporate limits.

2967 (1516) (1799) (1519) (1255). **Change of name or boundary.** Ten adult male inhabitants may, by petition in writing to the judge of probate, propose an alteration or change of the name, or of the boundaries of the town, stating the alteration or change proposed; and on the filing of such petition, the judge of probate must order an election to be held and conducted in all respects as the election for the original incorporation; and if at such election a majority vote for the proposed alteration or change, the fact must be certified to such judge by the inspectors, and on the filing of such certificate he must make and enter an order allowing such alteration or change; but the boundaries of the town cannot be extended until the consent in writing, signed by them, of at least two-thirds of the owners of the real estate situate within the extension has been filed in the office of the judge of probate.

ARTICLE 2.

PROVISIONS APPLICABLE TO ALL CITIES AND TOWNS.

2968 (1517) (1800). **Punishment of female.**—For a violation of an ordinance or by-law of a town or city, a female must not be punished by subjecting her to work on the streets.

2969 (1518). **Appeals from judgments of conviction for a violation of municipal ordinances or by-laws.**—If not otherwise provided by the charter of a town or city, an appeal to the circuit court of the county will lie from a judgment of conviction for a violation of an ordinance or by-law of the town or city; such appeal to be taken within five days after the rendition of such judgment, and to be governed in all respects by the laws regulating appeals from judgments of justices of the peace in criminal cases.

2970 (1519) (1801). **May regulate running of trains; may prohibit the standing thereof on or across streets.**—Towns or cities have power to regulate the running of railroad trains or engines within the corporate boundaries, limiting the moving or running thereof to a speed of not more than four miles per hour; and to prohibit the standing thereof on or across the streets or highways within the corporate boundaries.

2971 (1380) (1604) (1299) (1119). **Magazine to be built.**—It is the duty of the corporate authorities of every city or town corporate within the state to provide a suitable fire-proof building without the limits of the town or city, for the storage of gunpowder or other explosive material, on such terms as the corporate authorities may prescribe.

Feb. 28, 1889, p. 99.

2972. Mayor or intendant has power to close certain places in case of riot.—Whenever any mob, riot, or tumult, has occurred, or

there is reasonable cause to apprehend an occurrence thereof in any city, town, or village, or in the vicinity thereof, the mayor or intendant shall have power to issue his proclamation ordering the closing of all barrooms, saloons, shops, or other places where the business of selling intoxicating liquors, arms, ammunition, dynamite, or other explosives, is carried on, and forbidding the selling, lending, giving away, bartering, or otherwise disposing of any of such articles, until such time as in his judgment such occupation may be carried on without danger to the public peace and safety.

2973 (1520). **Municipal special tax kept separate.**—Unless otherwise provided by its charter, when a special tax is levied by a town or city for any purpose, the levy, collection and disbursement thereof shall be separate in all respects from the levy, collection and disbursement of general municipal taxes; and all moneys, books, receipts, vouchers and warrants relating thereto shall be kept separate, and express on their face that they relate to the special tax, and state the object of the tax; but the same officers may act in the levy, assessment, collection and disbursement of the general and special taxes, unless otherwise provided. If, after the purpose of the special tax is accomplished, there remains a balance over, it shall be transferred to the general fund of the corporation.

CHAPTER 80.

NAVIGATION.

ARTICLE 1.—DUTIES OF HARBOR-MASTER AND PORT-WARDENS OF MOBILE. 2974–2991.
2.—PILOTS AND PILOTAGE. 2992–3013.
3.—SHIPS AND SEAMEN. 3014–3020.

ARTICLE 1.

DUTIES OF HARBOR-MASTER AND PORT-WARDENS OF MOBILE.

2974. Southern boundary of the harbor of Mobile.—The southern boundary of the harbor of Mobile is the outer bar to the southward of Sand Island. Feb. 28, 1889, p. 1038, §1.

2975. Appointment of port-wardens and harbor-master; term; removal.—On the fifteenth day of March of each even-numbered year, or as often as there shall be a vacancy, there shall be appointed by the mayor of Mobile, the president of the Mobile chamber of commerce, the president of the board of underwriters of Mobile, the president of the Mobile cotton exchange, and the president of the board of revenue and road commissioners of Mobile county, three persons, who shall be denominated port-wardens of Mobile; one of whom shall be designated as harbor-master. For refusal to perform duty, neglect of duty, or other improper conduct in the dis- Ib. §2. As amended Feb. 18, 1895, p. 752, §1.

charge of duty, or for ineligibility under this article, either of said wardens may be removed by the said officers charged with the appointment, whose action shall be final.

Feb. 28, 1889, p. 1038, §3.

2976. Who disqualified.—No agent or inspector of any insurance company; no person employed by the master, owner or consignee of any vessel for any purpose, in connection with vessels, except as in this article provided; no person who furnishes supplies or material of any description to vessels, and no person who has any interest, direct or indirect in the business of auctioneer, shall be appointed harbor-master or port-warden. And no person employed, concerned or interested in any business of commerce connected with shipping, shall be appointed, or shall exercise the duties of harbor-master, save where a port-warden may temporarily fill such function during the absence of the harbor-master, under the provisions hereinafter made.

Ib. §4. Feb. 18, 1895, p. 1038, §3.

2977. Territorial limits of powers; exceptions.—The powers of the harbor-master and port-wardens, except as in this article is otherwise provided, are limited to the corporate limits of Mobile, and in and upon that portion of Mobile river lying north of the corporate limits of Mobile and extending northwardly past the mouth of Chikisa Bogue to the place at which part of the waters of the Mobile river flows into the Spanish river. But on the request of a master or consignee of a vessel beyond these limits, any of them may survey or inspect such vessel, her hatches, cargo or stowage.

Feb. 28, 1889, p. 1038, §5.

2978. Office and record.—The harbor-master and wardens must keep an office in the city of Mobile, and there make and preserve a full record of their official acts, and docket of their official fees, showing their amounts and from what vessel or person collected, and on what account, and at what times; all of which shall be at all times open to public inspection free of charge; and the harbor-master shall keep such office open daily, except Sundays, from eight o'clock A. M. to four o'clock P. M., and remain in his office when not actively engaged elsewhere in the performance of his duties.

Feb. 18, 1895, p. 752, §§3, 4.

2979. Duties and powers; deputy.—The harbor-master shall, on the request of the owner, master or consignee of any vessel arriving within the limits stated in this article, regulate and station such vessel, and may from time to time remove any such as are not employed or immediately about to be employed in receiving or discharging cargo or ballast, if necessary to make room for such other vessels as may require immediate accommodation for receiving or discharging ballast or cargo. He shall not interfere with the selection by the master, owner, agent or consignee of a vessel of a wharf, bulkhead or shore-berth for the discharge or receipt of cargo or ballast where such wharves, bulkheads or shore-berths so selected are erected within the limits and in the manner of construction fixed by the Mobile river commission, nor station such vessel at other berths than the one so selected by the master, agent, owner or consignee, unless the person or authority controlling such selected wharf prohibits its use for such purpose by the vessel. He may require persons in charge

of vessels, made fast to a wharf or the shore, or lying in the stream, to adjust their spars so that they will not interfere with other vessels, or project over a street. He has authority to determine how far and when persons in charge of vessels shall accommodate each other in their station, but shall not have authority or power to prohibit vessels from receiving or discharging cargo while lying moored in the Mobile river, if they be so moored as not to unduly interfere with navigation, or with each other. But in case no request is made within a reasonable time by the owner, master, agent or consignee, the harbor-master shall have authority to locate vessels at proper places. The harbor-master shall allow vessels to load in the stream above One Mile creek, but shall have power to place such vessels so as to avoid undue interference with navigation and with such others while taking on cargo, lying at anchor. He shall not require vessels taking berths above One Mile creek to occupy or make fast to shore-berths against the wish of the officer or master controlling the vessel. It shall be the duty of the harbor-master to cause to be printed from time to time and to keep posted in his office, and in all ship-chandlers' and ship-brokers' offices, in the chamber of commerce and in the cotton exchange, the laws and rules governing him and the harbor and river of Mobile. In case of sickness or temporary absence, the harbor-master may appoint by writing in his stead, pro tempore, one of the other wardens, who while so acting shall have all the powers of harbor-master; but no such absence, except in case of sickness, shall extend beyond one week at any one time, unless leave therefor be first given him by the officers who are charged with the appointment.

Feb. 18, 1895, p. 752, §4.

Ib. §8.

Feb. 28, 1889, p. 1038, §6.

2980. Resisting harbor-master; penalty.—Any person in charge of a vessel who resists or opposes the harbor-master, or acting harbor-master, in the lawful execution of his duties, shall be fined by the mayor of Mobile not exceeding fifty dollars, to be collected, enforced and applied as fines for violations of municipal ordinances of that city.

Feb. 28, 1889, p. 1038, §7.

2981. Opening hatches; survey of cargo; record.—The harbor-master or warden must, on written application by the owner, master, or consignee of a vessel arriving within the corporate limits of Mobile, or within the bay or river of Mobile, inspect the hatches, be present at the opening thereof, and survey the stowage of the cargo of said vessel. And it shall be the duty of the harbor-master to give reasonable notice of the time of opening and inspection of hatches and survey of stowage to all consignees in writing, or by advertisement, and said consignees or their agents shall be allowed to be present at such time of opening, survey and inspection. The record of the inspection and survey shall state whether the hatches were properly covered and secured, shall designate, by marks and numbers, every package of merchandise surveyed, and if any package had the appearance of being damaged shall state how such package appeared to have received damage.

Ib. §8.

2982. Inspection and sale of damaged merchandise; certificate.

Ib. §9.

Any two of the harbor-master and wardens, where applied to for that purpose, must inspect damaged cotton or merchandise arriving within the corporate limits of Mobile, or in the bay of Mobile, and if the owner or consignee thereof orders it sold under their direction, attend and direct the sale at public auction, if in their opinion, the damage thereto is sufficient to justify its sale, but only upon forty-eight hours' notice of the time and place of sale in some newspaper of Mobile. They must give a certificate of such survey and of the correctness of such sale under their hands.

Ib. §10. **2983. Survey of vessel; expenses.**—Any two of the harbor-master and wardens shall, when called upon by the master, owner or consignee of any vessel, survey the same, and may employ carpenters to open the ceiling, strip the sheathing, bore the timbers and perform such other work as shall be necessary to a correct survey; and in case of survey of merchandise, may employ laborers to move, open, cooper, or otherwise arrange cotton or merchandise to be surveyed, the expense thereof to be paid by the person requiring the service.

Ib. §11. **2984. Discharge of ballast.**—The harbor-master and wardens may, by resolution, direct where ballast, sweepings, screenings, cinders, sawdust, shavings, refuse and rubbish of any kind shall be discharged in and about the harbor and bay of Mobile, and any river emptying into Mobile bay, and prescribe reasonable rules as to the manner of such discharge, and the masters of a vessel, or any other person who violates such directions as to place of discharge, shall forfeit five hundred dollars for each offense, to be recovered, with costs, in any court of competent jurisdiction at the suit of the harbor-master or other informer; one-half of the sum so forfeited shall be paid to the informer, and the other half into the treasury of the city. But any vessel may lawfully discharge ballast upon any wharf or bulkhead erected in the manner and within the limits of construction established by the Mobile river commission, if the person or authority controlling the wharf or bulkhead, assent thereto, all such wharves and bulkheads so constructed and placed being hereby made lawful places for the discharge of ballast. The harbor-master must keep the persons having the charge or care of vessels arriving in ballast well advised of all regulations as to any rules which may be made regulating the mode of discharging ballast, and must exercise a general surveillance over such discharges where made in or along Mobile river, but without any fee or reward therefor beyond his regular salary, and without delaying the lawful discharge. On the arrival of every vessel in ballast in the city of Mobile the harbor-master shall notify the mayor of said city of such arrival and the kind of ballast she has on board; and if the city purchase or acquire such ballast, the harbor-master must locate the vessel for its discharge at such accessible place as the mayor may indicate, and no wharfage shall be charged or demanded of the city or any vessel by the superintendent of the wharves for the use of the wharves for discharging such ballast thereon, if it be promptly removed.

2985. Anchorage; regulations.—It is the duty of all vessels coming to anchor in the channel of Mobile bay or of Mobile river, to so anchor that the vessel shall be and remain parallel to the fairway of the stream or the channel, and for that purpose sufficient anchors shall be placed fore and aft to hold the vessel in position. But this shall not be required of vessels engaged in the United States naval, lighthouse, or revenue service, nor to small boats of fifty tons burthen or less; nor to vessels temporarily coming to anchor in stress of weather, or while awaiting the assignment of a berth by the harbor-master; but in such cases it shall be the duty of the harbor-master, or his deputy, to assign such vessel to a berth as soon as possible. Dec. 10, 1892, p. 38, §§1, 2.

2986. Same; penalty; enforcement.—Any vessel, except those noted in the foregoing exception, so anchoring in the channel of Mobile bay, or of Mobile river, which shall fail to promptly comply with the requirements of the foregoing section, shall forfeit the sum of not exceeding fifty dollars for each twelve hours or fraction thereof that such vessel shall so fail to comply, after being duly assigned a berth as hereinabove provided, the amount of such forfeit to be fixed by the court or jury trying the same, which penalty may be collected by a suit in personam against the master or against any one or more owners of the vessel by attachment of the vessel, her tackle, apparel and furniture in the name of the state on the relation of the harbor-master; and any amount recovered in any judgment, whether against the master or owners, and the cost of suit, shall be a lien upon such vessel; and it is the duty of the solicitor of Mobile county to institute and prosecute such suits upon the grounds therefor being substantiated by the oath of the harbor-master, or by any one of the port-wardens, or two reputable citizens. All moneys recovered in such suits or proceedings shall be paid into the county treasury to the credit of the Mobile river commission. Ib. §2.

2987. Ship-channel; regulations.—The harbor-master and wardens shall have the general supervision of the navigation of the ship-channel connecting the river Mobile with the lower bay, and shall, from time to time, prescribe rules and regulations under which it may be used, and may define the circumstances under which the harbor-master shall grant permits to vessels to enter and use the same when drawing more than twelve feet of water, and forbid the use thereof by vessels of such draft without such permit. But it shall be the duty of the officers charged with the appointment of port-wardens on the first day of September in each year, or as soon as practicable thereafter, to fix the maximum draft at which any vessel may proceed through the channel, and to so instruct the harbor-master. Feb. 28, 1889, p. 1038, §12.

2988. Damage to channel or marks; penalty; enforcement. If any person in any manner, by his negligence, or wantonly, shall damage any ship-channel, natural or artificial, in the river or bay of Mobile, or if any person shall damage any beacon-stake, piling or other thing, or channel-mark, used in connection with the navi- Ib. §13.

gation thereof, he shall be required by the harbor-master to repair such damage, and on failure to do so within ten days after such notice, the offender forfeits five hundred dollars, to be recovered with costs in any court of competent jurisdiction at the suit of the harbor-master or an informer, the recovery to be applied under the direction of the harbor-master, first to the repair of the damage so done, and the surplus, if any, to go to the informer.

Ib. §14. **2989. Fees.**—The owner, master or consignee of a vessel, or the owner or consignee of a cargo, requesting in writing the service, shall, for the service so rendered on said written request and not otherwise, pay the harbor-master and port-wardens the following fees: For every survey of the hatches or of stowage of the cargo of a vessel, three dollars, and an additional one dollar for the expense of giving the notice. For every survey of damaged cargo, cotton or merchandise, ten dollars. For every survey of a vessel, ten dollars. For attending, directing and certifying the sale of damaged cotton or merchandise, fees as follows: On sums not exceeding two hundred dollars, five per cent.; on those not exceeding five hundred dollars, five per cent. on the first two hundred, and two per cent. on the remainder; on those exceeding five hundred dollars and not exceeding one thousand dollars, five per cent. on the first two hundred, two per cent on the next three hundred, and one per cent. on the remainder; on those exceeding one thousand dollars, the above fees up to the first thousand dollars, and one quarter of one per cent on the remainder.

Ib. §15. As amended Feb. 18, 1895, p. 752, §2. **2990. Harbor-master neglecting duty; penalty; enforcement.** On the neglect or refusal of the harbor-master, or warden acting at any time pro tempore as harbor-master, promptly to perform his duties imposed by this article, or those required to be done on the request of the owners, master or consignee of any cargo, or of a person or authority controlling any wharf in Mobile river; or on his exacting, demanding or receiving any fee or emolument other than his regular salary for any service for which a fee is not herein specifically given or prescribed, or exacting, demanding or receiving from any person or vessel any fee whatever for doing or performing any of the services for which fees are in this article prescribed, where the service was done or performed without the actual request of the person from whom the fee is demanded or received; or on his accepting any gift, or gratuity, or pay or reward other than his lawful salary and fees under this article, from any person owning or controlling or being interested in any ship or other vessel, or wharf or transportation line or company, or in any cargo or ballast arriving or departing from Mobile or Mobile river and harbor, such harbor-master, or acting harbor-master, so offending, shall be fined by the mayor of Mobile not exceeding fifty dollars for each offense, to be collected and paid into the treasury of the city of Mobile, as are other fines imposed by the mayor, and, in addition to such punishment, such officer who shall be guilty of doing such acts which are hereby declared to be unlawful, or who shall be guilty of a refusal to

perform any duty, or of any neglect of duty imposed upon him by this article, or for any other improper conduct in the discharge of duty, may be reported therefor to the general council of the city of Mobile who may by a vote of three-fifths of the whole number of said council, remove such officer from his office, and their action in removing such officer shall be final. In the event of such removal the mayor shall immediately report the fact to the officers charged with the appointment by this article, and said officers shall proceed as early as practicable, to fill by election the vacancy occasioned by such removal.

Ib. §16. As amended Feb. 18, 1895, p. 752, §3.

2991. Disposition of fees; accounting; salary of master.—All the revenues arising to the harbor-master and his wardens under the provisions of this article, and as commissioners of pilotage, shall constitute one fund, and be applied, first, to the payment of the expenses of printing and distributing all papers necessary to make known the port charges and the laws and rules governing the river and harbor of Mobile and vessels and crews coming into it; second, to the payment of office expenses; and the residue shall be divided as follows: One-third to the city treasury, and the remaining two-thirds of the residue to the port-wardens, excluding the harbor-master. The harbor-master shall receive a salary from the city of Mobile of twelve hundred dollars per annum, payable monthly in the same manner as the salaries of other municipal officers. For his services in and upon that portion of Mobile river lying north of the corporate limits of Mobile and extending northwardly past the mouth of Chikisa Bogue to the place at which part of the waters of the Mobile river flow into the Spanish river the harbor-master shall receive a salary of three hundred dollars per annum from the county of Mobile, payable monthly on the first of each month, for which the board of revenue and road commissioners of Mobile county shall make due provision. It shall be the duty of the harbor-master to file with the city clerk on or before the fifth of every calendar month a statement in detail of receipts and disbursements of all moneys which shall have come into his hands in the discharge of the duties of his office during the preceding month, and shall submit the same with vouchers to the said clerk, who shall audit said harbor-master's accounts, and see that the amount received for dues, after paying expenses are provided to be paid into the city treasury and to wardens as provided. Said clerk shall make monthly reports to the mayor of collections and disbursements of said fees, and said statement of receipts and disbursements, together with the city clerk's report, shall be laid before the general council at their first meeting after the completion of said report, and spread at length on the minutes of said council.*

*As amended by joint committee.

ARTICLE 2.

PILOTS AND PILOTAGE.

2992 ( ) (1384, 1385, 1404) (1131, 901) (1151, 921). **Commissioners of pilotage; examination of pilots.**—The harbor-master and wardens, in their official capacity, constitute a board of commissioners of pilotage. At no time shall there exist more than thirty pilots holding valid branches or licenses to serve as Mobile bay or bar pilots. At any time when there shall be less than thirty of said pilots and the commissioners of pilotage, or a majority of them, shall be of opinion that the necessity of commerce demands an increase of the actual number serving as such pilots, they shall have the power to branch or license a sufficient number of bay or bar pilots to meet such necessity; *Provided*, that the number so branched or licensed shall not increase the total number of such pilots to exceeding thirty; *And provided*, that no person shall be so branched or licensed who has not made due application and been regularly examined and certified to be competent to fill such appointment as hereinafter required. No person shall apply for a license or branch as a bay or bar pilot who has not served at least one year as an apprentice, or boat-keeper, on board a pilot-boat, in commission as such on the Mobile bay and bar, and who has not also assisted as pilot, on at least one entire trip a week for twelve weeks within a continuous period of six months in company with some licensed Mobile bay or bar pilot, or on a sea-going vessel or tug; and the Mobile bay or bar pilots shall always keep upon the pilot-boats not less than three apprentices or boat-keepers; and no Mobile bay or bar pilot apprentice or boat-keeper shall be discharged except for cause, and any such apprentice or boat-keeper so discharged shall have the right to appeal from such discharge to the pilot commissioners, and should the commissioners, upon investigation, find that such discharge was without sufficient cause, they shall have the power to annul such discharge and reinstate such apprentice or boat-keeper. Every application for a license or branch must be in writing, accompanied by a certificate of the registered master of a pilot-boat, that the applicant has served his apprenticeship as hereinabove required, and by an affidavit by the applicant, that he has made the trips herein provided. Before an applicant is branched or licensed the commissioners of pilotage must prepare in writing suitable questions to test his knowledge and competency to become such pilot, and must require him to answer the same in writing, without any aid from any other person, and without having been informed as to what questions would be propounded to him; when the applicant has reduced his answers to writing, he shall sign the same and deliver them to one of the commissioners, and the commissioners must cause such answers to be copied legibly, but without the name of the applicant. The commissioners shall then appoint three fair, impartial and competent nautical men as a committee to examine the answers of the applicants. The applicant or applicants may name one of these, the existing pilots name another,

Dec. 9, 1896, p. 89, §1.

and the commissioners or a majority of them shall name the third. Said committee shall examine the copies of the answers of the applicants, and shall indorse upon the answers of such of the applicants as they find sufficient the following certificate: "We hereby certify that the foregoing answers are satisfactory, and that in our opinion the applicant making the same is well acquainted with the pilot-grounds, and knows how to handle both steam and sailing vessels, and is competent to perform the duties of a bay or bar pilot." When such certificate is duly signed and delivered to the commissioners, the applicant shall be deemed qualified to receive a license.

2993 ( ) (1386) (1132) (902). **Certificate of appointment; oath of pilot.**—The commissioners of pilotage shall issue to each pilot licensed and branched by them, an original and a duplicate certificate of his appointment, competency and authority to act as such pilot and as to the extent thereof, and shall reissue duplicate certificates from time to time, as the occasion may require; such original and duplicate certificates to be signed by a majority of the commissioners, or by their chairman by their direction, and each bay or bar pilot holding a license or branch, must keep upon his person, when offering his services to any vessel, his duplicate certificate, and must, upon demand of the proper officer of the vessel, exhibit the same, and allow such officer to inspect it. Before issuing an original license or branch the commissioners delivering the same to the appointee, shall require him to take and subscribe in writing an oath as follows, to be administered by such commissioners: "I, A. B., do solemnly swear (or affirm) that I will faithfully and according to the best of my skill and judgment perform the duties of a pilot for the bay and harbor of Mobile; that I will at all times, wind and weather and health permitting, use my best exertions to repair on board all vessels which I shall see and conceive to be bound for, coming into or going out of the harbor or bay of Mobile, unless I am well assured that some other licensed pilot is then on board the same; that I will at all times make the best dispatch in my power to convey safely every vessel committed to my charge coming into or going out of the bay or harbor of Mobile; and will at all times well and truly observe, follow and fulfill, to the best of my skill and judgment, all such directions as I may receive from the commissioners of pilotage relative to things appertaining to the duty of a pilot, and I will not be a member at the same time of more than one combination or partnership of pilots; so help me God." Ib. §2.

2994 ( ) (1387) (1133) (903). **Bond of pilot.**—Before receiving his branch, the pilot must make and deliver to the commissioners a bond payable to the chairman of the board and his successors, in the penal sum of two thousand dollars, with surety to be approved by the commissioners, and with condition faithfully to perform his duties as pilot; and this bond must be renewed every six years.

2995 ( ) (1408, 1409) (1155, 1157) (925, 927). **Bond and affidavit filed; who may sue on pilot's bond.**—The commissioners must preserve on file all bonds and affidavits taken from pilots, and may,

whenever they consider it necessary, require a new bond to be executed. The pilot's bond stands as security for any injury caused by the negligence or want of skill of the pilot, and may be put in suit in the name of any person aggrieved.

2996 ( ) (1389, 1390) (1135, 1136) (905, 906). **When branch revoked.**—The commissioners may deprive any pilot of his branch for a willful violation of his duties, or the orders or regulations of the commissioners, or for negligently losing or injuring any vessel in his charge; or when laboring under mental derangement, or so addicted to habits of intoxication as to be unfit to be intrusted with the charge of a vessel. Any pilot who fails to act as such for three months, or absents himself for ten days at any one time from the bay or harbor of Mobile without leave of the commissioners, may be deprived of his branch. And if, while a vessel in the bay or harbor of Mobile, is in charge of any civil officer in virtue of process from any court of record in this state, and any pilot, with knowledge thereof, conducts or pilots such vessel out of the bay or harbor, he forfeits his branch, and is forever disqualified from acting as pilot, and forfeits such sum of money as the jury may assess.

2997 ( ) (1402) (1150) (929). **Pilot to report improper discharge of ballast.**—Every pilot, having knowledge of the discharge of ballast, sweepings, screenings, cinders, refuse and rubbish of any kind in the bay of Mobile, or in any river emptying into the same, contrary to the directions of the harbor-master and wardens, must, as soon as practicable, give them information thereof, and failing so to do, must be deprived of his branch, and forever disqualified for the office of pilot.

2998 ( ) (1395) (1141) (911). **No fee for piloting without license.**—Any person piloting or conducting a vessel in or out of the bay of Mobile, or over the outer bar thereof, without a branch as pilot, or after having forfeited or having been deprived of his branch, is entitled to no fee or reward for the service.

2999 ( ) (1388) (1134) (904). **Commissioners prescribe regulations; fees of Ft. Stoddard pilot.**—The commissioners shall prescribe rules and regulations for the government of pilots, and shall prescribe the fees for the services of the Ft. Stoddard pilot; they may also impose such penalties for neglect of duty, not inconsistent with law, as they may think proper.

3000 ( ) (1407) (1154) (924). **Commissioners keep record of proceedings.**—The commissioners must preserve in a well-bound book a record of their acts and of the rules and regulations adopted by them for the direction and government of pilots. They must designate one of their number as chairman, and make record thereof. They must also preserve upon record a list of all persons appointed pilots by them, and of those whom they may declare to have forfeited their licenses. All persons interested must have access to, and be permitted to take copies of the records, and copies from such records, certified by the chairman, are presumptive evidence of the facts stated therein.

3001 ( ) (1410) (1159) (929). **Fees of commissioners.**—The fees of the commissioners are as follows: For every branch granted, ten dollars; for taking and filing bond and affidavit, one dollar; giving copy from records, for each hundred words, twenty cents; for certifying the same, fifty cents.

3002 ( ) (1406) (1153) (923). **How forfeitures sued for.**—The commissioners may in their own names as commissioners, or in that of their chairman as such, sue for and recover to their own use any forfeiture accruing under this chapter not otherwise specifically appropriated.

3003 ( ) (1401) (1147). **Rates of pilotage; vessels exempt.** As amended Feb. 8, 1887, p. 168, §§1, 3. The master, owner or consignee of any ship or vessel must pay the pilot who conducts a vessel into or out of the bay or harbor of Mobile at the following rates, for actual draft of water at the time of pilotage: For every vessel crossing the outer bar of Mobile bay drawing not more than nine feet of water, two dollars and fifty cents per foot; on every vessel drawing more than nine and less than eleven feet of water, three dollars a foot; on every vessel drawing not less than eleven and not exceeding twelve feet of water, three dollars and twenty-five cents a foot; on every vessel drawing more than twelve and not exceeding fourteen feet of water, three dollars and fifty cents a foot; on every vessel drawing more than fourteen feet and not exceeding twenty feet of water, five dollars a foot; on all vessels drawing more than twenty feet of water, six dollars per foot; and if any vessel proceeds to and from the city of Mobile via Spanish river, one dollar per foot additional. But vessels trading between any domestic port on the Gulf of Mexico and the port of Mobile, drawing seven feet or less of water, shall not be required to employ a pilot, but if they do, their regular pilotage shall be paid. No fishing-smack shall pay pilotage.

3004 ( ) (1394) (1140) (910). **When fees due.**—A pilot, who has brought a vessel into port, is entitled to his fees before her departure from port, to be paid in advance, or security given for the payment, and, on failure thereof, may refuse to carry the vessel out.

3005 ( ) (1391) (1137) (907). **Rule as to approaching vessel.** Every pilot-boat cruising or standing out to sea must offer the services of a pilot to the vessel nearest the bar, unless a vessel more distant is in distress, under penalty of fifty dollars for every neglect or refusal to approach such nearest vessel, to aid her if required, or to aid a vessel in sight showing signals of distress; and the commissioners may deprive a pilot so offending of his license.

3006 ( ) (1400) (1146) (916). **Outer-bar pilots deliver letters to vessels coming in.**—It is the duty of every outer-bar pilot to deliver to the master of any and every vessel approaching the bay or harbor of Mobile, as soon as he can board such vessel, all letters which may be sent him for that purpose, on the person who requires the delivery of such letters paying or securing to the pilot twenty dollars for such service, unless the pilot so employed to deliver letters is en- As amended Feb. 8, 1887, p. 168, §1.

gaged as pilot for the vessel, in which event he is entitled to five dollars for such service.

3007 ( ) (1396) (1142) (912). Vessel declining pilot liable for half fees.—The master of a vessel bearing towards the bay or harbor of Mobile, except in the case of coasters and other vessels trading between Mobile, New Orleans and Pensacola, who declines the services of a pilot, is liable on his arrival in the bay or harbor of Mobile to pay the first pilot who offered his services outside the bar, and exhibited his branch, if demanded by the master, one-half the rates of pilotage for a vessel of such draft.

3008 ( ) (1399) (1145) (915). If vessel has crossed bar, pilot may be refused; if taken, at half rate.—Whenever a vessel entering into the bay or harbor of Mobile is crossing over, or is within the outer bar, before a pilot offers, he may, at his option, take or refuse a pilot. If he requires a pilot, he must indicate it by a signal, and the nearest pilot-boat must furnish a pilot at half the rate of pilotage of a vessel of that draft. A pilot refusing to act in such case must be deprived of his branch, and also forfeits the sum of one hundred dollars.

3009 ( ) (1392) (1138) (908). Pilot bringing vessel in may take her out; exceptions.—The pilot who brings a vessel into port has the exclusive right of taking her out, unless he has in the meantime been deprived of his license, or the master proves to the satisfaction of the commissioners that such pilot has misbehaved himself while in charge of the vessel; and in either case another pilot may be employed. A pilot having the right to take a vessel out of port may attend in person or procure another pilot out of his pilot-boat to attend for him; but if he fail to attend or so substitute another, the master, after due notice of his intended departure, may employ another pilot, who must, if not previously engaged, pilot the vessel out at the regular rate. But a vessel may refuse a pilot, and, after paying him half rate, employ a tug or towboat to tow her out.

3010 ( ) (1397) (1143) (913). Notice of sailing given pilot. The master of a vessel in readiness to leave must, if practicable, give personal notice to the pilot who conducted his vessel in; where that cannot be given, it is sufficient for vessels lying in the lower bay to keep a jack at the foremast-head twenty-four hours before leaving. Vessels going down from Mobile shall bring the north end of Dauphin Island to bear west before employing another pilot than the one who conducted them in, except as otherwise in this chapter provided.

3011 ( ) (1393) (1139) (909). Liability for wrongfully piloting.—Any person who pilots a vessel out without being entitled to do so is liable to the pilot having the right for the amount due or paid for such service.

3012 ( ) (1398) (1144) (914). Pay of pilot detained or carried out to sea.—If the master of any vessel retain a pilot on board, the wind and weather permitting her going to sea, the pilot is entitled to three dollars for every day of such detention. If a master carries off a pilot from the bay or harbor of Mobile, he must pay him

two dollars for every day of such absence, and supply him with such provisions as is usual for the maintenance of masters, the master, as well as the owner, being liable therefor, unless the vessel has laid to for the space of four hours after crossing the bar, and no pilot-boat appears to receive the pilot on board.

3013 ( ) (1405) (1152) (922). **Fee to boat for taking pilot off.**—When any pilot-boat belonging to a different pilot than the one who has conducted the vessel to sea, takes such pilot off from such vessel, such pilot-boat is entitled to one-third of the pilotage.

ARTICLE 3.

SHIPS AND SEAMEN.

3014 ( ) (1336) (1092) (864). **List of crew and passengers on entry of ship to be given and sworn to.**—Every master of a vessel arriving from any port or place out of this state (except New Orleans), at the port of Mobile, who is, by any law of the United States, required to enter such arrival at the custom-house, must, within one day after such arrival, deliver at the office of the city clerk of Mobile, on oath, a correct list of all persons who arrived on such vessel, stating the names of the officers and crew, the name of each passenger, and color and sex of each person.

3015 ( ) (1339) (1093) (865). **By whom oath on list administered.**—The oath required by the preceding section may be administered by any officer authorized by law to administer oaths, for which he is entitled to a fee of twenty-five cents.

3016 ( ) (1340) (1094) (866). **Where list filed.**—The clerk must file in his office all such lists, for the inspection of any citizen of the United States on payment of a fee of ten cents.

3017 ( ) (1341) (1095) (867). **Penalty for failure to give list.** The master of any such vessel arriving in the port of Mobile, failing to make out and deliver the list of his officers, crew, and passengers, as required by this article, forfeits the sum of two hundred dollars, one half to the use of the person suing for the same, the other to the use of the city of Mobile.

3018 ( ) (1342) (1096) (868). **Apprehending sailor deserting ship.**—If any person, who has made an engagement to perform a voyage in any vessel at any port or place in this state, deserts or absents himself from such vessel without leave of the master or officer commanding in the absence of the master, any justice of the peace, upon complaint being made thereof under oath, must issue his warrant to apprehend such person and bring him before himself or some other justice; and if it appears that he has made an engagement to perform a voyage, that such voyage has not terminated, and that he has deserted or absented himself without leave, the justice must commit him to the county jail, there to remain until such vessel is ready to proceed on her voyage, or until the master requires his discharge; the master paying the jail fees for each week in advance.

3019 ( ) (1343) (1097) (869). **Penalty for harboring or concealing deserters.**—If any person knowingly conceals or harbors any person belonging to any vessel, he forfeits ten dollars a day for each day he so harbors or conceals him, to the use of any person suing for the same.

3020 ( ) (1344) (1099) (871). **Penalty for employing hands of another vessel.**—Any master of a vessel who, within this state, ships, hires, or receives any person belonging to any other vessel, without a discharge in writing, signed by the master of such vessel, forfeits fifty dollars, one-half to the use of the person suing for the same, and the other to the county in which such suit is brought.

CHAPTER 81.

NOTARIES PUBLIC.

ARTICLE 1.—COMMERCIAL NOTARIES. 3021-3033.
2.—NOTARIES EX OFFICIO JUSTICES OF THE PEACE. 3034-3039.

ARTICLE 1.

COMMERCIAL NOTARIES.

3021 (1102) (1325) (1080) (854). **Appointment; term of office.** A competent number of notaries public for each county in the state are appointed by the governor, who hold office for three years from the date of their commission.*

"**Until their successors are qualified**" means reasonable time only.—City Council v. Hughes, 65 Ala. 201; Lane v. Kolb, 92 Ala. 636. **Jurisdiction limited to county where commissioned.**—Edinburgh Co. v. Peoples, 102 Ala. 241. **Have common-law powers** as well as those conferred by statute.—Kirksey v. Bates, 7 Port. 529; Carroll v. State, 58 Ala. 396; Chandler v. Hanna, 73 Ala. 390; Cary v. State, 76 Ala. 78. **When seal necessary.**—Donegan v. Wood, 49 Ala. 242; Ala. Nat. Bank v. Chattanooga, etc., Co., 106 Ala. 663. **Notarial acts verified by seal, self-proving everywhere.**—Goree v. Wadsworth, 91 Ala. 416; Hart v. Ross, 57 Ala. 518; Dunn v. Adams, 1 Ala. 527; Bradley v. Northern Bank, 60 Ala. 252; Ala. Nat. Bank v. Chattanooga, etc., Co., 106 Ala. 663; St. John v. Redmond, 9 Port. 428; The Bayonne Knife Co. v. Umbenhauer, 107 Ala. 496.

Feb. 28, 1887, p. 74.

3022. Women eligible.—Women may be appointed notaries public who shall have the power and authority of commercial notaries only.

3023 (1103) (1326, 1327) (1081) (855). **Removal vacates office.** They vacate their office by removal from the county; and may be removed by the governor, in his own discretion.

3024 (1104) (1328) (1082) (856). **Bond.**—They must give bond with sureties, to be approved by the judge of probate of the county for which they are appointed, in the sum of one thousand dollars, payable to the State of Alabama, and conditioned to faithfully dis-

*Hold-over clause stricken out by joint committee.

charge the duties of such office, so long as they may continue therein, or discharge any of the duties thereof; which bond must be executed, approved, filed and recorded in the office of judge of probate, before they enter on the duties of such office.

3025 (1105) (1329) (1083) (857). **Authority.**—Notaries public have authority—

1. To administer oaths in all matters incident to the exercise of their office.

2. To take the acknowledgment or proof of instruments of writing relating to commerce or navigation, and to certify the same, and all other of their official acts, under their seal of office.

3. To demand acceptance and payment of bills of exchange, promissory notes, and all other writings which are governed by the commercial law as to days of grace, demand and notice of non-payment; to protest the same for non-acceptance or non-payment, and to give notice thereof as required by law.

4. To exercise such other powers as, according to commercial usage or the laws of this state, may belong to notaries public.

3026 (1106) (1330) (1084) (858). **Seal.**—For the authentication of his official acts, such notary must provide a seal of office, which must present, by its impression, his name, office, state, and county for which he was appointed.

What constitutes a seal.—Bradley v. Northern Bank, 60 Ala. 252. As to when seal necessary.—See citations to section 3021 (1102).

3027 (1107) (1332) (1085) (859). **To keep a register.**—He must keep a fair register of all his official acts, and give a certified copy therefrom, when required, and on payment of his legal fees.

Register is a public record.—Phillips v. Poindexter, 18 Ala. 579.

3028 (1108) (1333) (1086) (860). **Disposition of register on death, etc.**—In case of the death, resignation, removal, or expiration of his term of office, the registers of any notary must, within thirty days thereafter, be delivered to the judge of probate of the county; and any person having the same in possession, and refusing to deliver them on demand to such judge, is liable to an action for the recovery thereof in the name of such judge.

3029 (1109) (1334, 1335) (1087, 1088) (861, 862). **Certified copies of such registers.**—Such registers may, by such judge, be delivered to any other notary of his county, who must give certified copies from the same to any person making application therefor, on payment of the legal fees. While the registers are in possession of the judge of probate, he must give certified copies from the same on application, and the payment of the fees therefor, in the same manner as notaries public.

3030 (1110) (1336) (1089). **Certificate of demand; notice and protest; evidence.**—The certificate of a notary public, under his hand and seal of office, or of any other authorized person, under his hand and seal, of the presentment for acceptance, or demand of payment, or protest for non-acceptance or non-payment, of any instrument governed by the commercial law, or of service of notice of

such presentment, demand, or protest, and the mode of giving the same, and the reputed place of residence of the party to whom the same was given, and the post-office nearest thereto, is evidence of the facts contained in such certificate.

Whitman v. Bank, 8 Port. 258; Dunn v. Adams, 1 Ala. 527; Hill v. Morris, 2 Ala. 640; Bank v. Marston, 7 Ala. 108; s. c., 10 Ala. 284; Rives v. Parmley, 18 Ala. 256; Bradley v. Northern Bank, 60 Ala. 252; Boit v. Corr, 54 Ala. 112; Martin v. Brown, 75 Ala. 442.

3031 (1111) (1337) (1091). **Justices act as notaries.**—Where there is no notary public, or he is absent or incapable of acting, any justice of the peace may discharge the duties required of such notary by the laws of this state; for which he shall receive the fees allowed by law for such services; but when he acts as a notary public, he must set forth in his certificate, protest, or notice, that there is no notary public, or that the notary public is absent or incapable of acting, which certificate shall be evidence of such fact.

3032 (1112) (1331, 1329, subd. 1) (1083) (857). **Further authority of notaries.**—Notaries have the authority of justices of the peace to take and certify the acknowledgment and proof of conveyances, to administer oaths, and take and certify affidavits; and are entitled therefor to the fee or fees allowed a justice of the peace, unless their seal of office is affixed, when they are entitled, in addition, to a fee of twenty-five cents for affixing such seal, the seal to be affixed only at the request of the party for whom the service is rendered.

St. John v. Redmond, 9 Port. 428; Toulmin v. Austin, 5 Stew. & Port. 410; Johnson v. McGehee, 1 Ala. 186; Harrison v. Simons, 55 Ala. 510.

3033 (1113) (5065) (1090) (863). **Notary's fees.**—Notaries public are entitled to the following fees: For presenting any bill of exchange for acceptance, or any bill of exchange, promissory note, or other writing for payment, fifty cents; for protesting the same for non-acceptance, or non-payment, certifying, affixing seal of office, and registering the same, one dollar; for notice of protest to each party, fifty cents; for every other protest, certificate, registration and seal, two dollars; for any oath, certificate and seal, taken under subdivision 1 of section 3025 (1105), fifty cents; for giving copies from register, twenty cents for each hundred words; for each certificate and seal to such copy, twenty-five cents; for giving any other certificate, and affixing seal of office, fifty cents.

ARTICLE 2.

NOTARIES EX OFFICIO JUSTICES OF THE PEACE.

3034 (1114). **Appointment and term of office.**—The governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, as defined by law, shall have and exercise the same jurisdiction, and the same powers, as justices of the peace, within the precinct or ward for which he is ap-

pointed; and he shall hold office for the term of three years from the date of his commission and until his successor is qualified.

Are judicial officers.—Harper v. State, 109 Ala. 66. **Jurisdiction limited to county where commissioned.**—Edinburgh Co. v. Peoples, 102 Ala. 241; American Mortg. Co. v. King, 105 Ala. 358. Proper, but not necessary, to use words "ex officio justice of the peace" after official signature as notary public. Coleman v. State, 63 Ala. 93. May be de facto officer after expiration of commission.—Cary v. State, 76 Ala. 78. But "until his successor is qualified" means reasonable time only.—City Council v. Hughes, 65 Ala. 201; Lane v. Kolb, 92 Ala. 636.

3035 (1115). **Governor may remove.**—The governor may, in his discretion, remove, at any time, the notary so appointed.

3036 (1116). **Vacation of office.**—Such notary vacates his office by removal from the precinct or ward for which he is appointed.

3037 (1117). **Official bond.**—Such notary, before entering on the duties of his office, must give bond with sufficient sureties, in the penalty of one thousand dollars, payable to the State of Alabama, with condition that he will faithfully discharge all the duties of his office during the time he continues therein, or discharges any of the duties thereof; which bond must be approved by the judge of probate of the county, and filed and recorded in his office.

3038 (1118). **Jurisdiction; powers.**—Such notary, within the precinct or ward of his appointment, has all the jurisdiction, and must exercise all the powers of a justice of the peace, and is subject to all the liabilities to which a justice of the peace is subject; and all the remedies which may be pursued against a justice of the peace, and his sureties, or either of them, may be pursued against him, and his sureties, or either of them.

3039 (1119). **Dockets and files to be delivered to successor.**—On the vacation of the office, or the expiration of the term of office of a notary public having the jurisdiction of a justice of the peace, the docket and all papers pertaining to his office, as justice, must be delivered to his successor, if he have a successor appointed, within thirty days, or if he have no successor, to a justice of the peace of the precinct; such successor or justice must complete all unfinished business pending before such notary, and must exercise all the powers and jurisdiction in reference to such unfinished business, and in the issue of process upon judgments rendered, and in the certifying of such dockets and papers, which he can or may exercise in reference to business originally commenced before him, and in reference to his own judgments, dockets and papers.

CHAPTER 82.

NOTICES. 3040-3051.

3040 (663) (3970, 553). **Party in interest may designate newspaper.**—The party in interest, or at whose instance the publication

of notice is to be given by advertisement in a newspaper, may designate the newspaper in which such advertisement shall be made. If the officer charged with the duty of making the advertisement disregards such designation, and makes advertisement in some other paper, he must pay the costs thereof, and shall not be entitled to reimbursement.

3041 (664) (3972). **Length of publication when not otherwise provided.**—If the length of the publication be not otherwise prescribed, it must be for three successive weeks.

Feb. 27, 1889, p. 118.

3042. Length of publication of certain notices to executors, administrators and guardians.—In all cases where notice is required by law to be given to executors, administrators and guardians, in the probate court, if affidavit shall be made that such executor, administrator or guardian has been absent from the state for more than three months last passed, such notice shall be given by publication in a newspaper published in the county where such proceedings are had, for two consecutive weeks, or, if there be no such paper, by posting at the court-house door for fifteen days.

3043. Publication for a specified number of weeks or days defined.—When the notice is required to be given for a specified number of weeks, it must be given by consecutive weekly insertions for the number of weeks so specified; and when the notice is of a proceeding to be had or of an act to be done on a specified day, if the publication be for one week, the insertion must be not less than six days before such day; if for two weeks, the first insertion must be at least twelve days before such day; if for three weeks, the first insertion must be at least eighteen days before such day; if for four weeks, the first insertion must be at least twenty-four days before such day; if for five weeks, the first insertion must be at least thirty days before such day; if for six weeks, the first insertion must be at least thirty-six days before such day, and so on at the same rate of increase, the time to be computed as provided in section 11 of this Code. When the time is specified in days, two weeks' notice is equal to fifteen days' notice; three weeks' to twenty days'; four weeks' to thirty days'; and six weeks' to forty days'.

3044 (665) (3974). **Paper sent to officer or person making publication and to the person to whom the notice is given.**—The publisher or manager of the newspaper must send to the officer or person making the advertisement a copy of each issue of the paper containing it; and a copy of such paper must be sent by mail to the person to whom the notice is directed, if his post-office address can be ascertained, by the officer or person making the advertisement; such copy to be furnished by the publisher or manager of the newspaper, in addition to the copy of each issue herein required to be furnished.

3045 (666) (3975). **Costs of publication.**—Not more than one cent per word for each insertion of a legal notice or advertisement must be charged or allowed, and the insertions must not be oftener than once a week, unless, in cases of sales under a decree of the court of chancery, the court shall otherwise order. Each amount or

number expressed in figures and each initial letter shall constitute one word. The year, month and day shall each constitute one word; in all, three words. In estimating the number of words in a notice, an appropriate caption may be included; but no memorandum of the printer must be included.

3046 (667) (551) (646). **Agreements between officers and publishers.**—All agreements between any officer charged with the duty of advertising legal notices in a newspaper, and the printer, publisher, or manager of such paper, whereby any advantage, gain, or profit is to accrue to such officer, are void; and before the charge for such advertisement can be demanded or received, the officer and the printer, publisher, or manager must each make and file an affidavit that no such agreement exists; and the printer, publisher, or manager must, in addition, make affidavit that the sum charged is the actual lowest regular price for such advertisement

3047 (668) (547, 548) (642, 643). **Publication, when paper suspended, or discontinued.**—If publication is commenced, or is directed in a particular newspaper, and before it is made or completed there is a suspension or discontinuance of the publishing of such paper, then the publication may be made or completed in some other newspaper published in the county; and if there be no other paper published in the county, the publication may be made or completed by posting notices, for the length of time prescribed, at the court-house door and three other public places in the county; or the publication, if so desired by any party in interest, may be made or completed in some newspaper published in an adjoining county.

3048 (669). **Notice of sale under power in deed of trust, mortgage, or assignment.**—If a deed of trust, mortgage, assignment, or other conveyance to secure the payment of debts, contains a power of sale, and provides that notice of the sale be given in a designated newspaper, or in a newspaper published in the county where the property is situate, or where the sale is to be made, and before the sale is made, the publication of the designated newspaper is suspended, or discontinued, the notice may be given by advertisement in some other paper published in the county; or if there be no paper published in the county, then, in either case, notice may be given by publication, for the time prescribed, in some newspaper published in an adjoining county, or by posting notices at the court-house door, and three other public places in the county. If the publication of notice has been commenced, and there is a suspension or discontinuance of the publishing of the newspaper in which it is commenced, it may be completed as is herein provided.

3049 (670) (566) (655). **Weekly papers taken, and pay for them.** The clerks of the several circuit courts, the registers in chancery and judges of the several courts of probate, must subscribe for, and take, and file in their respective offices, one copy of each weekly newspaper published in their respective counties, and as soon as practicable, after the end of each year, shall cause the numbers of

such papers for the preceding year to be well bound, and shall keep the same safely in their respective offices, as the property of their respective counties; and the court of county commissioners must allow to such officers the sums paid by them for such subscription and binding.

3050 (671) (567) (656). **Papers of adjoining county.**—If in any county there be no newspaper published, such officers may take and bind the papers of any adjoining county, in which the public printing and advertising of such county may be done.

3051 (672). **Newspapers as evidence of notice.**—The newspapers containing the advertisement shall be received as evidence of the fact of publication.

CHAPTER 83.

OFFICES AND OFFICERS.

ARTICLE 1.—TERMS OF EXECUTIVE AND JUDICIAL OFFICERS DEFINED; INSTALLATION. 3052-3055.
2.—PERSONS INELIGIBLE TO OFFICE; RESIDENCE AND COMMISSION; FILLING VACANCIES. 3056-3061.
3.—OATHS OF OFFICE. 3062-3069.
4.—OFFICIAL BONDS. 3070-3091.
5.—BONDS BY GUARANTEE COMPANIES. 3092-3109.
6.—REQUIRING CERTAIN PUBLIC OFFICERS TO GIVE ADDITIONAL BOND AND NEW SURETIES IN CERTAIN CASES. 3110-3123.
7.—THE DISCHARGE OF SURETIES ON OFFICIAL BONDS IN CERTAIN CASES. 3124-3132.
8.—PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS, PAPERS, PROPERTY AND MONEY, BY PUBLIC OFFICERS TO SUCCESSORS. 3133-3139.
9.—VACATING OFFICE, DEATH, RESIGNATION, INSANITY, REMOVAL. 3140-3152.
10.—SALARIES OF OFFICERS; WHEN PAYABLE. 3153, 3154.

ARTICLE 1.

TERMS OF EXECUTIVE AND JUDICIAL OFFICERS DEFINED; INSTALLATION.

Feb. 21, 1893, p. 1091, §1.

3052. Terms of governor and other executive officers.—The governor, secretary of state, state auditor, state treasurer, attorney-general and superintendent of education shall hold their respective offices for the term of two years from the time of their installation in office and until their successors shall be elected and qualified, such installation to take place on the first day of December next after their election, except when that day falls on Sunday, when it shall take place on the following Monday.

Ib. §2.

3053. Term of commissioner of agriculture.—The commissioner of agriculture shall hold office for the term of two years from the first day of September next after his election, and until his successor is elected and qualified.

3054. Terms of judicial officers.—The chief justice and associate justices of the supreme court, circuit judges, chancellors, judges of probate and clerks of the circuit court shall hold their respective offices for the term of six years from the third day of November next after their election, and until their successors are elected and qualified. Ib. §3.

3055. Terms of sheriffs, assessors, collectors, county treasurers, coroners, justices, constables and commissioners.—Sheriffs, tax-assessors, tax-collectors, county treasurers, coroners, justices of the peace, constables and county commissioners shall hold their respective offices for the term of four years from the first day of September next after their election, and until their successors are elected and qualified; but as to county commissioners and county treasurers, this section does not apply to counties where special laws in conflict herewith are in force. Ib. §4.

Purpose and effect of hold-over clause.—City Council v. Hughes, 65 Ala. 201; Lane v. Kolb, 92 Ala. 636, 645.

ARTICLE 2.

PERSONS INELIGIBLE TO OFFICE; RESIDENCE AND COMMISSION; FILLING VACANCIES.

3056 (241) (149) (144) (105). **Persons ineligible to office.**—The persons who are ineligible to, and disqualified for holding office under the authority of this state, are—

1. Those who are not male persons, of the age of twenty-one years.
2. Those who have not been inhabitants of the state, county, district or circuit, the period required by the constitution and laws of the state.
3. Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or any other crime punishable by imprisonment in the penitentiary, and those who are idiots or insane.
4. Those who have in this state, or in any of the United States, given, accepted, or knowingly carried a challenge to fight with deadly weapons.
5. Those against whom there is a judgment unpaid, for any moneys received by them in any official capacity, due to the United States, this state, or any county thereof.
6. Soldiers, seamen, or mariners in the regular army or navy of the United States.
7. No person holding an office of profit under the United States, except postmasters whose annual salary does not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables and notaries public.

3057 (244) (152) (147) (108). **Residence of officers.**—All officers

must reside in this state, and keep their offices in such places as are or may be designated by law.

3058 (245) (153) (148) (109). **Commissioned officers.**—The judges of the several courts, the chancellors, the attorney-general, the solicitors, the secretary of state, the auditor, the state treasurer, the superintendent of education, the commissioner of agriculture, the railroad commissioners, the clerk of the supreme court, the clerks of city courts, the clerks of the circuit courts, the sheriffs, the tax-assessors, the tax-collectors, the county treasurers, the county commissioners, the justices of the peace, the constables and notaries public, before entering upon and exercising the duties of their respective offices, must obtain a commission.

3059 (246). **Commission.**—The commission must issue in the name, and by the authority of the State of Alabama, must be sealed with the great seal, and signed by the governor, and countersigned by the secretary of state, unless it be the commission of the secretary, which must be signed by the governor.

3060 (247) (296). **When commission issues to officers.**—No commissioned officer of this state, required by law to give bond, shall receive his commission until he has made his bond, and had the same properly approved and filed. In all other cases, commissions may issue, on the production of the certificate of election, to the person therein named.

3061 (248) (154). **Vacancies in state and county offices; how filled; term of office.**—Vacancies in all state and county offices are filled by appointment of the governor, except as otherwise provided; the appointees must be commissioned, and they shall hold their offices for the unexpired term, and until their successors are elected and qualified.

ARTICLE 3.

OATHS OF OFFICE.

3062 (249) (155) (149) (110). **Dueling oath.**—In addition to the oath prescribed by the fifteenth article of the constitution, every public officer must swear that he has not, directly or indirectly, given, accepted, or knowingly carried a challenge, in writing or otherwise, to any person, being a citizen of this state, to fight with deadly weapons, either in or out of this state; or aided or abetted in the same since he has been a citizen thereof; and that he will not, directly or indirectly, give, accept, or knowingly carry a challenge to any person being a citizen of this state, to fight with deadly weapons, either in or out of the state; or in any manner aid or abet the same during his continuance in office.

Ex parte Dorsey, 7 Port. 293.

3063 (250) (156) (150) (111). **Who may administer official oaths.** In all cases in which it is not otherwise provided by law, the oaths of office may be administered by any officer authorized to administer

an oath; must be written out and subscribed by the person taking the same, and be accompanied with the certificate of the officer administering such oaths, specifying the day and year on which the same were taken.

3064 (251) (157) (151) (112). **What oaths of office filed with secretary of state.**—Such oaths must, when taken by the governor, any judge of the supreme court, judge of the circuit court, chancellor, auditor, state treasurer, attorney-general, solicitor, or any other officer whose general duties are not limited to any one county, unless it is otherwise provided, be filed, with the certificate required by the preceding section, in the office of the secretary of state; and when taken by the secretary of state, must be filed, with such certificate, in the office of the auditor.

3065 (252) (158) (152) (113). **Oath of judge of probate; where filed.**—Judges of probate must file their official oaths in the office of the clerk of the circuit court of their respective counties.

3066 (253) (159) (153) (114). **Filing of oaths of other officers.** Judges of other inferior courts, clerks of the circuit and inferior courts, sheriffs, tax-collectors, county commissioners, justices of the peace, constables, and all other officers whose general duties are confined to a single county, must, unless it is otherwise provided, file such oaths and certificate in the office of the judge of probate of their respective counties.

3067 (255) (161) (155) (116). **Oaths of deputies; how taken and filed.**—Whenever any officer is authorized or required to appoint a deputy, such deputy, before he proceeds to act, must take the oath prescribed by the fifteenth article of the constitution, which must be accompanied with the same certificate, filed in the same office with the same indorsement thereon, as the oaths of his principal; but the provisions of this section do not apply to any deputy who may be employed in particular cases only.

3068 (256) (162). **Oath of municipal officers.**—The mayor and aldermen of the various cities or towns in this state shall take the oath of office prescribed in article fifteen of the constitution of the state, and none other; and, upon taking the same, are absolved from any other charter oath previously taken by them.

3069 (254) (160) (154) (115). **Oaths to be indorsed with the date of filing.**—The officer in whose office such oaths are required to be filed, must indorse thereon the day and year on which the same were filed, which indorsement must be signed by him.

ARTICLE 4.

OFFICIAL BONDS.

3070 (257) (163) (157) (118). **Official bonds, to whom payable, condition, sureties.**—The bond of each public officer, required by law to give bond, must, unless it is otherwise provided, be made payable to the State of Alabama, with such sureties as the approving officer

is satisfied have the qualifications required by law, and with condition, in all cases in which a different condition is not prescribed, faithfully to discharge the duties of such office during the time he continues therein, or discharges any of the duties thereof.

Ex parte Buckley, 53 Ala. 42; Morrow v. Wood, 56 Ala. 1; McKee v. Griffin, 66 Ala. 211; Dudley v. Chilton County, Ib. 593; Brewer v. King, 63 Ala. 511.

3071 (258) (169) (158) (119). **Indorsed with date of approval.** The approval of all official bonds should be in writing indorsed on the bond, should show the day and year on which the same were approved, and be signed by the approving officer.

3072 (259) (170) (159) (120). **Improperly approving bond; penalty.**—The bond of any public officer, which is not in the penalty, payable, and conditioned, and has not sureties having the qualifications required by law, should not be approved; and the officer approving a bond not conforming to the law in any or all of these respects, is guilty of a neglect of duty, and subjects himself and his sureties to an action by any person injured, and a recovery to the extent of such injury.

3073 (260) (176) (165) (126). **Bonds not filed unless properly approved.**—No officer, with whom any official bond is required to be filed, must allow the same to be filed in his office, unless the approval of the proper officer appears thereon, indorsed according to the provisions of the second preceding section.

3074 (261) (178) (168) (129). **Date of filing bond to be indorsed.**—Every officer, in whose office the official bond of any public officer is filed, must indorse on such bond the day and year when the same was filed, and sign his name to such indorsement.

3075 (262) (164, 166). **Qualifications and sufficiency of sureties.** All sureties on official bonds must be residents of the state, and the aggregate value of their property, real and personal, not exempt from debts and other liabilities, and in excess of their debts and liabilities, must equal the penalty of the bond; and such property must be within the state. If the duties of the office of the principal are limited to a single county, the sureties must be residents of that county, and their property must be therein situate.

Ex parte Buckley, 53 Ala. 42; Ex parte Plowman, Ib. 440; State v. Flinn, 77 Ala. 100.

3076 (263) (165). **Officers not sufficient sureties.**—No officer of the United States required to give an official bond other than postmasters; no municipal officer required to give an official bond; no officer, state or county, required to give an official bond, other than justices of the peace, notaries public and constables, must be deemed a sufficient surety on any bond taken under this article.

3077 (264). **Attorneys or solicitors not sufficient sureties.**—A practicing attorney at law, or solicitor in chancery must not be deemed a sufficient surety on the official bond of the judge of probate, or of the clerk of any court of record, or of the register of the court of chancery, or of any other officer of a court of record, or of the sheriff or deputy-sheriff, or of the coroner, or of a justice of the

peace, or of a notary public exercising the powers of a justice of the peace, or of any constable, general or special.

3078 (265) (167). **Bond a lien.**—The bond of the judge of the probate court, of the county clerk, of the sheriff, of the clerk of the city or circuit court, of the tax-assessor, of the tax-collector, and of the county treasurer, is a lien upon the property of the principal from the date of its execution.

County v. Timberlake, 54 Ala. 403; Knighton v. Curry, 62 Ala. 404; Watts v. Eufaula Nat. Bk., 76 Ala. 474; Lott v. Mobile Co., 79 Ala. 69; Schuessler v. Dudley, 80 Ala. 547; Sumter Co. v. Mitchell, 85 Ala. 313; Baker v. Schuessler, 85 Ala. 541; Callen v. Schuessler, 86 Ala. 527; Cummings v. May, 110 Ala. 479; Randolph v. Billing, Ala. (22 So. 468).

3079 (266) (168). **By whom approved.**—The bond of the sheriff, of the clerk of the city or circuit court, of the tax-assessor, of the tax-collector, and of the county treasurer must be approved by the judge of probate of the county. The bond of the judge of probate, and of the judge of the county court must be approved by the judge of the circuit court, or by the chancellor of the division in which such judge of probate, or of the county court resides.

Ex parte Candee, 48 Ala. 386; Ex parte Harris, 52 Ala. 87; Ex parte Thompson, Ib. 98.

3080 (267) (171) (160) (121). **Time of filing bonds with secretary of state and auditor.**—The official bonds of public officers, required by law to be filed in the office of auditor or secretary of state, must be filed therein within forty days after the declaration of election, or the appointment of such officer.

3081 (268) (172) (161) (122). **Time of filing in circuit clerk's office.**—Such bonds, when required to be filed in the office of the clerk of the circuit court, must be filed therein within twenty days after the declaration of election, or the appointment to office.

3082 (269) (173) (162) (123). **Time of filing in office of judge of probate.**—Such bonds, when required to be filed in the office of any judge of probate, must be filed therein within fifteen days after the declaration of election, or the appointment to the office.

State v. Tucker, 54 Ala. 205.

3083 (270) (174) (163) (124). **In other cases, within thirty days.**—In all other cases, such bonds must be filed in the proper office within thirty days after the declaration of election, or the appointment to the office.

3084. Official bonds to be recorded.—Each official bond required by law to be filed with any public officer must be, by such officer, recorded word for word in a well-bound book and properly indexed.

3085 (271) (175) (164) (125). **Failure to file bond vacates office.** If any officer required by law to give bond fails to file the same within the time fixed by law, he vacates his office; and in such case, it is the duty of the officer in whose office such bond is required to be filed, at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases.

Sprowl v. Lawrence, 33 Ala. 674; State v. Ely, 43 Ala. 568; State v. Falconer, 44 Ala. 696; Ex parte Candee, 48 Ala. 386; Ex parte Harris, 52 Ala. 87; Beebe v. Robinson, Ib. 66; State v. Tucker, 54 Ala. 205.

3086 (272) (177) (167) (128). **Notice of failure to file bond must be given to the solicitor.**—If any public officer required by law to give bond fails to file the same within the time prescribed, in the proper office, notice of such failure must be given by the officer in whose office such bond is required to be filed, by or during the first two days of the session of the circuit court held in the county in which the officer so failing resides, next after such failure, to the solicitor of the circuit to which such county belongs, or to the solicitor of the county, if there be a county solicitor.

3087 (273) (179) (169) (130). **Legal effect of official bond.**—Every official bond is obligatory on the principal and sureties thereon—

1. For any breach of the condition during the time the officer continues in office, or discharges any of the duties thereof.

2. For the faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein.

3. For the use and benefit of every person who is injured, as well by any wrongful act committed under color of his office, as by his failure to perform, or the improper or neglectful performance of those duties imposed by law.

McElhaney v. Gilleland, 30 Ala. 183; Kelly v. Moore, 51 Ala. 364; Irion v. Lewis, 56 Ala. 190; Morrow v. Wood, Ib. 1; Brewer v. King, 63 Ala. 511; McKee v. Griffin, 66 Ala. 211; Dudley v. Chilton County, Ib. 593; Mason v. Crabtree, 71 Ala. 479; Clark v. Lamb, 76 Ala. 406; Bryan v. Kelly, 85 Ala. 569; Albright v. Mills, 86 Ala. 324; Savage v. Matthews, 98 Ala. 535; Burgin v. Raplee, 100 Ala. 433; Couch v. Davidson, 109 Ala. 313; Scott v. Ryan, Ala. (22 So. 284).

3088 (274) (180) (170) (131). **Not discharged by single recovery.**—Such bonds are not discharged by a single recovery, but proceedings may, from time to time, be instituted thereon until the whole penalty is exhausted.

3089 (275) (181) (171) (132). **Bond not properly executed or approved; effect of.**—Whenever any officer, required by law to give an official bond, acts under a bond which is not in the penalty, payable and conditioned, or without sureties of the requisite qualification and sufficiency, as prescribed by law, such bond is valid and binding on the obligors therein, and stands in the place of the official bond, subject on its condition being broken to all the remedies which the person aggrieved might have maintained on the official bond of such officer, executed, approved and filed according to law.

Sprowl v. Lawrence, 33 Ala. 674; Lewis v. Lee County, 66 Ala. 480.

3090 (276). **Conditional execution or delivery by sureties.**—A surety on an official bond, or on a bond intended as an official bond, cannot avoid liability thereon, on the ground that he signed or delivered it on condition that it should not be delivered to the proper officer, or should not become perfect, unless it was executed by some other person who does not execute it. The provisions of this section apply to bonds of state, county, municipal and corporate officers; to bonds of executors, administrators, guardians, receivers, assignees and other trustees, and to all bonds and undertakings executed in

the commencement or progress of any suit or judicial proceeding, civil or criminal.*

3091 (277) (182) (172) (133). **Applies to offices hereafter established.**—All the provisions of this and the preceding article apply to the oaths of office and official bonds of all public officers of this state, whose office may be established hereafter, unless the contrary is expressly provided.

ARTICLE 5.

BONDS BY GUARANTEE COMPANIES.

3092. Official bonds may be executed by guarantee companies. Feb. 12, 1897, p. 830, §1. Whenever any person or corporation is or may be required or permitted to execute bond, or other undertaking, of whatsoever nature, with surety or sureties for the faithful discharge or performance of the duties of any state, county, municipal, precinct, township, district or corporate office or position, or of any position of public or private trust or employment, for the faithful discharge or performance of any duty, or for the doing or not doing of anything in such bond or undertaking specified; or when any person or corporation is required or permitted to execute any bond or other undertaking, of whatever nature, with surety or sureties, in any judicial proceeding, or as guardian, executor, administrator, receiver, assignee or trustee, the court officer or person having authority, or charged with the duty of approving such bond or undertaking, may if such bond or undertaking is otherwise sufficient, approve the same when executed by a corporation having the power or authority under its charter to become surety on such bond or undertaking, as surety, and having complied with the provisions of this article; and the execution by any such corporation, as surety, of any such bond or undertaking shall be, in all respects, upon the approval and acceptance of such bond, a full and complete compliance with the requirements of any law, ordinance, rule or regulation requiring such bond or undertaking, or requiring that such bond or undertaking shall be executed by one surety, or by one or more sureties, or that such surety or sureties shall be residents of the state, or any county therein, or shall be householders or freeholders, or either or both, or shall possess any other qualification.

3093. Prerequisites to granting authority to domestic corporation; application showing financial condition; deposit; certificate of authority; license-tax.—Any such corporation, if incorporated under the laws of this state, in order to be qualified to so become such surety, must have an authorized capital stock of one hundred thousand dollars, all of which must be subscribed for and paid in, and either held in money or safely invested in the securities created by the laws of the United States, or by or under the laws of this state, or in other safe, marketable and interest-bearing stocks or bonds or other Ib. §2.

*As amended by joint committee.

securities, the value of which shall be at or above par; and such corporation shall also, before it is authorized to become such surety, deposit with the treasurer of this state twenty-five thousand dollars of securities created by or under the laws of the United States, or by or under the laws of this state, or in other safe, marketable and interest-bearing stocks, bonds, or other securities, the value of which shall be at or above par, in trust for the benefit of the resident holders of the obligations of such corporation, at their market value; and the liabilities of such corporation shall not exceed its available assets; but such liabilities shall not be construed, within the meaning of this section, to include its capital stock, nor its contingent liabilities upon bonds or undertakings executed by or under the provisions of this article, but shall include its outstanding debts and a premium reserve equal to fifty per centum of the annual premiums on all outstanding risks then in force; and such corporation shall also file with the auditor of this state a written application to do business under this article signed by its president or other managing officer, under its corporate seal, and attested by its secretary, or other officer acting as secretary to be authorized to do business under this article, and also a statement, signed and sworn to by its president, or other managing officer, and by its secretary, or other officer acting as secretary, stating the amount of its paid-up capital stock, and how it is invested, stating each item of such investment, the amount of premiums on existing bonds upon which it is surety, the amount of liability for unearned portions thereof, estimated at fifty per centum of the annual premiums on all outstanding risks for one year or less, and pro rata for items of more than one year; stating also the amount of its outstanding debts and liabilities of all kinds; and thereupon the auditor, if satisfied that such corporation is solvent, and has the cash capital herein provided for, and that it has in all respects complied with, and is qualified under this article shall issue to such corporation his certificate that it is authorized to become and be accepted as sole surety on all bonds or undertakings required or permitted by the laws of this state, or by the charters, ordinances, rules and regulations of any county, municipal corporation, board, body, organization, or public officer; such company shall also semi-annually, on the first days of January and July of each year, furnish to and file with the auditor of the state a similar statement to the one hereinbefore in this section provided for. Such company shall also, at such times as he may demand the same, furnish to the auditor such other information touching its condition and credit, as he may require, signed and sworn to as in this section provided; and it shall also pay to the auditor an annual license-tax of one hundred dollars.

Ib. §3. **3094. Prerequisites to granting authority to foreign corporation; application showing financial condition; deposit; charter; agent; and place of business; certificate of authority; semi-annual reports; annual license-tax.**—If such corporation be incorporated under the laws of any other state, in order to be qualified

to so become such surety, it must have an authorized capital stock of at least two hundred and fifty thousand dollars, which must be fully paid up, and unimpaired, and safely invested in the securities created by the laws of the United States, or by or under the laws of the state where it is incorporated, or in other safe, marketable and interest-bearing stocks, bonds or other securities, the value of which shall be at or above par, one hundred thousand dollars of which shall be deposited with or held by the insurance commissioner, or other corresponding financial officer of the state in which such corporation is incorporated and has its principal place of business, in trust for the benefit of the holders of the obligations of such corporation, and, in addition thereto, such corporation shall also deposit with the treasurer of this state fifty thousand dollars of like securities, in trust for the benefit of the resident holders of the obligations of such corporation, at their market value; and the liabilities of such corporation must not exceed its available assets, but such liabilities must not be construed, within the meaning of this section, to include its capital stock, nor its contingent liabilities upon bonds or undertakings executed by it under the provisions of this article, but shall include its outstanding debts and a premium reserve equal to fifty per centum of the annual premiums of all outstanding risks in force; and such corporation shall also, before transacting any business in this state, file with the auditor of this state a certified copy of its charter or act of incorporation, and the written application and statements required hereinbefore in the preceding section of this article of domestic corporations. Such corporation shall also, in addition to the foregoing requirements, file in the office of the secretary of state of this state an instrument in writing under the seal of said company, and signed officially by its president or one of its vice-presidents, and by its secretary or one of its assistant secretaries, designating a known place of business in this state, and an authorized agent thereat, who shall be a resident of such place, upon whom service of any process or notice required or authorized by law may be made for or on behalf of such corporation. Whereupon, and upon the payment of the license hereinafter required, the auditor, if satisfied that such corporation is solvent, and has the cash capital herein provided for, and surplus assets, in excess of its capital stock, its outstanding debts and premium reserve specified, and that it has, in all respects, complied with, and is qualified under this article, shall issue to such corporation, and to each of its agents in this state, his certificate that it is authorized to become and be accepted as sole surety on all bonds or undertakings required or permitted by law, or the charters, ordinances, rules and regulations of any county, municipal corporation, board, body, organization or public officer. Such company shall also semi-annually, on the first days of January and July of each year, file with the auditor a statement similar to that hereinbefore provided for, and shall also furnish him with a certificate from the officer with whom the deposit herein mentioned is required to be made, describing such securities so deposited, and the

manner in which they are held by him, and stating that he is satisfied that such securities are fully worth one hundred thousand dollars, and that said corporation is solvent; and such corporation shall also furnish the auditor at such times as he may demand the same, such other information touching its condition and credit as he may require, signed and sworn to, as in this section provided; and it shall also pay to the auditor an annual license-tax of one hundred dollars.

Ib. §4. **3095. Auditor's certificate good for one year.**—The certificates hereinbefore provided for by the auditor to such corporations, foreign or domestic, shall only authorize such corporations to engage in such business during the year in which, or for which it is issued; and such corporations must obtain such certificates annually at the beginning of each year.

Ib. §14. **3096. Corporation not to become sole surety on bond of state treasurer; may become co-surety; how estimated.**—No such corporation shall, however, be accepted as sole surety on the bond of the state treasurer; but such corporation may become and be accepted as a co-surety with other persons, or with other corporations of like powers and qualifications, upon said bond; and in the event any such corporation does become a co-surety on said bond, its property or credit shall not be estimated to exceed one hundred thousand dollars.

Ib. §17. **3097. Testator may, in his will, preclude corporation from becoming surety on bond of executor.**—Whenever any testator, by the terms of his will, so provides, no such corporation shall be accepted upon the bond of any executor or administrator of such testator.

Ib. §5. **3098. Auditor must revoke certificate when corporation deemed unsafe; effect; notice; additional bonds; duty of approving officers.**—The auditor shall at any time, on becoming satisfied that any such corporation is insolvent, or cannot be safely accepted as surety upon the instruments hereinbefore provided for, or upon such corporation failing, on demand, to furnish the auditor full and satisfactory information touching its business, securities or investments, or upon such corporation violating any of the provisions of this article, revoke the authority of such corporation to transact any new business in this state; and thereupon the right of such corporation to transact any new business shall cease, and it shall not thereafter be allowed to transact such business until it has again received from the auditor another certificate of the character hereinbefore prescribed. Upon revoking such authority, the auditor shall give notice thereof, in some newspaper of general circulation published at the seat of government, and by circular letter to each officer in this state authorized to approve official bonds, stating the grounds of such revocation. If such authority is revoked upon the ground that such corporation is insolvent, or cannot be safely accepted as surety upon such bonds or undertakings, it shall be the duty of any such officer, upon receiving such circular letter, or upon his having

brought to his attention such publication, to require the principal in any such bond upon which such corporation has become surety, to give an additional bond as provided by law.

3099. When no agent in state process may be served on the auditor.—If the agent designated by any corporation as provided in the third section of this article, shall die, resign, remove from the state, become insane, or otherwise incapable of acting, it shall be the duty of such corporation to appoint another agent in his place as in said section prescribed; and until such appointment shall have been made, or during the absence of the agent of said corporation from the state, or at any time when said corporation has no agent in this state, service of process against such corporation may be made upon the auditor with like effect as upon an agent so appointed by such corporation. The officer serving such process upon the auditor must immediately transmit a copy thereof by mail to the corporation, and state such fact in his return. Ib. §6.

3100. Jurisdiction of suits on bonds.—Any bond or undertaking executed by such corporation may be sued on in the county of residence of the principal, or in which he resided at the time of the execution of the same; but suits by the state may be brought in Montgomery county. Ib. §7.

3101. Corporation estopped to deny power to execute bond. No corporation having signed any such bond or undertaking, shall be permitted to deny its corporate power to execute such instrument, or incur such liability in any proceedings to enforce liability against it thereunder. Ib. §8.

3102. Judgment on bond certified to auditor; sale of securities. If any such foreign or domestic corporation shall fail or refuse to pay any final judgment or decree rendered against it upon any such bond or undertaking from which no appeal or supersedeas has been taken for thirty days after the rendition of such judgment or decree, it shall be the duty of the clerk or register of the court in which such judgment or decree was rendered to certify a copy thereof to the auditor, together with the fact that it remains unpaid, and the auditor must require the state treasurer to sell as many of the bonds or other securities deposited by such corporation with the treasurer as may be necessary to pay such judgment or decree and the interest and costs thereon, and to pay to the clerk or register of such court, from the proceeds of such sale, the amount of such judgment or decree, with interest and costs; and it shall be the duty of the treasurer to sell such bonds or other securities at private or public sale, with or without notice, or so many as may be necessary, for the best price he can obtain in the market, to assign the same to the purchaser, and to apply the proceeds, or so much thereof as may be necessary, to the payment of such judgment or decree, with interest and costs, the surplus, if any, remaining on deposit in lieu of the bonds or other securities so sold. Of such sale the auditor must forthwith notify such corporation and require it to supply the deficiency within thirty days; and if such corporation shall fail to do so, the auditor must Ib. §9.

cancel its authority to act under this article, and give notice thereof to the persons and in the manner prescribed by the fourth preceding section.

Ib. §§10, 12. **3103. Corporation entitled to rights and remedies of other sureties.**—Such corporation as surety on any bond, undertaking or obligation is entitled to all the rights and remedies of other sureties on such instruments; and any corporation becoming security on any bond or undertaking, as authorized by this article, shall have the same right to be relieved from further liability thereon, or to require the principal to give new or additional bonds or undertakings, as is conferred by law upon the other sureties on like bonds or undertakings.

Ib. §11. **3104. May wind up business and withdraw securities on deposit.**—When any foreign or domestic corporation transacting business in this state under the provisions of this article ceases to transact such business, it may withdraw the securities deposited with the treasurer upon satisfying him that it has discharged or been relieved from any and all risks and liabilities it has incurred in this state, and upon the treasurer becoming satisfied that such corporation has discharged or been relieved from all such risks and liabilities, he shall deliver to such corporation the securities so deposited by it with him.

Ib. §13. **3105. Penalty for doing business without authority; bond not invalid.**—Any corporation or officer or agent of such corporation who shall transact the business herein authorized without first obtaining the certificate from the auditor herein provided for, authorizing such corporation to transact such business, or who shall transact such business after the authority to do so has been revoked by the auditor as herein provided, shall be guilty of a misdemeanor, and upon conviction must be fined not exceeding one thousand dollars. Nothing, however, in this section shall render invalid any bond or undertaking executed by such corporation.

Ib. §15. **3106. When value of deposit impaired by sale or depreciation the same must be made good; faith and credit of state pledged to return securities, etc.**—If at any time the bonds or other securities deposited by foreign or domestic corporations with the state treasurer under the provisions of this article should be diminished in amount, by sale as hereinbefore provided, or should depreciate in value, the auditor shall require such corporation to deposit other bonds or other securities of like kind as hereinbefore provided, with the state treasurer, so that the amount and value of such bonds or other securities in the hands of the state treasurer shall, at all times, be fifty thousand dollars. For all bonds and securities deposited by all such corporations under the provisions of this article, the faith and credit of the state are hereby pledged, that the said bonds and securities shall be returned to the parties entitled to receive them, or disposed of as provided in this article.

Ib. §16. **3107. When domestic corporation must deposit additional securities.**—If any corporation organized under the laws of this state, and authorized to become surety as herein provided, should extend

its business of becoming surety on official or other bonds or undertakings hereinbefore mentioned beyond the limits of this state, then such corporation shall, before being entitled to further carry on such business in this state, deposit with the treasurer of this state fifty thousand dollars, including the twenty-five thousand dollars hereinbefore provided to be so deposited by it, of like securities, as those required to be deposited by foreign corporations by the third section of this article.

Ib. §18.

3108. Governor may order examination into the financial condition of corporation; duty of corporation; penalty for withholding information.—The governor shall, at any time when he considers the public interest so demands, direct the examiner of public accounts to examine into the financial condition of any corporation, foreign or domestic, doing business under the provisions of this article, and make report thereon to the auditor; and upon the governor so directing, and upon the demand of said examiner, such corporation shall submit to the examination of such examiner all such books, papers and securities as he may require; and such examiner shall also have the power to examine the officers of such corporation under oath touching its business and financial condition, and the authority of any such corporation to transact business under this article, that refuses to allow such examination, shall be revoked by the auditor, and such corporation shall not thereafter be allowed to transact further business in this state until it has fully complied with the provisions of this section.

Ib. §19.

3109. Article applies only to official bonds and the like.—Nothing herein contained shall apply to any bond or undertaking which is not by law required to be approved by any state, county, municipal, precinct, township, district or other like office, or by any judge, clerk or register of any court of this state, or to corporations engaged merely in the business of becoming sureties on any such bond or undertaking.

ARTICLE 6.

REQUIRING CERTAIN PUBLIC OFFICERS TO GIVE ADDITIONAL AND NEW SURETIES IN CERTAIN CASES.

3110 (278) (183) (173) (134). **Auditor and treasurer.**—It is the duty of the governor to require additional bonds of the auditor and treasurer, or any other officer whose bond is required to be approved by the governor, whenever, in his opinion, the interest of the state demands.

3111 (279) (184) (174) (135). **Additional bonds from officers whose bonds are approved by circuit judge or chancellor; when required.**—Any judge of probate, or any other officer whose official bond is required to be approved by a judge of the circuit court or chancellor, must, upon the address of a majority of the grand jury of the county in which the duties of such office are exercised, made

in term time to the presiding judge of the circuit court, or in vacation upon the address of any three members of the court of county commissioners to the judge of the circuit, be required by such presiding judge, or in vacation, by the judge of the circuit, to give an additional bond.

Randolph v. Billing, Ala. (22 So. 468).

3112 (280) (185) (175) (136). **Bonds approved by judge of probate.**—Any sheriff, coroner, clerk of the circuit court, justice of the peace, constable, tax-assessor, tax-collector, or any other officer whose official bond is required to be approved by any judge of probate, must, in like manner, upon the address of the grand jury of the county, made in term time, or of three members of the court of county commissioners made in vacation, be required by such judge of probate to give an additional bond.

3113 (281) (186) (176) (137). **Requisition in writing, and copy served.**—The requisition to give additional bond must in all cases be in writing, and signed by the officer making the same; must state the day and place when and where the officer cited must appear and give such bond; and a copy of such requisition must be personally served on such officer before the day specified therein.

3114 (282) (187) (177) (138). **Additional bond; when to be given.**—Such officer must give such additional bond within ten days after the day specified in such requisition; and failing so to do, he vacates his office, and the officer making the requisition must at once certify the same to the appointing power, by whom the vacancy must be filled.

3115 (283) (188) (178) (139). **Penalty, etc., of additional bond.** Such additional bond must be in the same penalty, and payable, conditioned, approved and filed in the same office, as the first official bond.

Ex parte Plowman, 53 Ala. 440; County v. Timberlake, 54 Ala. 403.

3116 (284) (189) (180) (141). **Effect of such bonds.**—Every such additional bond is of like force and obligation on the principal and sureties thereon, from the time of its approval, and subject to the same remedies, as the first official bond.

Bryan v. Kelly, 85 Ala. 569; Randolph v. Billing, Ala. (22 So. 468).

3117 (285) (190) (181) (142). **First bond not discharged.**—In no case provided for under any of the preceding sections of this article, are any of the official bonds previously executed discharged; but each remains of the same force and obligation as if the additional bonds had not been given; and any person aggrieved can have his remedy upon either or all of such bonds, in the same, or in separate proceedings.

3118 (286) (191) (182) (143). **Rights of sureties among themselves.**—The sureties in either bond, who may have been compelled to make any payment thereon for the principal obligor, have the same remedies against the sureties in the remaining bonds as cosureties have against each other, and may recover, against such sure-

ties, such an amount as shall be in the same proportion to the sum paid by the plaintiff as the aggregate penalty of the two bonds bears to the penalty of the bond of the defendant, apportioning the same among the solvent sureties.

3119 (287) (192). **Five freeholders may petition to have bond declared insufficient.**—Upon the application of five or more resident freeholders of the county, addressed to the chancellor of the division or judge of the circuit, and verified by the oath of one or more of the applicants, alleging that the bond of the judge of probate, or the judge of the county court, or the clerk of the circuit court, or of the clerk of the city court, or of the sheriff, or of the tax-assessor, or of the tax-collector, or of the county treasurer, is for any cause insufficient, and setting forth the grounds upon which the allegation is based, such officer may be required to make a new bond, if, upon the hearing of such application by the chancellor or circuit judge, it shall appear that the bond is, for any cause, insufficient.

Ex parte Buckley, 53 Ala. 42.

3120 (288) (193). **Day appointed for hearing and deciding on sufficiency of bond.**—Upon the making of the application, the chancellor or circuit judge must appoint a day, not more than twenty days thereafter, for the hearing of the application, of which time and the place of hearing the same the officer shall have at least ten days' notice. If upon the hearing of the application it shall appear to the satisfaction of the chancellor, or judge, either from oral or written testimony, to be produced before him, that the bond, for any cause, is insufficient, he shall at once make an order requiring such officer to make and execute a new bond within fifteen days from the date of such order.

3121 (289) (194). **Application, order and minute of proceedings; where filed.**—The application and order, and minute of the proceedings shall be filed in the office of the circuit clerk of the county in which the officer discharges the duties of his office, except when the application is based upon the insufficiency of the bond of the circuit clerk, in which case they shall be filed in the office of the judge of probate.

3122 (290) (195). **Upon failure to make new bond, office declared vacant.**—Upon the failure of any officer to make and execute a new bond, when required to do so, within the prescribed time, the office which he holds is hereby declared vacant; and in such event it shall be the duty of the circuit clerk in whose office the papers and proceedings are filed, to certify such vacancy forthwith to the officer having authority to fill the same, except when such vacancy is in the office of the circuit clerk, in which case it shall be the duty of the judge of probate to certify the vacancy; and such officer shall at once fill such vacancy by appointment.

3123 (291) (196). **Bond and affidavit required.**—The chancellor or circuit judge, before fixing the day for the hearing of such application, in addition to the oath verifying the application, must require one or more of the applicants to make oath that the application

is not made for the purpose of vexing or harassing the defendant; he must further require the applicants to execute a bond with sufficient surety, in such amount as may be fixed by the chancellor or circuit judge, payable to the officer whose bond is alleged to be insufficient, with condition that the applicants will prosecute the application to effect, and will pay the officer all such damages as he may sustain from the wrongful or vexatious making of such application, together with the costs of the same.

ARTICLE 7.

THE DISCHARGE OF SURETIES ON OFFICIAL BONDS IN CERTAIN CASES.

3124 (292) (197) (183) (144). **Application of sureties to be discharged.**—Any person, who is surety upon the official bond of any public officer, required to be approved by the judge of the circuit court, or judge of probate, or chancellor, can discharge himself of such suretyship, whenever he is in danger of being made liable on such bond, and can have no adequate remedy against his principal, in consequence of his inability to discharge such liability, upon making an application in writing, setting forth such facts.

Mitchell v. Nelson, 49 Ala. 88.

3125 (293) (198) (184) (145). **To whom made.**—This application must be addressed to the officer, or to one of the officers required to approve such bond, and must be sworn to.

3126 (294) (199) (185) (146). **Notice to principal to give new bond.**—The officer to whom such application is addressed must require the principal named in such application to appear before him on and at a certain day and place, and give a new bond; which requisition must be in writing, signed by the officer making the same, and must be personally served on such principal before the day named therein.

Bruner v. Bryan, 50 Ala. 522.

3127 (295) (200) (186) (147). **Failure to give it.**—If such requisition is personally served, and the officer named therein fails to give an additional bond within ten days after the day specified in such requisition, he vacates his office; and the officer making such requisition must at once certify the same to the appointing power, who must fill the vacancy.

3128 (296) (201) (187) (148). **How approved and filed.**—On the execution of the additional bond provided for in this article, the same must be approved and filed, with the application and requisition, with the first official bond.

3129 (297) (202) (189) (150). **When sureties discharged.**—On the execution, approval and filing of such additional bond, such applicants are exonerated as sureties on the bond on which such application was made, from all liability for any breach of the condition therein contained, accruing subsequently to the filing of such additional bond.

3130 (298) (203) (190) (151). **When new bond goes into effect.** Every such additional bond, approved and filed as in this article is provided for, is binding on the obligors from the time of its approval, and subjects them to the same liabilities, proceedings and remedies as are provided in relation to the first official bond of such officer.

3131 (299) (204) (191) (152). **Effect of exoneration of surety.** The exoneration provided for in the second preceding section does not affect the previous liability of any of the obligors; but in case of the discharge of any one or more obligors, under such section, the same shall operate as a discharge of all other obligors.

3132 (300) (205) (192) (153). **Sureties' rights among themselves.**—Whenever the sureties on either bond have made any payments thereon, on account of the principal obligor therein, they are entitled to the same remedies and recoveries against the sureties in the remaining bonds, as are provided by section 3118 (286).

ARTICLE 8.

PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS, PAPERS, PROPERTY AND MONEY BY PUBLIC OFFICERS TO SUCCESSORS.

3133 (301) (206) (193) (154). **Property and papers delivered to successor.**—In all cases, in which it is not otherwise expressly provided, when any office is vacated, except by the death of the incumbent, all books, papers, property and money, belonging or appertaining to such office, must, on demand, be delivered over to his qualified successor.

Ex parte Scott, 47 Ala. 609; Thompson v. Holt, 52 Ala. 471; Chambers v. Stringer, 62 Ala. 596; Beebe v. Robinson, 64 Ala. 171; Ryan v. Couch, 66 Ala. 246; Lane v. Kolb, 92 Ala. 636.

3134 (302) (207) (194) (155). **Proceedings to compel delivery.** If any person refuses or neglects, after demand made, to deliver over any books, papers, or property, as required in the preceding section, his successor may make complaint thereof to the judge of the circuit court, or judge of probate of the county in which the person refusing resides; and if such officer is satisfied by the oath of the complainant, and such other evidence as may be offered, that any such books, papers, or property are withheld, he must grant an order requiring the person so refusing to show cause before him, on a day and at a place named in such order, why he should not be compelled to deliver the same.

3135 (303) (208) (195) (156). **Officer discharged on affidavit.** At the time so appointed, or at any other time to which the matter may be adjourned, a copy of such order having been personally served on the person so refusing, such officer must proceed to inquire into the circumstances. If the person charged with withholding such books, papers, or property makes affidavit before such officer that he has delivered over to his successor all such books, papers and prop-

erty in his custody, or appertaining to such office, all further proceedings against him must cease.

3136 (304) (209) (196) (157). **On refusal, imprisoned.**—If the person complained against does not make such affidavit, and it appears that any such books, papers, or property are withheld, the officer before whom the proceedings are had must, by warrant, commit the person so withholding to the jail of the county, there to remain until he delivers such books, papers and property, or is otherwise discharged by law.

3137 (305) (210) (197) (158). **Search-warrant.**—In the case stated in the preceding section, if required by the complainant, such officer must also issue his warrant, directed to any lawful officer, commanding him in the daytime to search such places as may be designated in such warrant, for such books, papers and property as belonged and appertained to the office vacated, and to seize and bring them before the officer issuing such warrant.

3138 (306) (211) (198) (159). **Delivered to incumbent if obtained.** Upon books, papers, or property being brought before such officer by virtue of such warrant, he must inquire and examine whether the same appertained to the office vacated, in which case he must cause such books, papers and property to be delivered to the complainant.

3139 (307) (212) (199) (160). **If in possession of any other person, proceedings to recover.**—If any person holding any office in this state dies, or his office in any way becomes vacant, and any books, papers, or property belonging or appertaining to such office come into the possession of any person, the qualified successor to such office may, in the manner before prescribed in this article, demand such books, papers, or property from the person having the same in his possession, and on the same being withheld, an order may be obtained; and the person charged may, in like manner, make oath of the delivery of all such books, papers and property that ever came into his possession; and in case of his failure to make such oath and to deliver up the books, papers, or property so demanded, such person must be committed to jail, and a search-warrant may be issued, and the books, papers, or property seized by virtue thereof delivered to the complainant, as hereinbefore prescribed.

ARTICLE 9.

VACATING OFFICE, DEATH, RESIGNATION, INSANITY, REMOVAL.

3140 (308) (213) (200) (161). **How offices are vacated.**—Any office in this state is vacated—

1. By the death of the incumbent.
2. By his resignation, except in such cases as are excepted by law.

Williams v. Fitts, 49 Ala. 402.

3. By ceasing to be a resident of the state, or of the division, district, circuit, or county, for which he was elected or appointed.

4. By the decision of a competent tribunal declaring his election or appointment void, or his office vacant.

5. By an act of the general assembly abridging his term of office, when the same is not fixed by the constitution.

6. In such other cases as are or may be declared by law.

3141 (242) (150). **Vacation of judicial office by acceptance of another office.**—The judge of a court of record, or a chancellor, vacates his judicial office by the acceptance of another office, state, county, or municipal.

3142 (243) (151) (146) (107). **Sentence of officer to the penitentiary vacates office.**—When any person, holding any office or place under the authority of this state, is sentenced by any court of the United States, of this state, or any other state, to imprisonment in the penitentiary, or hard labor for the county, his office or place is vacated from the time of the sentence; and if the judgment is reversed, he must be restored; but if pardoned, he must not.

Ex parte Diggs, 50 Ala. 78.

3143 (309) (214) (201). **Vacation of offices of clerk of the circuit court, etc.**—The offices of clerk of the circuit court, tax-collector, tax-assessor, county treasurer, and justices of the peace are respectively vacated from the expiration of the incumbent's term, when there is a failure to elect at any general election, where such officers are elected by the people.

3144. Insanity vacates office.—When the incumbent of any office is, upon a proceeding in lunacy, adjudged to be of unsound mind, such office is vacated, and the judge of probate must certify the vacancy to the appointing power; but if such proceeding is thereafter revoked or annulled, he must, upon his own request, be restored.

3145 (310) (215) (202) (162). **Notice of death of member of congress, or of general assembly, etc.; by and to whom given.**—On the death of any senator or representative from this state to the congress of the United States, or of any member of the general assembly, the judge of probate of the county in which such officer, at the time of his death, resided, must give notice thereof to the governor; in case of the death of the governor, such judge of probate must give notice to the president of the senate; and in case of the death of any other officer, to the officer who fills the vacancy.

3146 (311) (216) (203) (163). **Notice of death of judge of probate given by circuit clerk.**—On the death of any judge of probate, the clerk of the circuit court of the county for which he was elected must give notice thereof to the governor.

3147 (312) (217) (204) (164). **The resignation of the governor.** The governor, if he resigns during the session of the general assembly, must transmit his resignation to the president of the senate; otherwise, to the secretary of state, who must notify the president of the senate.

3148 (313) (218) (205) (165). **Resignation of members of congress, etc.**—The resignation of senators and representatives in congress, and members of the general assembly must be transmitted to

the governor; and in all other cases, except justices and constables, to the officer or tribunal which fills the vacancy.

3149 (314) (219) (206). **Resignation of justices and constables.** The resignation of justices and constables must be transmitted to the judge of probate of the county in which the office may have been held; and the judge of probate must thereupon notify the governor.

3150 (315) (220) (207) (166). **Notice of removal from county, etc.**—Notice of removal of any officer, other than justices of the peace or constables, from the state, or from the district, circuit, or county, for which he was elected or appointed, must be given by and to the same officers as notice of his death is required by this article to be given.

3151 (316) (221) (208) (168). **Notice of judgment vacating office to be given by clerk.**—Whenever there is a judgment of a competent tribunal declaring any election or appointment void, or any office vacated, such judgment must, if the vacancy is filled by appointment, the day after the time for taking an appeal has expired, be certified by the clerk of such court, or by the judge, if there be no clerk, to the appointing power.

3152 (317) (222) (209) (168). **Notice of vacancies to be filled by the general assembly.**—The governor must give notice to the general assembly, at each session thereof, of all offices to be filled by that body, which have become vacant, or which will be vacated by the expiration of the term of office before the next regular session.

ARTICLE 10.

SALARIES OF OFFICERS; WHEN PAYABLE.

3153 (318) (223) (210) (169). **Salaries; when due.**—The salaries of all officers are payable on the last day of each month; but any unpaid salary may be paid upon the expiration of the term of the officer.

3154. Succeeding officer entitled to salary for day change takes place.—The succeeding officer is entitled to the salary for the day upon which he is inducted into office, to the exclusion of the retiring officer.

CHAPTER 84.

OYSTERS. 3155–3160.

Dec. 10, 1892. p. 27, §1.

3155. Right to plant.—The owners of land fronting on any bay, river, bayou, or creek within this state, are granted the right to plant oysters, and gather the same, in the waters in front of their land, to the distance of six hundred yards from the shore; but where the

distance from shore to shore is less than twelve hundred yards, the owners on either shore may plant and gather to a line equidistant between the two shores, but no person shall plant in any natural channel so as to interfere with navigation. The respective owners shall plant within lines extended into the water from the points where their boundaries intersect the shore, as nearly as practicable with a mean width corresponding with their respective frontages on the shore, but should the lines thus extended cross each other, or seriously interfere with obtaining such a mean width, then a line equidistant from the shore-lines of the respective owners shall be the boundary line between such planting-grounds. Nothing in this chapter shall be construed as an abandonment by the state of its right or title to the overflowed lands within such limits; but upon the asserting of the rights of the state, the owners of oysters planted in such limits shall have the right to remove them. No riparian rights shall vest in any person under this section, nor be recognized by the state in or to the land covered by the waters between two parallel lines drawn as follows: one across the south end of Cedar Point, and one across the north end of Dauphin Island, both extending east and west from points mentioned. Feb. 14, 1893, p. 518, §1.

3156. Public reefs.—The title to and property in all oysters in the tide-waters of the state outside of the six-hundred-yard limit prescribed in the preceding section shall remain in the state until divested as hereinafter provided. Oyster-beds outside of such limits shall be known and designated as public reefs. Dec. 10, 1892, p. 27, §2.

3157. License to take oysters from public reefs.—A license is hereby given to resident citizens of the State of Alabama to take oysters from the public reefs in the state, subject to the restrictions and regulations herein provided; but no person not a bona fide resident of this state is, or shall be, authorized to take or transport such oysters from, over or through any of the waters of the State of Alabama. Ib. §3.

State v. Harrub, 95 Ala. 176.

3158. Property in oysters taken from public reefs.—When any resident citizen of this state shall lawfully take oysters from the public reefs, he shall have an unqualified interest in the oysters so taken, and shall have the right to sell the same without restriction or reservation. Ib. §4.

3159. Manner and time of taking.—It shall be unlawful for any person to take oysters from the public reefs except with the hands or the double rake, known as oyster-tongs, worked by hand. Ib. §§5, 6.

3160. Measure.—When oysters in the shell are bought or sold by measure, it shall be by box measure, and the measure must be uniform in shape and of the following dimensions: eighteen inches long, twelve inches wide and six inches deep, all inside measure; and four of such measures filled and rounded, without heaping, shall constitute a barrel. Ib. §9.

CHAPTER 85.

PARTITION.

ARTICLE 1.—PARTITION OF PROPERTY GENERALLY. 3161-3187.
2.—PARTITION OF CROPS. 3188-3206.

ARTICLE 1.

PARTITION OF PROPERTY GENERALLY.

3161 (3237) (3497) (3105) (2677). **Partition of property held by joint owners or tenants in common.**—Any property, real, personal, or mixed, held by joint owners or tenants in common, may be divided among them, on the written application of one or more of them to the probate court of the county in which the property is situate; and such application may be made by the executor or administrator of a deceased person in interest, or by the guardian of a minor or person of unsound mind.

The **systems of partition in severalty and by sale for division, are separate and distinct.**—Griel v. Randolph, 108 Ala. 601; Hillens v. Brinsfield, 108 Ala. 605 (overruling Johnson v. Ray, 67 Ala. 603; McCorkle v. Rhea, 75 Ala. 213; Ballard v. Johns, 80 Ala. 32; s. c., 84 Ala. 70; Wolffe v. Loeb, 98 Ala. 426; Sherer v. Garrison, 111 Ala. 228. **Partition is a matter of right**; neither the fact that inconvenience or injury will result, nor that a division is difficult, will prevent it.—McEvoy v. Leonard, 89 Ala. 455; Donnor v. Quartermas, 90 Ala. 164; Keaton v. Terry, 93 Ala. 85; Gore v. Dickinson, 98 Ala. 363. **The probate court of the county where the property is situated** alone has jurisdiction.—Turnipseed v. Fitzpatrick, 75 Ala. 297; Matthews v. Matthews, 104 Ala. 303. **Jurisdiction attaches on the filing of a proper application**; and intervening errors do not affect it.—Bryant v. Stearns, 16 Ala. 302; Whitman v. Reese, 59 Ala. 532; Stimpson v. Malone, 60 Ala. 338. **Probate court cannot make an unequal division** and award money to equalize the shares.—Terrell v. Cunningham, 70 Ala. 100. Probate court **cannot determine complicated questions of law or fact** respecting the title, but may interpret a deed of undisputed validity.—Guilford v. Madden, 45 Ala. 290. Partition will **only be awarded of the whole tract or estate; effect of life-estate in the property.** Ward v. Corbett, 72 Ala. 438 (overruling Stimpson v. Malone, 60 Ala. 338); Hall v. Caperton, 87 Ala. 285; Austin v. Bean, 101 Ala. 133. Property **owned jointly by husband and wife** may be partitioned, but not the homestead, if the wife objects.—Mitchell v. Mitchell, 101 Ala. 183; Donegan v. Donegan, 103 Ala. 488. **All co-tenants must be made parties.**—Whitman v. Reese, 59 Ala. 532; Ballard v. Johns, 80 Ala. 32; Gayle v. Johnston, 80 Ala. 395; Ferris v. Montgomery L. & I. Co., 94 Ala. 557; Gore v. Dickinson, 98 Ala. 363. There is **no provision for adjusting equities** between the parties **under the statutory system** of partition.—Austin v. Bean, 101 Ala. 133. **An infant may file his petition in his own name,** by next friend, or in the name of his guardian. Strange v. Gunn, 56 Ala. 611. **Statute does not deprive equity of its original jurisdiction** to partition property.—Wilkinson v. Stuart, 74 Ala. 198; McEvoy v. Leonard, 89 Ala. 455. See citations to section 3187 (3262).

3162 (3238) (3499, 3500). **Application when land lies in different counties; certificate and record.**—When partition is sought of a tract of land lying partly in different counties, the application may be made to the probate court of either county, and the partition shall be made at the court-house of the county of the judge of such court; and when made, the judge of such court shall, on demand and payment of lawful fees therefor, furnish to each party in interest a certificate, under his official seal, of the lots or parcels al-

lotted to him, and of the book and page where the proceedings are recorded; and the record of such certificate in the proper office of the county in which such lots or parcels, or any part thereof, lie, shall operate as notice of its contents.

3163 (3239) (3498) (3106) (2678). **Contents of application.**—The application for division or partition must set forth the names of all the persons interested in the property, their residence, if known, whether they are over or under twenty-one years of age, a full and accurate description of the property sought to be divided or partitioned, the interest of each person in the same, and the number of shares into which it is to be divided.

Applies only to applications for partition in kind or severalty; not to sales for division.—Griel v. Randolph, 108 Ala. 601; Hillens v. Brinsfield, 108 Ala. 605 (overruling Johnson v. Ray, 67 Ala. 603; McCorkle v. Ray, 75 Ala. 213; Ballard v. Johns, 80 Ala. 32; s. c., 84 Ala. 70; Wolffe v. Loeb, 98 Ala. 426); Sherer v. Garrison, 111 Ala. 228. **Statutory allegations are jurisdictional**; without them proceedings are void.—Whitman v. Reese, 59 Ala. 532; Johnson v. Ray, 67 Ala. 603; McCorkle v. Rhea, 75 Ala. 213; Whitlow v. Echols, 78 Ala. 206; Ballard v. Johns, 80 Ala. 32; s. c., 84 Ala. 70; Morgan v. Farned, 83 Ala. 367; Wolffe v. Loeb, 98 Ala. 426. **Application must state the names and residences of all parties**, including petitioner and their respective interests. Johnson v. Ray, 67 Ala. 303; Whitman v. Reese, 59 Ala. 532; McCorkle v. Rhea, 75 Ala. 213; Whitlow v. Echols, 78 Ala. 206; McQueen v. Turner, 91 Ala. 273; Wolffe v. Loeb, 98 Ala. 426. **Property described as "a certain law library** consisting of text-books and reports," is too indefinite.—Strange v. Glenn, 56 Ala. 611. **A substantial conformance is sufficient** to sustain proceedings on collateral attack.—Whitlow v. Echols, 78 Ala. 206. **How far defects may be waived** by appearance and failure to object.—Morgan v. Farned, 83 Ala. 367.

3164 (3240) (3501) (3107). **Hearing and notice; guardian ad litem; how non-residents made parties.**—Upon the filing of the application, a day, not less than thirty days thereafter, must be appointed for hearing the same; and of the time and place of such hearing, all parties in interest must have at least ten days' notice; and when infants or persons of unsound mind are parties, guardians ad litem must be appointed to represent them; and if any of the parties in interest are non-residents, they must be made parties in the same manner, and to the same extent, as is done when property in the hands of an executor or administrator is to be divided or distributed.

A lunatic, if properly brought in, is bound by the decree; but the court will treat him as its ward so far as seeing that his interests are properly protected. Bryant v. Stearns, 16 Ala. 302; Austin v. Bean, 101 Ala. 133.

3165. Unknown parties; notice; shares paid into court.—When it is necessary to make any persons defendants to a bill in chancery or a petition in the probate court filed for the partition of property or for a sale thereof because it cannot be equitably divided, and the names of all or any of such persons are unknown to the complainant or petitioner and cannot be ascertained on diligent inquiry, if the complainant or petitioner shall state in a sworn bill or petition, or in an affidavit thereto annexed, that the names of such persons are unknown, and that he has made diligent inquiry to ascertain the same, proceedings may be had against them without naming them; and the register or judge of probate, as the case may be, must make publication as in case of non-resident defendants, describing such

Dec. 13, 1894. p. 144.

unknown parties as near as may be by the character in which they are sued, and with reference to their title or interest in the property sought to be partitioned or to be sold for division of the proceeds. The shares or interest of such unknown parties in the proceeds of any such sale shall be paid into court under such directions as may be ordered by the court, and shall there be retained and paid out to the proper parties when ascertained.

3166 (3241) (3502) (3108). **Appointment of commissioners; how proof taken when minors interested in lands.**—If, upon the hearing, the court is satisfied from the proof that the property described in the application is held and owned jointly, or in common, it must decree the same to be divided or partitioned among the joint owners or tenants in common, according to their respective interests therein; and to effect such division or partition, it must appoint suitable commissioners, not more than five, any three of whom may act; but if the application be for the partition of lands, and any of the parties interested are minors, the court, before granting the application, must be satisfied by evidence taken as in chancery cases, that it is to the interest of such minors that the partition be made.

3167 (3242) (3503) (3109) (2681). **Oath and duties of commissioners.**—The commissioners must be sworn faithfully to execute the trust reposed in them, and to make the division or partition fairly and impartially, if the same can be made; and the division or partition shall be conducted in all respects, as nearly as may be, consistently with the provisions of this article, as is done when property in the hands of an executor or administrator is to be distributed or divided; and in case of application for partition of lands, the commissioners must, after examining the lands, and a survey thereof, if necessary, proceed without delay to make division thereof into the necessary number of shares, having regard to the quality of the soil, and other advantages, so as to make the different shares as nearly equal in value as practicable; and they must make a plat and map thereof, showing the subdivisions and boundaries of the lots, and numbering them progressively; and they are authorized to employ a surveyor, and chain-bearers, and other attendants, if necessary.

3168 (3243) (3504) (3110) (2682). **Notice of time of making partition of lands.**—In case of partition of lands, the commissioners must give notice, by publication in some newspaper published in the county, if there be one, or if not, in the one nearest thereto, to be made not less than three successive weeks, that they will, on a day designated, attend at the court-house of the county to make partition.

3169 (3244) (3505) (3111) (2683). **Partition made by lot, and result returned.**—On the day designated, the commissioners must, in the presence of the judge of probate, determine by lot to whom each of the several parcels belongs, and make a statement in writing of the result, setting forth to whom the several parcels or lots were allotted, together with all the facts relating to the partition and

allotment, which must be signed by them, and attested by the judge of probate.

Partition in kind must be by lot in the probate court, but need not be so determined in chancery.—Donnor v. Quartermas, 90 Ala. 164; Austin v. Bean, 101 Ala. 133.

3170 (3245) (3506) (3112) (2684). **Papers filed and registered as conveyances.**—The application, commission, statement of the commissioners, and plat and map must be filed in the office of the judge of probate, and, together with all orders made by him, must be recorded in a book kept by him for the record of conveyances of land, and when recorded, the record thereof shall be presumptive evidence of the truth of any fact therein stated.

See citations to next section.

3171 (3246) (3507) (3113) (2685). **Partition vests title; but may be set aside in chancery for fraud.**—The partition so made vests a title in fee simple in the persons to whom the several shares are allotted, as fully and completely as if each had conveyed to the others; but if any fraud or undue influence be employed by any of the parties to obtain an unfair partition or allotment, such partition may be annulled by the chancery court, on bill filed within five years after the allotment.

The probate court does not settle equities existing between the parties, but only declares the same ownership in severalty as before existed in unity. Austin v. Bean, 101 Ala. 133. **Mortgage on joint property to secure debt of one co-tenant,** will, after partition, be first **enforced against share of debtor.** Austin v. Bean, 101 Ala. 133.

3172 (3247) (3508) (3114) (2686). **Lien against one attaches only to his share.**—When there is a lien on an undivided interest of any of the parties, such lien, if a partition is made, is thenceforth a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien.

Except as here provided partition in severalty in the probate court **affects no lien or equity** whether existing in favor of a co-owner or a third person. Austin v. Bean, 101 Ala. 133. **A mortgage executed by one joint owner is a charge only on his share,** after his proportion of costs are paid.—Gore v. Dickinson, 98 Ala. 363. **If lands are sold for division, the purchaser takes subject to a prior mortgage on an individual portion;** there is no statute making the mortgage debt a lien on the mortgagor's portion of the purchase-money.—Espalla v. Touart, 96 Ala. 137.

3173 (3248) (3509) (3115) (2687). **New commissioners appointed if necessary.**—If any of the commissioners die, resign, or neglect or refuse to act, at any time before the final allotment, others may be substituted in their stead by the probate court, and they shall have the same power in completing such partition and allotment as if they had been originally appointed.

3174 (3249) (3510) (3116) (2688). **Fees of commissioners.**—The commissioners are entitled to two dollars per day for each day whilst engaged in such partition and allotment, and all expenses they may have incurred in causing survey, map and plat to be made, or otherwise, in the discharge of their duties.

3175 (3250) (3511) (3117) (2689). **Costs and expenses; execu-**

tion may issue therefor.—The probate court must ascertain the costs and expenses attending the division, and make a record thereof, stating distinctly each item of such costs and expenses; and if the same are not paid within thirty days after the allotment, an execution may be issued against each of the persons to whom the land was allotted, for his aliquot proportion thereof, which must be directed to the sheriff, to be levied as other executions, and may be levied on the land so allotted to him.

3176 (3251) (3512) (3118) (2690). **No partition when adverse claim is set up or made known.**—No division or partition can be made under this article, when an adverse claim or title is asserted by any one, or brought to the knowledge of the commissioners, or of the judge of probate.

Intended to **prevent the substitution of partition proceedings for ejectment.**—Ballard v. Johns, 80 Ala. 32; Hillens v. Brinsfield, 108 Ala. 605. **A bona fide assertion of an adverse claim as a true, existing status, is intended.** The court must determine whether the claim is well founded, not its validity.—Fennell v. Tucker, 49 Ala. 453; Ballard v. Johns, 80 Ala. 32. **Confined to partition in kind or specie.**—Hillens v. Brinsfield, 108 Ala. 605 (overruling Ballard v. Johns, 80 Ala. 32; s. c., 84 Ala. 70); Sherer v. Garrison, 111 Ala. 228. **Contemplates an actual adverse possession by a defendant** under a claim of exclusive ownership against the petitioner which has not been tried and determined in petitioner's favor.—Hillens v. Brinsfield, 108 Ala. 605. **Adverse possession as between tenants in common.**—Abercrombie v. Baldwin, 15 Ala. 363; Newbold v. Smart, 67 Ala. 326; Brady v. Huff, 75 Ala. 80; Duncan v. Williams, 89 Ala. 341; Stevenson v. Anderson, 87 Ala. 228; Burrus v. Meadows, 90 Ala. 140; Sibley v. Alba, 95 Ala. 191.

3177 (3252) (3513) (3119) (2691). **The remedy herein provided not exclusive.**—The power hereby conferred does not prevent a resort to any other lawful mode of obtaining partition of lands.

Wilkinson v. Stuart, 74 Ala. 198; McMath v. DeBardelaben, 75 Ala. 68; Hillens v. Brinsfield, 108 Ala. 605. See citations to section 3187 (3262).

3178 (3253) (3514) (3120). **Sale for distribution.**—Any property, real, personal, or mixed, held by joint owners or tenants in common, on the written application of any one or more of them, may be decreed to be sold by the probate court of the county in which such property is situate, or, in case of land lying partly in different counties, of either of such counties, when the same cannot be equitably divided or partitioned among them, notwithstanding they, or any of them, are infants or persons of unsound mind; and the application may be made by the executor or administrator of a deceased person in interest, or by the guardian of a minor or person of unsound mind.

Sale for division is not an unconditional right, but will only be decreed where equitable partition cannot be made.—McEvoy v. Leonard, 89 Ala. 455; Keaton v. Terry, 93 Ala. 85. **The systems** of partition in kind or specie, and sale for division, **are separate and distinct.**—Griel v. Randolph, 108 Ala. 601; Hillens v. Brinsfield, 108 Ala. 605 (overruling Johnson v. Ray, 67 Ala. 603; McCorkle v. Rhea, 75 Ala. 213; Ballard v. Johns, 80 Ala. 32; s. c., 84 Ala. 70; Wolffe v. Loeb, 98 Ala. 426); Sherer v. Garrison, 111 Ala. 228. **Entire tract must be sold and each part owner must be interested in the whole.**—Wilkinson v. Stuart, 74 Ala. 198; Hall v. Caperton, 87 Ala. 285; West v. West, 90 Ala. 458; Inman v. Prout, 90 Ala. 362. **Equality of interest is not essential.** Hillens v. Brinsfield, 108 Ala. 605. Lands **may be sold where one party only has a life-estate** in an undivided interest.—McQueen v. Turner, 91 Ala. 273. **Probate court has concurrent jurisdiction with chancery;** court first assuming jurisdiction retains it.—Marshall v. Marshall, 86 Ala. 383. See citations to section 3187 (3262). **Circumstances under which chancery may interfere,**

jurisdiction of probate court having attached.—Wilkinson v. Stuart, 74 Ala. 198; Marshall v. Marshall, 86 Ala. 383; Morrison v. Morrison, 105 Ala. 637. **Probate court has no jurisdiction to sell for division trust property.**—Wimberly v. Wimberly, 38 Ala. 40. **Nor to determine complicated questions of law or fact** respecting title.—Guilford v. Madden, 45 Ala. 290. **There can be no sale of the homestead,** jointly owned by husband and wife, against the objections of the wife.—Mitchell v. Mitchell, 101 Ala. 183. **Jurisdiction attaches on the filing of a proper petition** giving a description of the property; making tenants in common parties, showing their respective interests and which are infants or non compos, and stating that property cannot be equitably divided.—Fennell v. Tucker, 49 Ala. 453; McCorkle v. Rhea, 75 Ala. 213; Whitlow v. Echols, 78 Ala. 206; Ballard v. Johns, 80 Ala. 32; Cantelou v. Whitley, 85 Ala. 247; McEvoy v. Leonard, 89 Ala. 455; Inman v. Prout, 90 Ala. 362; McQueen v. Turner, 91 Ala. 273; Wolffe v. Loeb, 98 Ala. 426; Hillens v. Brinsfield, 108 Ala. 605. **On collateral attack, reasonable intendments** will be indulged to support the decree.—Whitlow v. Echols, 78 Ala. 206. **Proceedings under a petition lacking in essential jurisdictional averments are void;** but if regular on its face it will be sustained on collateral attack.—McCorkle v. Rhea, 75 Ala. 213; Whitlow v. Echols, 78 Ala. 206; Morgan v. Farned, 83 Ala. 367; Cantelou v. Whitley, 85 Ala. 247; Inman v. Prout, 90 Ala. 362. **The petition is amendable,** and pleadings are governed by the general rules. Fennell v. Tucker, 49 Ala. 453. **Residence of parties in interest is not a jurisdictional averment under this section.**—Griel v. Randolph, 108 Ala. 601; Hillens v. Brinsfield, 108 Ala. 605 (overruling Johnson v. Ray, 67 Ala. 603; McCorkle v. Rhea, 75 Ala. 213; Ballard v. Johns, 80 Ala. 32; Wolffe v. Loeb, 98 Ala. 426). **A person in possession but without interest** is not properly made a defendant.—Hillens v. Brinsfield, 108 Ala. 605. **A judgment creditor of one** of the tenants in common, **with a lien,** is not a necessary party.—Inman v. Prout, 90 Ala. 362. **Lien of a mortgage on an undivided interest** does not become a charge on the share of money belonging to the mortgagor after sale. Inman v. Prout, 90 Ala. 362; Espalla v. Touart, 96 Ala. 137. **If a party dies owing debts,** an administrator ad litem may be appointed. The safer practice is to make a legal representative a party, unless alleged and proved that there are no debts.—Ballard v. Johns, 80 Ala. 32; McQueen v. Turner, 91 Ala. 273; **If the sale is on credit the vendor's lien remains in the joint owners** and may be enforced in their own names.—McIntosh v. Reid, 45 Ala. 456. **Petition by a guardian to sell lands for distribution among his wards is** properly filed in the court whence his letters issued.—Matthews v. Matthews, 104 Ala. 303 (overruling Turnipseed v. Fitzpatrick, 75 Ala. 297). **Adverse possession.**—See citations to section 3176 (3251).

3179 (3254) (3515) (3121). **On filing application, day set for hearing.**—Upon the filing of such application, setting forth that the property cannot be equitably divided or partitioned without a sale thereof, a day must be appointed, not less than thirty days thereafter, for hearing the same.

Contents of application.—See citations to preceding section and to section 3181 (3256).

3180 (3255) (3516) (3122). **Hearing; notice; guardian ad litem; how non-residents made parties.**—All parties in interest must have at least ten days' notice of the time and place set for the hearing of such application; and when infants or persons of unsound mind are parties, guardians ad litem must be appointed to represent them; and if any of the parties in interest are non-residents, they may be made parties in the same manner, and to the same extent as is done when property in the hands of an executor or administrator is to be divided or distributed.

It is irregular and erroneous to enter the decree until after the lapse of thirty days.—Jones v. Jones, 56 Ala. 612. **The rights of infants are not prejudiced by the failure of the guardian to object to a premature hearing,** or by his failure to sever from adults in assignments of errors.—Jones v. Jones, 56 Ala. 612.

3181 (3256) (3517) (3123). **Evidence taken as in chancery cases; what must be proved.**—Evidence in support of such application

must be taken as in chancery cases, and before granting the decree of sale the probate court must be satisfied from the evidence that an equitable division or partition cannot be made; and when the application is by the guardian of an infant or person of unsound mind, the court must also be satisfied from the evidence that it would be to the interest of such infant, or person of unsound mind, to sell the property for the purpose of division or partition.

The court must be satisfied from the evidence that an equitable division cannot be made; burden of proof is on the petitioner.—Coker v. Pitts, 37 Ala. 692; McEvoy v. Leonard, 89 Ala. 455; Keaton v. Terry, 93 Ala. 85; Mitchell v. Mitchell, 101 Ala. 183; Hillens v. Brinsfield, 108 Ala. 605. **If applicant is an infant, proof must show that a sale will be to his interest;** if infant is defendant this is not necessary.—Coker v. Pitts, 37 Ala. 692; Fennell v. Tucker, 49 Ala. 453.

3182 (3257) (3518) (3124). **Decree, appointment of commissioner, sale, collection of purchase-money, and conveyance.**—If, upon the hearing, the court is satisfied from the proof, that such property cannot be equitably divided or partitioned among the parties in interest, it must decree the same to be sold, and make and issue all such orders as may be necessary to effect the sale thereof, and appoint a suitable commissioner to make the sale; and the sale shall be conducted, the purchase-money collected, conveyance of the title made, and all proceedings subsequent to the sale conducted in every respect as is done when property in the hands of an executor or administrator is to be distributed.

The sale is judicial and must be confirmed; before confirmation it may be vacated for irregularities.—Hutton v. Williams, 35 Ala. 503; Kellam v. Richards, 56 Ala. 238. **After confirmation it is complete,** and cannot be set aside except for fraud in which the purchaser participated.—Hutton v. Williams, 35 Ala. 503; Kellam v. Richards, 56 Ala. 238. **The right to resell at the risk of a non-complying purchaser** is an implied condition of the sale.—Hutton v. Williams, 35 Ala. 503; Griel v. Randolph, 108 Ala. 601. In such case **either the commissioner or the parties in interest may sue defaulting purchaser** for the loss occasioned by the resale.—Hutton v. Williams, 35 Ala. 503; Griel v. Randolph, 108 Ala. 601. **Equity will not enjoin a sale** on the ground that the property can be equitably divided, or because a sale would be ruinous; remedy by appeal.—Morrison v. Morrison, 105 Ala. 637.

3183 (3258) (3519) (3125). **Payment and distribution of the purchase-money.**—Such commissioner may discharge himself from all liability for money received by him for the property sold, by paying over the same to the judge of probate, after deducting therefrom the costs and expenses attending the sale, including commissions to him at the same rate that executors or administrators receive for collecting, but in no case more than one hundred dollars; and such net proceeds must be distributed by the judge of probate among the persons entitled thereto, according to their respective interests.*

Not retroactive.—McKee v. Griffin, 66 Ala. 211.

3184 (3259). **New commissioner appointed if necessary.**—If the commissioner dies, resigns, or neglects, or refuses to act, at any time before the sale, another may be substituted in his stead by the court, who shall have the same power in completing the sale as if originally appointed.

*The words "and disbursing" stricken out by joint committee.

The court is the real principal making the sale.—Jennings v. Jennings, 9 Ala. 285.

3185 (3260) (3520) (3126). **Provisions applicable to representative of party in interest.**—Should any of the parties interested in property, real, personal, or mixed, held by joint owners or tenants in common, die, the provisions of this article shall fully apply to his executor or administrator.

Applicable both to partition in kind and to proceedings to sell for division. Hillens v. Brinsfield, 108 Ala. 605.

3186 (3261). **Not applicable to partition of crops.**—The provisions of this article are not applicable to the partition of crops.

3187 (3262). **Jurisdiction of chancery court to divide or sell for division.**—The chancery court shall have jurisdiction to divide or partition, or to sell for division or partition, any property, real, personal, or mixed, held by joint owners or tenants in common, whether the defendant denies the title of the complainant or sets up adverse possession or not. As amended Nov. 27, 1896, p. 17.

Applicable to both systems of partition.—Hillens v. Brinsfield, 108 Ala. 605. **Equity has always had jurisdiction to partition** in kind or specie; that it does under its own rules unaffected by statute; the jurisdiction to sell for division is statutory.—Deloney v. Walker, 9 P. 497; Harkins v. Pope, 10 Ala. 493; Wilkinson v. Stuart, 74 Ala. 198; Lyon v. Powell, 78 Ala. 351; Johnson v. Kelley, 80 Ala. 135; Marshall v. Marshall, 86 Ala. 383; McEvoy v. Leonard, 89 Ala. 455; Donnor v. Quartermas, 90 Ala. 164; Keaton v. Terry, 93 Ala. 85; Johns v. Johns, 93 Ala. 239; Sellers v. Friedman, 100 Ala. 499 (modifying McQueen v. Turner, 91 Ala. 273). **Partition in kind in equity is a matter of right** and not dependent on the inadequacy of legal remedies. The right to sell for division depends on whether property can be equitably divided.—McMath v. DeBardelaben, 75 Ala. 68; McEvoy v. Leonard, 89 Ala. 455; Donnor v. Quartermas, 90 Ala. 164; Keaton v. Terry, 93 Ala. 85; Gore v. Dickinson, 98 Ala. 363. **Equity may decree partition whether the title is legal or equitable**; if legal, it will not interfere if another court has assumed jurisdiction; if equitable, its jurisdiction is exclusive.—Deloney v. Walker, 9 P. 497; Horton v. Sledge, 29 Ala. 478; Arnett v. Bailey, 60 Ala. 435; Wilkinson v. Stuart, 74 Ala. 198; McMath v. DeBardelaben, 75 Ala. 68; Berry v. Webb, 77 Ala. 507; Marshall v. Marshall, 86 Ala. 383; Johns v. Johns, 93 Ala. 239; Donnor v. Quartermas, 90 Ala. 164; Gore v. Dickinson, 98 Ala. 363; Hillens v. Brinsfield, 108 Ala. 605. **If the title is legal the practice is to refer disputed facts to a jury.** Ormond v. Martin, 37 Ala. 598; McMath v. DeBardelaben, 75 Ala. 68; Berry v. Webb, 77 Ala. 507. **The proceeding is an adversary suit,** and all questions arising in its progress should be determined.—Bragg v. Beers, 71 Ala. 151; McMath v. DeBardelaben, 75 Ala. 68; Lyon v. Powell, 78 Ala. 351; Marshall v. Marshall, 86 Ala. 383; Gore v. Dickinson, 98 Ala. 363. **A bill for partition and to remove a cloud from the title**; or foreclose a mortgage; or for the removal of a trustee and an account of rents; **is not multifarious.**—Tindall v. Drake, 51 Ala. 574; Berry v. Webb, 77 Ala. 507; Lyon v. Powell, 78 Ala. 351; Marshall v. Marshall, 86 Ala. 383; Stevenson v. Anderson, 87 Ala. 228; West v. West, 90 Ala. 458; Gore v. Dickinson, 98 Ala. 363; Kilgore v. Kilgore, 103 Ala. 614. But **to set aside a will, cancel a deed as a cloud, and partition is multifarious.**—McEvoy v. Leonard, 89 Ala. 455. **And so, for partition of one tract and the sale of an infant's interest in another.**—West v. West, 90 Ala. 458. **And for partition between the true owners and the settlement of their claims against an intruder** in possession receiving rents.—Bullock v. Knox, 96 Ala. 195. **Partition will only be awarded of the entire estate**; effect of life-estate in part of the tract.—Wilkinson v. Stuart, 74 Ala. 198; Ballard v. Johns, 80 Ala. 32; Gayle v. Johnston, 80 Ala. 395; West v. West, 90 Ala. 458; McQueen v. Turner, 91 Ala. 273; Gore v. Dickinson, 98 Ala. 363. **Partition cannot be substituted for ejectment,** although the title must necessarily be in some measure drawn into question.—McMath v. DeBardelaben, 75 Ala. 68; Gore v. Dickinson, 98 Ala. 363; Davis v. Bingham, 111 Ala. 192. **If a lunatic is a party** the bill must be filed in the name of his guardian, or he must be joined as complainant with his guardian.—West v. West, 90 Ala. 458. **On partition of the estate of an ancestor the administrator is not a necessary party if there are no debts**; but the practice is to make the personal representative a party. Stevenson v. Anderson, 87 Ala. 228; McEvoy v. Leonard, 89 Ala. 455; McQueen

v. Turner, 91 Ala. 273; Davis v. Bingham, 111 Ala. 292. Necessity of making the administrator of **a party dying pendente lite,** a party.—Donnor v. Quartermas, 90 Ala. 164. **A non compos mentis** will be regarded as **the ward of the court.**—Austin v. Bean, 101 Ala. 133. **Property owned jointly by husband and wife** may be partitioned; but not the homestead, the wife objecting. Mitchell v. Mitchell, 101 Ala. 183; Donegan v. Donegan, 103 Ala. 488. Partition **may be had by or against the owner of a life-estate.**—Gayle v. Johnston, 80 Ala. 395; McQueen v. Turner, 91 Ala. 273. **If one co-tenant has improved a part of the property with the express or implied consent of his co-tenant,** equity will award him the improved portion, if possible.—Horton v. Sledge, 29 Ala. 498; Ormond v. Martin, 37 Ala. 598; Sanders v. Robertson, 57 Ala. 465; Wilkinson v. Stuart, 74 Ala. 198; Turnipseed v. Fitzpatrick, 75 Ala. 297; Donnor v. Quartermas, 90 Ala. 164; Ferris v. Montgomery L. & I. Co., 94 Ala. 557. **Practice** in partition suits in equity.—Wilkinson v. Stuart, 74 Ala. 198. **Demand for partition does not become stale** within the time necessary to bar entry.—Stevenson v. Anderson, 87 Ala. 228. **Adverse possession** between tenants in common. See citations to section 3176 (3251).

ARTICLE 2.

PARTITION OF CROPS.

3188 (3263) (3521). **Partition of crops among joint owners or tenants in common.**—Matured crops of corn, cotton, or other produce, raised and made by persons in such manner as to make them joint owners or tenants in common therein, whether gathered or ungathered, may be divided among them, on the written application of any one or more of them to the probate court of the county in which such crops, or any portion thereof, are situate; and such application may be made by the administrator or executor of a deceased person, or by the guardian of a minor or person of unsound mind, interested in such crops.

Statute **only applies to the crops mentioned,** gathered, or ready for gathering, and made or raised in the required manner.—Mooney v. Hough, 84 Ala. 80. **Evidence** on proceeding for partition.—Gassenheimer v. Huguley, 64 Ala. 83.

3189 (3264) (3522). **Contents of application.**—Such application must set forth the names, ages and places of residence of all the persons interested in the crops, the location, value and description of the crops, the number of shares into which it is sought to divide them, the interest of each person therein, and who is in the actual possession thereof; and it must be sworn to by the applicant, his agent, or attorney.

Necessary averments.—Mooney v. Hough, 84 Ala. 80.

3190 (3265) (3523). **Day appointed for hearing; appointment of guardian ad litem.**—Upon the filing of such application, a day must be appointed for the hearing of the same, within fifteen days thereafter, if the parties are residents of this state, but if they are non-residents, within thirty days thereafter; and if any of the parties in interest are minors or persons of unsound mind, guardians ad litem must be appointed to represent them, unless they have general guardians who will represent them on the hearing.

3191 (3266) (3523). **Notice of hearing; how given.**—Notice of such application, and of the day appointed for its hearing, must be issued by the judge of probate to the parties in interest who are resi-

dents of this state, which must be served on them at least five days before the day appointed for the hearing; and if any of the parties in interest are non-residents, such notice must be given by publication, once a week for three successive weeks, in some newspaper published in the county, or if no newspaper is published therein, then in one that is published in an adjoining county, a copy of which shall be mailed by the judge of probate, directed to such non-residents at their post-offices, if the same are known, or can be ascertained by reasonable effort.

3192 (3267) (3524). **When sheriff ordered to take possession of crops.**—If, at the time of filing such application, or afterwards, any party interested in the crops, his agent, or attorney, makes affidavit before the judge of probate, that he has cause to believe that the crops, or any portion thereof, will be removed, sold, consumed, or destroyed, before they can be divided, and gives bond, with sufficient surety, in double the value of the property to be divided, payable to the defendant or defendants, with condition to pay all costs and damages that may accrue from the wrongful filing of the application, the court shall order the sheriff to take possession of such crops, and to safely keep the same until final disposition thereof shall be made by the court, unless the other parties in interest, or some of them, give bond, with sufficient surety, to be approved by the sheriff, in double the value of the shares of those complaining, with condition for the delivery of such crops to the sheriff within five days after judgment, or, in case of default, to pay those entitled the value of their interests in the crops, together with all costs and damages for the detention of the same; and if the crops are not delivered according to the condition of the bond, any of the parties in interest may sue on the bond, jointly or severally, in the name of the sheriff for their use, and recover the value of their interests in the crops, and the costs and damages resulting from the detention.

3193 (3268) (3525). **Decree of partition or sale; liens in favor of parties declared and enforced.**—If, on the hearing, the court is satisfied from the evidence, that the parties are joint owners or tenants in common in the crops, a decree must be entered, declaring the interest or share each has therein, and ordering the crops divided in specie, or sold for division, as may appear from the evidence more practicable and better for the interests of the parties; and if any liens exist on the crops, or on any interest or share therein, in favor of any of the parties, such liens, and the extent and amount thereof, must be declared; and if a division in specie is ordered, such liens shall be charges only on the shares of the parties against whom they exist; but if a sale be ordered, the proceeds of the shares or interest upon which they exist, after payment of their part of the costs, shall be applied to the satisfaction of such liens.

3194 (3269) (3534). **Liens in favor of strangers; how adjusted.** When any lien exists on the crops, or on any share or interest therein, in favor of any person other than the joint owners or tenants in common, such person must be made a party to the application, and his

lien declared and protected; and if division in specie is made, such lien shall thenceforth rest only on the share or interest of the party against whom it exists; but if a sale is made, such lien shall be satisfied out of the proceeds of the share or interest upon which it exists; but such share or interest must first be made to contribute its share of the costs.

3195 (3270) (3526). **Sale by sheriff; proceeds distributed by judge of probate.**—If the crops are ordered sold, the judge of probate must forthwith issue a writ, directed to the sheriff, commanding him to sell such crops for division, at a place to be designated in the decree and writ; and thereupon the sheriff must proceed to advertise and sell such crops at the place designated, in the same manner as he is required to advertise and sell personal property under execution issuing from the circuit court; and after making the sale, he shall forthwith make due return, and pay over the proceeds thereof to the judge of probate, who shall distribute the same among the parties according to their respective interests. If a forthcoming bond has not been executed under section 3192 (3267) and the sheriff is not in possession of the crops, he shall seize the same for the purpose of making a sale thereof, if in the hands of any of the parties to the proceedings.

3196 (3271) (3527). **Commissioners appointed to make partition; oath and return.**—If a division of the crops is decreed, the judge of probate must forthwith issue a writ, directed to the sheriff, and commanding him to summon three disinterested and intelligent householders of the county, not related to either of the parties, to make such division, who shall divide the crops among the parties according to the decree, a copy of which must accompany the writ, and shall, within ten days after their appointment, make due return of the division made by them in writing and under oath, which oath must be taken before the judge of probate, and must set forth that they made the division fairly and impartially, to the best of their knowledge and ability; and for the purpose of such division the sheriff, if not in possession, and no forthcoming bond has been given, must seize the crops to be divided, if in the possession of any of the parties to the proceedings.

3197 (3272) (3527). **If partition cannot be made, crops must be sold.**—If the commissioners find it impracticable to make division of the crops in specie, or that it is necessary to sell a portion thereof to make or equalize the division, they shall at once report that fact to the probate court, which shall thereupon order the crops to be sold for division, and shall issue a writ to the sheriff commanding him to make such sale; and such sale, and the distribution of the proceeds thereof, shall be made as provided in section 3195 (3270).

3198 (3273). **New commissioners appointed if necessary.**—If any of the commissioners for any cause fail to act, others may, at any time before division made, be appointed in their stead, and they shall have the same power as if they had been originally appointed.

3199 (3274). **If condition of forthcoming bond is broken, sheriff**

makes return of that fact.—If a forthcoming bond is given under section 3192 (3267), and the crops are not delivered to the sheriff, as required by its condition, the sheriff must indorse on the bond the failure to deliver such crops to him, and must return the same to the judge of probate.

3200 (3275) (3528). **Contest of commissioners' report; proceedings if report set aside.**—Any of the parties may file objections to the report of the commissioners making the division, within ten days after the same is returned, and, when filed, a day must be appointed to hear the same, of which notice, not exceeding ten days, shall be given to all the other parties in interest; and on the evidence adduced on such hearing, the report shall be confirmed or set aside, as equity and justice may demand; and if the report is set aside, new commissioners shall be appointed to make division, who shall proceed as herein provided of those originally appointed.

3201 (3276) (3529). **When shares delivered to parties after partition.**—If all the parties consent in writing, the sheriff, immediately after the division is made, shall deliver to each party his share of the crops; but if such consent is not given, the crops must be held by him until after the report of the commissioners has been confirmed, when he shall deliver the same to the parties entitled thereto, unless a supersedeas bond on appeal is given.

3202 (3277) (3531). **Trial by jury; when may be had; how jury organized.**—Either party shall be entitled to a trial by jury, on demand made therefor at any time before the hearing, and the jury shall decide the facts under the charge of the judge. When a jury is demanded, the court shall order the sheriff to summon twelve men, or, by agreement of the parties, any less number, competent to serve as jurors; and the mode of swearing, impaneling, challenging, and supplying the places of jurors shall be the same, so far as practicable, as in the circuit court, on the trial of civil causes.

3203 (3278) (3532). **Costs and fees; how taxed.**—The probate court may tax the costs against the unsuccessful party litigating, or against the crops, which may be sold in amount sufficient to satisfy the same, if not paid; but each share shall be charged with only its proportion of the costs. If the crops involved are worth less than one hundred dollars, the judge, sheriff, jurors, commissioners, and witnesses shall only be allowed half the fees for similar services in other cases; if over one hundred dollars, the same fees as they are allowed for such services in other cases.

3204 (3279) (3530). **Right of appeal; how decree superseded on appeal.**—Any of the parties may, within ten days thereafter, appeal to the circuit or supreme court from the decree of partition or sale, or from the decree confirming or setting aside the commissioners' report, under the regulations governing appeals in other cases from decrees of the probate court to the circuit or supreme court; and such decree may be superseded pending the appeal by the appellant, on giving bond in double the amount of the value of the interests of the other parties in the crops, with sufficient surety, to

be approved by the judge of probate, and with condition to have the crops forthcoming to abide the decree to be finally rendered in the cause, and in the event of his failure to do so, to pay all costs and damages arising therefrom.

3205 (3280) (3533). **Papers filed, but not recorded unless requested; effect as evidence.**—All papers connected with the proceedings shall be filed, but shall not be recorded unless one or more of the parties request it, in which case such party or parties shall pay the costs thereof; and the papers, or the record thereof, shall be evidence of title between the parties and their privies, to their respective shares of the crops.

3206 (3281) (3535). **Provisions apply to assignees; remedy not exclusive.**—The provisions of this article shall apply to the assignee of any joint owner or tenant in common; but the remedy hereby given shall not prevent a resort to any other remedy allowed by law.

CHAPTER 86.

PARTNERSHIPS, LIMITED. 3207–3231.

3207 (1705) (2063) (1799) (1493). **For what purpose formed.** Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other lawful business, within this state, may be formed by two or more persons, upon the terms, and with the rights and powers, and subject to the conditions and liabilities in this chapter; but its provisions must not be construed to authorize any such partnership for the purpose of banking or insurance business.

McGehee v. Powell, 8 Ala. 827.

3208 (1706) (2064) (1800) (1494). **Liability of general and special partners, respectively.**—Such partnerships may consist of one or more persons, who are general partners, and are, jointly and severally, responsible as general partners now are by law; and of one or more persons, who contribute in actual cash payments a specific sum as capital to the common stock, who are called special partners, and who are not liable for the debts of the partnership beyond the funds so contributed to the capital.

3209 (1707) (2065) (1801) (1495). **General partners alone manage the partnership business.**—The general partners alone are authorized to transact business, sign for the partnership, and to bind the same.

3210 (1708) (2066) (1802) (1496). **Proceedings to form limited partnership.**—The persons desirous of forming such partnership must make and severally sign a certificate, containing—

1. The name or firm under which such partnership is to be conducted.

2. The general nature of the business to be transacted.

3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

4. The amount of capital which each special partner has contributed to the common stock.

5. The period at which such partnership is to commence and terminate.

3211 (1709) (2067) (1803) (1497). **The certificate must be acknowledged.**—The certificate must be acknowledged by the several partners signing the same, before a judge of the supreme or circuit court, or judge of probate, who must indorse such acknowledgment and sign the same.

3212 (1710) (2068) (1804) (1498). **Where recorded.**—The certificate and acknowledgment must be filed in the office of the judge of probate of the county in which the principal place of business of such partnership is situated, and must be by such judge recorded in a book kept for that purpose, free to inspection. If the partnership has places of business in different counties, a transcript of the certificate and acknowledgment, certified by the judge of probate in whose office it is filed, must be filed and recorded in the office of the judge of probate of every such county.

3213 (1711) (2069) (1805) (1499). **Affidavit of payment of capital of special partner.**—At the time of filing the original certificate and acknowledgment, an affidavit of one or more of the general partners must also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash.

3214 (1712) (2070) (1806) (1500). **Partnership not complete until affidavit filed.**—No such partnership shall be deemed to have been formed until such certificate has been made, acknowledged, filed and recorded, nor until the affidavit required by the preceding section has been made and filed.

3215 (1713) (2071) (1807) (1501). **All liable as general partners for false certificate or affidavit.**—If any false statement is made in such certificate or affidavit, all the persons interested in such partnership are liable for all the engagements as general partners.

3216 (1714) (2072) (1808) (1502). **Publication of limited partnership.**—The terms of the partnership must be published immediately after the recording, for six successive weeks, in two papers designated by the judge of probate in whose office the certificate is recorded; and if such publication is not made, the partnership shall be deemed general.

3217 (1715) (2073) (1809) (1503). **Printer's affidavit, when filed, proves publication.**—Affidavits of such publication by the printers of the newspapers in which the same is published may be filed with the judge of probate, and are evidence of the fact.

3218 (1716) (2074) (1810) (1504). **Renewals made as the first partnership was formed.**—Every renewal or continuance of such partnership beyond the time originally fixed for its duration must be certified, acknowledged, recorded, and an affidavit of a general partner made and filed, and notice given by publication, as required for its original formation; and every such partnership which is otherwise renewed or continued must be deemed a general partnership.

3219 (1717) (2075) (1811) (1505). **When limited partnership becomes a general partnership.**—Every alteration which is made in the name of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, must be deemed a dissolution of the partnership; and every such partnership, which is in any manner carried on after such alteration has been made, must be deemed a general partnership, unless renewed as a special partnership according to the provisions of the preceding section.

3220 (1718) (2076) (1812) (1506). **Use of special partner's name makes him a general partner.**—The business of the partnership must be conducted under a firm, in which the names of the general partners alone are inserted, with the addition of the word "limited"; and if the name of any special partner is used in the firm, with his privity, he shall be deemed a general partner.

3221 (1719) (2077) (1813) (1507). **The general partner prosecutes and defends suits.**—Suits in relation to the business of the partnership may be brought and conducted by and against the general partner, in the same manner as if there were no special partners.

3222 (1720) (2078) (1814) (1508). **Special partner can only withdraw interest and profits.**—No part of the sum which any special partner has contributed to the capital stock must be withdrawn, or paid to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his proportion of such profits.

3223 (1721) (2079) (1815) (1509). **If the capital is thus reduced, he must restore it.**—If it appears that by the payment of interest, or profits, to any special partner, the original capital has been reduced, the partner receiving the same is bound to restore the amount necessary to make good his share of the capital without interest.

3224 (1722) (2080) (1816) (1510). **Special partner may examine into, but cannot interfere in management of business.**—A special partner may, from time to time, examine into the state and progress of the partnership concerns; may advise as to their management, and act as attorney at law, but must not transact any

other business, nor be employed for that purpose as agent or otherwise; and if he interferes contrary to the provisions of this section, he is deemed a general partner.

3225 (1723) (2081) (1817) (1511). **General partners liable to account as other partners.**—The general partners are liable to account to each other, and to the special partners, for their management of the partnership, both in law and equity, as other partners.

3226 (1724) (2082) (1818) (1512). **Partners guilty of fraud, liable for injury.**—Every partner who is guilty of any fraud in the affairs of the partnership is liable, civilly, to the party injured to the extent of the damage.

3227 (1725) (2083) (1819) (1513). **On insolvency, no preference to be given by assignment.**—Every sale, assignment, or transfer of any of the property or effects of such partnership, made by the same when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership; and every judgment suffered, lien, credit, or security given by such partnership under like circumstances, and with the like intent, is void.

3228 (1726) (2084) (1820) (1514). **Assignments by partners also void.**—Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership, and any judgment suffered, lien created, or security given by any such partner under the like circumstances, and with the like intent, is void as against the creditors of the partnership.

3229 (1727) (2085) (1821) (1515). **Special partners become general by the commission of such acts.**—Every special partner who violates any provision of the two preceding sections, or who concurs in, or assents to any such violation by the partnership, or by any individual person, is liable as a general partner.

3230 (1728) (2086) (1822) (1516). **Special partners cannot claim as creditors on insolvency.**—In case of the bankruptcy or insolvency of the partnership, no special partner is, under any circumstances, to be allowed to claim as a creditor, until the claims of all the other creditors of the partnership are satisfied.

3231 (1729) (2087) (1823) (1517). **Dissolution only made after three weeks' notice.**—No dissolution of such partnership, by the acts of the parties, must take place before the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution has been filed and recorded in the office of the judge of probate in which the original certificate was recorded, and published once a week for three successive weeks in a newspaper published in each of the counties where the partnership has places of business; and if there is any county in which the part-

nership has a place of business, in which no newspaper is published, then in a paper published the nearest thereto.

CHAPTER 87.

PAUPERS. 3232-3241.

3232 (1465) (1729) (1446) (1211). **Court of county commissioners purchase and sell lands and other property for poorhouses.**—The court of county commissioners may purchase and hold lands and other property, proper for the erection and continuance of a poorhouse, and may, at their discretion, dispose of lands now or hereafter owned for such purpose, and make titles therefor, and may make all appropriations and orders proper for the erection and continuance of poorhouses, and for the regulation and government of the poor and poorhouses.

3233 (1466) (1730) (1447) (1212). **Relatives liable to support poor; how enforced.**—The father, grandfather, brother, mother, grandmother, child, or grandchild of any poor persons, unable to maintain themselves, being of sufficient ability, must support such persons; and failing so to do, any county in the state, having made provisions for such persons, may sue their father, grandfather, brother, mother, grandmother, child, or grandchild, of full age, or either of them, before any court having jurisdiction, and recover, at the rate of eight dollars a month, for the time such county has made provision for such persons; the court or jury, trying the same, being satisfied from the evidence that the defendant was of sufficient ability to provide for their support.

3234 (1467) (1731) (1448) (1213). **Certificate of judge of probate evidence of maintenance.**—On the trial, the certificate of the judge of probate of the county, that the person was poor and unable to maintain himself, and that he was maintained for such a time at the expense of the county, is presumptive evidence of such facts.

3235 (1468) (1732) (1449) (1214). **Costs not to be taxed against county on failure.**—Should the county fail to recover, no costs are to be taxed against the plaintiff, except for witnesses attending on behalf of such plaintiff.

Feb. 21, 1893, p. 1007.

3236. County may appropriate money in aid of indigent Confederate soldier or sailor.—The commissioners' courts and county boards of revenue are authorized, in their discretion, to appropriate out of the county funds, a sum not exceeding forty dollars per annum, payable quarterly, in aid of any indigent Confederate soldier or sailor who is, by reason of blindness or the loss of a leg or an arm, totally disabled from physical labor.

3237 (1469) (1733) (3201) (2762). **Pauper lunatics supported by the overseer of the poor.**—If an idiot or insane person has no es-

tate, and no person is willing to become his guardian, the judge of probate must place him in charge of the overseer of the poor, who must provide for his safe-keeping and sustenance, and may call on his relations to aid in his support, under the provisions of this chapter.

3238 (1470) (1746) (1465) (1219). **Captain of vessel bringing paupers to the state, to give bond; penalty for breach; penalty for refusal.**—Any person, commanding any vessel which brings into this state any infant, lunatic, maimed, deaf, dumb, aged, or infirm person, who is likely to become chargeable to any county, may be brought before any judge of probate, and if such judge is satisfied that such person will probably be a charge to any county, he must require such master to enter into bond, payable to the state, with sureties resident in the state, to be approved by such judge, in the sum of five hundred dollars for each of such persons so brought, conditioned to pay all such expenses as any county in the state may incur in the support of such person; which bond must be filed and kept by such judge, and, on its condition being broken, may be sued on, and a recovery had in different actions to the amount of the penalty thereof, in the name of the state, for the use of any county; and on failure to give such bond, the judge must commit such master to jail until he gives the same, or is otherwise discharged by law.

3239 (1471) (1749) (1468). **Sick prisoners in jail.**—Whenever any insolvent person, confined in jail in any county of this state, on any criminal charge, becomes sick and requires medical attention or medicine, the sheriff, or jailer of the county, must give notice to the probate judge of the county of the condition of such person, and the probate judge must, on receiving such notice, or on receiving information in any other manner of the sick and destitute condition of such person, employ a physician, and furnish medicines as may by him be prescribed for such sick person; and the reasonable expenses of such medical attendance and medicines shall constitute a valid claim against the county.

3240 (1472) (1747) (1466). **Burial of the poor.**—Upon the decease of any person having no estate, leaving no relative in the county with ability or estate adequate to defray his necessary burial expenses, such expenses are a charge upon the county in which such demise shall take place.

3241 (1473) (1748) (1467). **Payment of expenses.**—When a death occurs, as contemplated in the preceding section, the court of county commissioners, upon the presentation of the account properly verified, shall make an order requiring the payment of the necessary burial expenses to the party by whom the same were incurred.

CHAPTER 88.

PAWNBROKERS. 3242-3247.

Feb. 21, 1893, p. 1115, §1.

3242. Must keep book and give receipt showing transaction. Every person engaged in the business of pawnbroking, must, upon receiving as security for the loan of money or other thing of value, any personal property or chose in action, enter in a book a full description thereof, and give to the borrower a receipt setting forth the same description of the pledge and stating the amount of the debt and the date when the same is due.

Ib. §1.

3243. Omitting to make such entry and give such receipt forfeits debt and security.—Any pawnbroker who shall fail to make the entry or to give the receipt required by the provisions of the preceding section forfeits the debt and all right to the security, and the property pledged may be recovered by the borrower.

3244. Book open to the inspection of the public.—The book mentioned in the second preceding section must be kept open to the examination of the public during business hours.

Feb. 21, 1893, p. 1115, §2.

3245. Sales by pawnbrokers must be by auction after notice. All sales of pledges made by pawnbrokers must be at public auction after five days' notice thereof, given by advertisement in a newspaper published in the city or town where the pledge was made, of the time and place of sale, in which advertisement the thing to be sold must be described as in the receipt given to the borrower.

Ib. §2.

3246. Pledge not to be sold until after sixty days.—No pledge must be sold until after the expiration of sixty days from the date when the pledge was delivered to the pawnbroker. Any sale made contrary to the provisions of this section is void, and the pledge may be recovered by the borrower.

3247. Borrower may pay debt, interest and costs before sale. The borrower may at any time prior to the sale, pay or tender to the pawnbroker the debt and interest thereon, together with the cost of advertising the sale, if the sale has been advertised, and such payment or tender has the effect to reinvest the borrower with the title and right of possession to the property pledged.

CHAPTER 89.

PHARMACISTS. 3248-3259.

Feb. 28, 1887, p. 106, §8.

3248. Board of pharmacy.—A board of pharmacy is established. Such board shall consist of three members who shall have been resident citizens of this state for five years and shall have had at least

five years' practical experience in pharmacy. One member of the board shall be appointed by the governor each year and shall hold office for three years and until his successor is appointed and qualified. The governor shall have power to fill any vacancy and the appointee in such case shall hold office for the unexpired term and until his successor is appointed and qualified.

3249. Power to make regulations.—The board of pharmacy shall have power to make by-laws and all necessary regulations, and create auxiliary boards when necessary, for the fulfillment of its duties under this chapter; but no such by-law or regulation shall entail any expense upon the state. Ib.

3250. Register of pharmacists.—The board shall keep a register of the names and places of residence of all persons to whom it may issue certificates as herein provided and the dates thereof. Ib. §4.

3251. Examinations.—The board shall, at such times and places and in such manner as it may determine, examine every person who shall desire to conduct the business of selling at retail, compounding or dispensing drugs, medicines, or chemicals, for medical use, or compounding or dispensing as pharmacists prescriptions prepared by physicians, and who shall pay to the board a fee of three dollars for such examination. Ib. §5.

3252. Certificates.—The board shall issue to every person who shall pass the examination as to his fitness to practice pharmacy satisfactorily, a certificate of competency, and shall enter his name upon the registry herein provided. Ib. §§5, 6.

3253. Persons not pharmacists may keep drug-store, when. Any person not a pharmacist may keep a drug-store if he shall constantly keep employed therein a registered pharmacist or druggist. But the proprietor of such drug-store, who is not himself a registered pharmacist, shall not himself sell or dispense drugs and medicines except proprietary and patent medicines in original packages. Ib. §5.

3254. Poisons must be labeled.—It shall be unlawful for any person to retail arsenic or any of its preparations, corrosive sublimate, white or red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, or any poisonous vegetable alkaloids or their salts, or the essential oil of almonds, opium or its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nux vomica, henbane, savine, ergot, cotton-root, cantharides, creosote, veratrum, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic and oxalic acids, without labeling the box, vessel, or paper in which the said poison is contained with the name of the article, the word "Poison," and the name and place of business of the seller. Nor shall it be lawful for any person to sell or deliver any of the poisons herein enumerated unless, upon due inquiry, he shall find that the purchaser is aware of its poisonous character and represents that it is to be used for a legitimate purpose. But the provisions of this section shall not apply to the dis- Ib. §8.

pensing of poisons in not unusual quantities or doses upon the prescriptions of licensed practitioners of medicine, nor to manufacturers making and selling poisons at wholesale.

Feb. 14, 1895, p. 569.

3255. Physicians may sell and compound drugs.—Every physician who is licensed to practice medicine under the law of this state is also authorized to fill the prescriptions of other physicians, compound and sell medicines and poisons, and carry on the business of a pharmacist.

Feb. 28, 1887, p. 106, §12.

3256. Pharmacists must post certificate.—Every registered pharmacist must conspicuously post his certificate of registration in his place of business.

Feb. 25, 1889, p. 59, §§1, 2.

3257. Unlawful to engage in business of pharmacy unless registered.—It shall be unlawful for any person not a registered pharmacist, except as herein otherwise provided, to carry on any pharmacy, drug-store, apothecary-shop, or store for the purpose of retailing, compounding or dispensing drugs, medicines, or poisons for medicinal uses. And it shall be unlawful for the proprietor of any pharmacy, drug-store, apothecary-shop, or store, to allow any person not a registered pharmacist to compound or dispense the prescriptions of physicians, or to retail drugs, poisons, or medicines for medicinal uses, except as an aid to, and under the supervision of, a registered pharmacist.

Ib.

3258. Territorial operation of statute.—The rules and regulations provided in this chapter for the government of pharmacists and the practice of pharmacy, shall operate only in cities and towns having a population of nine hundred, or more, and within two miles in every direction from the corporate limits of such cities and towns.*

3259 (1318) (1524, 1526) (1231, 1234) (977, 980). **Contracts for the sale of drugs, when void.**—Every contract for the sale of drugs or medicines is void unless the seller of such drugs or medicines has authority to deal in drugs and medicines, obtained according to the provisions of this chapter; but proof of such authority must not be required unless two days' notice to make the same is given before the trial of any suit brought to recover the value of such drugs or medicines.

*On the 18th of February, 1897, an act was approved (Pamph. Acts, p. 1450), amending certain sections of the original acts here revised and codified. It is not practicable, without codification, to here incorporate the provisions of the amendatory act. Its effect is to reduce the minimum, so that the statute will apply to towns and cities of five hundred or more inhabitants, and within two miles thereof; and to fix the fee for registration and certificate as a pharmacist, at three dollars without examination, and five dollars with examination.

CHAPTER 90.

PHYSICIANS. 3260-3267.

3260 (1301) (1530). **Board of medical examiners.**—The board of censors of the Medical Association of the State of Alabama, organized in pursuance of the constitution thereof adopted at Tuscaloosa, in March, 1873, and the board of censors of the several county medical societies in affiliation with the association, and organized in pursuance of its constitution, are constituted boards of medical examiners having the authority and subject to the duties hereinafter prescribed.

3261 (1302) (1528). **Certificate of qualification must be obtained.** Without a certificate of qualification from an authorized board of medical examiners, no person must engage in or pursue the practice of medicine in any of its branches or departments as a profession or means of livelihood.

Harrison v. Jones, 80 Ala. 412; Brooks v. State, 88 Ala. 122; Stough v. State, 88 Ala. 234; Nelson v. State, 97 Ala. 79; Nicholson v. State, 100 Ala. 132; Harrison v. State, 102 Ala. 170; Bell v. State, 104 Ala. 79; McCurry v. Gibson, 108 Ala. 451.

3262 (1303) (1531). **Standard of qualification.**—The standard of qualification, the method or system, and the subjects of examination of practitioners of medicine, shall be prescribed by the Medical Association of the State of Alabama, and must be observed by the boards of medical examiners.

3263 (1304) (1532). **Certificate of qualification.**—It shall be the duty of the board of medical examiners, on application, to examine an applicant for a certificate of qualification as a practitioner of medicine, according to the rules and regulations made by the Medical Association of the state, and if found qualified and of good moral character, to issue to him a certificate of qualification. For such certificate no fee or charge must be made by the board of examiners; but any actual expenses necessarily incurred by the board in making or supervising such examination, not including the personal expenses of any member of the board attending such examination, must be paid by the applicant.

3264 (1306) (1532). **Certificate of qualification recorded.**—The certificate of qualification, issued by an authorized board of medical examiners, is a license to the person to whom it is issued for the purpose therein expressed, and confers authority to practice medicine throughout the state. Such certificate must be recorded in the office of the judge of probate of the county in which the person to whom it is issued may reside at the time of the issue; and upon the record thereof, the judge of probate must indorse thereon a certificate of the fact of record, which must be signed by him, and to which he must affix the seal of the court; and for the record and certificate he is entitled to a fee of one dollar.

3265 (1307). **Certificate evidence of authority.**—Such certificate, the record thereof being certified by the judge of probate, is evidence of the authority of the person therein named to practice medicine, and if the original be lost, a certified copy of the record is sufficient evidence.

3266 (1318) (1524, 1526) (1231, 1234) (977, 980). **Contracts for medical services, when void.**—Every contract or agreement, express or implied, the consideration of which is the service of a physician or surgeon, is void, unless the physician or surgeon has authority to practice obtained according to the provisions of this chapter. But proof of such authority must not be required, unless two days' notice to make the same is given before the trial of any suit brought to recover the value of such services.

3267 (1308) (1535). **Midwives.**—The provisions of this chapter do not apply to women engaged in the practice of midwifery.

CHAPTER 91.

PLEADING AND PRACTICE.

ARTICLE 1.—THE SUMMONS. 3268–3284.
2.—GENERAL RULES OF PLEADING. 3285–3290.
3.—THE COMPLAINT AND OTHER PLEADINGS. 3291–3306.
4.—TRIAL TERM; GENERAL RULES OF PRACTICE. 3307–3318.
5.—TRIAL WITHOUT JURY AND DEMURRER TO EVIDENCE. 3319–3325.
6.—THE CHARGE TO THE JURY. 3326–3329.
7.—AMENDMENTS TO PLEADINGS, BEFORE AND AFTER JUDGMENT. 3330–3334.
8.—NOTICE OF MOTIONS TO SET ASIDE OR SATISFY JUDGMENTS, OR TO AMEND NUNC PRO TUNC. 3335–3340.
9.—NEW TRIAL ON RELEASE FOUND WITHIN TWO YEARS; REHEARING IN FOUR MONTHS. 3341–3351.
10.—FORMS OF PLEADINGS IN CIVIL CASES. 3352, 3353.

ARTICLE 1.

THE SUMMONS.

3268 (2651) (2924) (2558) (2160). **Civil actions commenced by summons.**—All civil actions in courts of record, except in such cases as are otherwise provided by this Code, must be commenced by the service of summons.

A general appearance or written acceptance of service of complaint renders summons unnecessary.—Birmingham Flooring Mills v. Wilder, 85 Ala. 593; Ward v. Manly, Ala. (21 So. 307). **In common-law ejectment, notice from plaintiff brings defendant into court.**—Cruise v. Riddle, 21 Ala. 791. **Suing out of summons and complaint is commencement of suit.**—E. T. V. & G. R. Co. v. Bayliss, 74 Ala. 150. **Summons sued out when placed with sheriff to be served.**—West v. Engel, 101 Ala. 509. **Quo warranto, mandamus,** etc., not civil actions.—Capital City Water Co. v. State, 105 Ala. 406.

3269 (2652) (2925) (2559) (2161). **Summons and complaint.** The summons must be issued by the clerk of the court, and be accompanied by the complaint of the plaintiff, signed by him or his attorney, setting forth the cause of action.

Complaint **must be signed by plaintiff or his attorney.**—Browder v. Gaston, 30 Ala. 677. In detinue, **when failure of clerk to sign summons will not reverse judgment by default.**—Baker v. Swift, 87 Ala. 530. **Statute refers to actions to recover money or property,** not to extraordinary remedies, such as mandamus, quo warranto, etc.—Capital City Water Co. v. State, 105 Ala. 406.

3270 (2653) (2926) (2560) (2162). **Form.**—The summons must be in the following form:

"The State of Alabama, —— county. } To any sheriff of the State of Alabama:

You are hereby commanded to summon A. B. to appear at the next term of the circuit court, to be held for said county at the place of holding the same, then and there to answer the complaint of C. D. Witness my hand, this —— day of ———.

E. F., Clerk."

Summons, not signed by clerk, will not support judgment by default. Costley v. Driver, 45 Ala. 230; Wilson v. Owens, Ib. 451; Winnemore v. Mathews, Ib. 449; Sheppard v. Powers, 50 Ala. 377. **Otherwise in detinue if order of seizure indorsed on summons be officially signed.**—Baker v. Swift, 87 Ala. 530. **Acknowledgment of service and waiver of notice and copy waives all defects in summons.**—Earbee v. Ware, 9 Port. 291; Ayres v. Hill, 82 Ala. 401; Ward v. Manly, Ala. (21 So. 307). **Need not state place where nor day on which court will be held.**—Yonge v. Broxson, 23 Ala. 684. **Date and form not conlusive.**—Huss v. Central R. & B. Co., 66 Ala. 472. **Omission of words "at next term" not fatal.**—Davis v. McCary, 100 Ala. 545.

3271 (2654) (2927) (2561) (2163). **Branch summons when defendants in different counties.**—When any joint or joint and several cause of action exists, and the defendants reside or may be found in different counties, a summons may issue from the court having jurisdiction of any one of such defendants, and be executed in any county, which must be returned and filed in the court from which the process issued, and constitute but one suit, in the same manner as if but one summons had issued against all the defendants; and it is the duty of the clerk, on issuing such branch summons, to indorse thereon that it is a branch of the original suit, and that all the summons constitute one suit, and are for one and the same cause of action.

Omission of name of one defendant from branch summons to two others does not make summons void.—Lewis v. Grace, 44 Ala. 307. **Each summons should be a counterpart of the other;** a variance is only pleadable in abatement, and may be cured by amendment.—Mayo v. Stoneum, 2 Ala. 390; Boardman v. Parrish, 56 Ala. 54.

3272 (2655) (2932) (2564) (2165). **Execution and return of summons.**—The summons must be executed by the sheriff or other officer in any county, by leaving a copy of the summons and complaint with the defendant, which fact he must return with the process.

Recitals of judgment may be sufficient to show jurisdiction of person without service.—Owings v. Binford, 80 Ala. 421; M. & C. R. Co. v. Whorley, 74 Ala. 264. **General appearance a waiver of defect in service.**—Kennedy v. Young, 25 Ala. 563; Goldsmith v. Stetson, 39 Ala. 183; Peebles v. Weir, 60 Ala. 413; McCaskey v. Pollock, 82 Ala. 174; Birmingham Flooring Mills v. Wilder, 85 Ala. 593; Rosenberg v. Claflin, 95 Ala. 249; Carter v. O'Bryan Bros., 105 Ala. 305. **Special appearance to move setting aside of service not a waiver.**

Lampley v. Beavers, 25 Ala. 534. **Written acceptance of service waives official service.**—Norwood v. Riddle, 1 Ala. 195; Ward v. Manley, Ala. (21 So. 307). **When return shows no service.**—Melvin v. Clark, 45 Ala. 285. **Officers, making returns, may use initial letters to indicate official character.** Eslava v. Ames Plow Co., 47 Ala. 384. **What sufficient return of service.** Snelgrove v. Branch Bank, 5 Ala. 295; Lenoir v. Broadhead, 50 Ala. 58; Veasey v. Brigman, 93 Ala. 548. **Service on Sunday** a mere irregularity.—Comer v. Jackson, 50 Ala. 384.

3273 (2656) (2933) (2551) (2153). **Service on one representative sufficient.**—When there are two or more executors or administrators of an estate, service of summons on one is sufficient.

Where service had on one representative, discontinuance as to others discontinues action.—Huff v. Davison, 44 Ala. 273.

3274 (2657) (2934) (2568) (2169). **How corporation served.** When the suit is against a corporation the summons may be executed by the delivery of a copy of the summons and complaint to the president or other head thereof, secretary, cashier, station-agent, or any other agent thereof.

When municipality defendant, service on mayor proper.—Lyon v. Lorant, 3 Ala. 151. **Return of sheriff not proof of official character of president, secretary, agent, etc.; independent proof necessary** to support judgment by default.—Lyon v. Lorant, 3 Ala. 151; W. & C. R. Co. v. Cole, 6 Ala. 655; Oxford Iron Co. v. Spradley, 42 Ala. 24; So. Express Co. v. Carroll, 42 Ala. 437; Talladega Ins. Co. v. McCullough, 42 Ala. 667; M. & E. R. Co. v. Hartwell, 43 Ala. 508; Talladega Ins. Co. v. Woodward, 44 Ala. 287; M. & C. R. Co. v. Whorley, 74 Ala. 264; Manhattan F. Ins. Co. v. Fowler, 76 Ala. 372; Oxanna Building Asso. v. Agee, 99 Ala. 571, 591; Independent Pub. Co. v. Am. Press Asso., 102 Ala. 475. **Erroneous default judgment by justice of the peace against corporation without proof of official character of person served** revisable by common-law certiorari.—Independent Pub. Co. v. Am. Press Asso., 102 Ala. 475. **Director only not head or managing agent** of corporation.—Ala. & Tenn. R. Co. v. Burns, 43 Ala. 169. **Officer,** etc., on whom service might be made, **competent to accept service.**—Talladega Ins. Co. v. Woodward, 44 Ala. 287. **The statute embraces foreign corporations.**—West. Un. Tel. Co. v. Pleasants, 46 Ala. 641; Sullivan v. Sullivan Timber Co., 103 Ala. 371. **When ordinary suits against foreign corporations authorized.**—Central R. Co. v. Carr, 76 Ala. 388; Kahl v. M. & C. R. Co., 95 Ala. 337; R. & D. R. Co. v. Trousdale, 99 Ala. 389.

Feb. 26, 1887, p. 68.

3275. Service on person or corporation operating railroad of a domestic corporation.—Whenever any railroad corporation created by the authority of this state, shall permit its railroad to be used or operated by any other person or corporation, whether by contract or otherwise, process issuing against the person or corporation so using or operating such railroad, may be served upon any station-agent or person in charge of any depot along the line of such railroad.

Has no reference to railroads operated by receivers.—Ex parte Charles, 106 Ala. 203. (See section 804.)

Feb. 18, 1895, p. 995.

3276. Publication against domestic corporation, other than railroad corporation, having no officer or agent in the state. Whenever it is shown by affidavit that the president or other head of a domestic corporation, the secretary, cashier and managing agent thereof are absent from the state, and that in the belief of affiant there is no person in the employ of such corporation or doing business for it in this state, such corporation may be served with any legal process issuing from any court of record in this state, by publication in some newspaper published in the county where suit is brought, or, if there is no newspaper published in the county where suit is brought, in the newspaper published nearest the place

of trial; and a copy of such newspaper containing such notice must be sent by mail to the president, secretary, cashier or other agent of such corporation, at his place of residence, if known; and if such publication is perfected twenty days before the next term of the court, the case shall stand for trial at that term; otherwise at the succeeding term, or any other term after the perfection twenty days prior thereto. This section does not apply to railroad corporations.

3277. Service on designated agent of foreign corporation; proof of agency.—When a foreign corporation has filed an instrument in writing designating one or more agents in this state as provided by this Code, process issuing against such foreign corporation may be served upon any agent so designated; and the certificate of the secretary of state, or of the auditor, as the case may be, showing such designation, is evidence of the fact of such agency. If the agent designated by such foreign corporation shall die, resign, remove from the state, or his authority shall cease from any cause, and no other agent shall be designated by such foreign corporation, the service of process issuing against it may be made upon the secretary of state, or, if the process be against an insurance company, upon the auditor; and the officer serving such process upon the secretary of state, or the auditor, as the case may be, must immediately transmit a copy thereof by mail to such corporation, at its home office, and state such fact in his return.*

3278. Service of process in real action when defendant secretes himself; publication by sheriff on affidavit.—When the defendant in any real action secretes himself so that process cannot be served upon him, the sheriff must, upon proof thereof being made by affidavit filed with him, advertise the summons and complaint once a week for three successive weeks in a newspaper published in the county in which the real estate in controversy lies; or, if there be no newspaper published in such county, in a newspaper published in an adjoining county; and a copy of such newspaper containing such notice must be sent by mail to the defendant at his last known place of residence; and such publication, when perfected, has the same force and effect as personal service. Feb. 28, 1889, p. 85.

3279 (2658) (2936) (2572) (2173). **When executed in adjoining county, or within the state.**—When the summons or other process issues to the sheriff of the county in which the defendant resides, he may execute it in an adjoining county if the defendant is there found; or may pursue the defendant and execute it in any part of the state.

3280 (2659) (2937) (2573) (2174). **Summons to county executed on judge of probate.**—When a county is a defendant, the summons must be executed by leaving a copy of the summons and complaint with the judge of probate.

3281 (2660) (2938) (2570) (2171). **When executed by coroner or special coroner.**—When the office of sheriff is vacant, and until his successor is qualified, or when the sheriff is imprisoned, or in

*Last clause added by joint committee.

cases in which the sheriff is a party, or is interested, or otherwise is incompetent to act, if such interest or cause appear on the face of the proceedings, the summons must be directed to, and executed by the coroner; and if such interest or cause does not appear on the face of the proceedings, the coroner must execute the summons, though directed to the sheriff, if the judge of probate, on proper showing by affidavit, direct the execution thereof by the coroner; and when in such cases the coroner has not qualified, or the office is vacant, or when the coroner is absent from the county, having no deputy therein, or when the coroner is imprisoned, or when he is a party to, or interested in the suit, the summons must be directed to, and executed by a special coroner, to be appointed by the judge of probate.

3282 (2661) (2939) (2565) (2166). **Summons executed three days before return.**—The summons must be executed at least three days before the return-day thereof, and be returned to the office whence it issued on or before the return-day; but when the summons has been executed twenty days or more before the return-day, it must be returned five days after the execution thereof.

Mode of computation stated.—Garner v. Johnson, 22 Ala. 494; Thrower v. Brandon, 89 Ala. 406.

3283 (2662) (2940) (2566) (2167). **When returned, if issued less than three days before term.**—When the summons is issued less than three days before the term of the court next thereafter, it must be made returnable to the next succeeding term.

Omission of term from summons not fatal—law fixes return-term.—Davis v. McCary, 100 Ala. 545.

3284 (2663) (2941) (2567) (2168). **Return-day.**—The return-day of the summons is the first day of the court to which it is returnable.

Davis v. McCary, 100 Ala. 545.

ARTICLE 2.

GENERAL RULES OF PLEADING.

3285 (2664) (2978) (2629) (2227). **Pleadings to be short; no objection for want of form.**—All pleadings must be as brief as is consistent with perspicuity, and the presentation of the facts, or matter to be put in issue, in an intelligible form; no objection can be allowed for defect of form, if facts are so presented that a material issue in law or fact can be taken by the adverse party thereon.

Brief but clear presentation of facts on which material issue can be taken all that is necessary.—Clark v. Goddard, 39 Ala. 164; Randolph v. Sharpe, 42 Ala. 265; Hall v. Brazelton, 46 Ala. 359; S. & N. Ala. R. Co. v. Thompson, 62 Ala. 494; M. & M. R. Co. v. Crenshaw, 65 Ala. 566; C. & W. R. Co. v. Bridges, 86 Ala. 448; Jones v. Darden, 90 Ala. 372; Stanton v. L. & N. R. Co., 91 Ala. 382; Ensley Ry. Co. v. Chewning, 93 Ala. 24; Oxford Lake Line Co. v. Stedham, 101 Ala. 376; Kolsky v. Enslen, 103 Ala. 97. **Improper to join several distinct causes of action in one count of complaint.**—H. A. & H. R. Co. v. Dusenbury, 94 Ala. 413; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; L. & N. R. Co. v. Mothershed, 97 Ala. 261; L. & N. R. Co. v. Cofer, 110 Ala. 491.

3286 (2665) (2979) (2630) (2228). **Pleadings struck out for prolixity on motion.**—If any pleading is unnecessarily prolix, irrelevant, or frivolous, it may be stricken out at the costs of the party so pleading, on motion of the adverse party; and any pleading which conforms substantially to the schedule of forms in this Code is sufficient.

When motion to strike proper.—Cotton v. Ward, 45 Ala. 359; Ware v. St. Louis Co., 47 Ala. 667; L. & N. R. Co. v. Hall, 91 Ala. 112; Kennon v. W. U. Tel. Co., 92 Ala. 399; Cole v. Tuck, 108 Ala. 227; Treadwell v. Tillis, 108 Ala. 262; Davis v. L. & N. R. Co., 108 Ala. 660. **Motion to strike not equivalent of demurrer—when not proper.**—Lindsay v. Morris, 100 Ala. 546; Davis v. L. & N. R. Co., 108 Ala. 660; McAnally v. Lumber Co., 109 Ala. 397; Powell v. Crawford, 110 Ala. 294. **Refusal to strike not reversible error, unless injury affirmatively appears.**—Goldsmith v. Picard, 27 Ala. 142; C. & W. R. Co. v. Bridges, 86 Ala. 448; Davis v. L. & N. R. Co., 108 Ala. 660. **Forms prescribed by Code have force of law—others of like brevity and perspicuity sufficient.** Letondal v. Huguenin, 26 Ala. 552; Pickens v. Oliver, 29 Ala. 528; Crimm v. Crawford, 29 Ala. 623; Pike v. Elliott, 36 Ala. 69; Lang v. Waters, 47 Ala. 624; Munter v. Rogers, 50 Ala. 283; S. & N. Ala. R. Co. v. Thompson, 62 Ala. 494; Herring v. Skaggs, 73 Ala. 446; Com. F. Ins. Co. v. Capital City Ins. Co., 81 Ala. 320.

3287 (2666) (2980) (2631) (2229). **Complaint for defamation.** No colloquium or innuendo is necessary in actions for defamation; it is sufficient to state in the complaint that the defendant falsely and maliciously charged the plaintiff with perjury, larceny, or other crime, or as the case may be, in substance as follows, setting it out.

3288 (2667) (2981) (2632) (2230). **Consideration of sealed instrument may be inquired into.**—The defendant may by plea impeach or inquire into the consideration of a sealed instrument in the same manner as if it had not been sealed.

Does not interfere with rule as to variation of effect of writing by parol. Kinnebrew v. Kinnebrew, 35 Ala. 628. **Special plea necessary.**—Johnson v. Coffey, 59 Ala. 331. **What sufficient plea of no consideration.**—Giles v. Williams, 3 Ala. 316; Kolsky v. Enslen, 103 Ala. 97 (distinguishing Phœnix Ins. Co. v. Moog, 78 Ala. 284; Carmelich v. Mims, 88 Ala. 335; Darby v. Berney Nat. Bank, 97 Ala. 643; McAfee v. Glen Mary C. & C. Co., 97 Ala. 709).

3289 (2668) (2982, 3033) (2633, 2771) (2231, 2367). **Assignment of breaches on penal bond.**—In actions upon penal bonds or other writings, for the non-performance of any covenant or agreement contained therein, the plaintiff may assign such breaches as he may deem proper, and verdict and judgment may be rendered for the plaintiff for such of the breaches as he may prove; and if judgment be rendered for the plaintiff by default or nil dicit, a writ of inquiry of damages must be awarded. Judgment shall in no case exceed principal and interest due on the instrument.

Separate assignment of breaches.—Gaines v. Shelton, 47 Ala. 413; Sloss I. & S. Co. v. Macon Co., 111 Ala. 554.

3290 (2670) (2984) (2635) (2233). **Profert dispensed with; notice to produce.**—No profert of a sealed instrument is required in pleading, but, at any time previous to the trial, the defendant may have inspection of the bond or other instrument sued on, upon notice to the attorney of the party; or when an account is the foundation of the suit, a list of the items composing it.

Bills of particulars; purpose served when list of items supplied.—Boykins v. Persons, 95 Ala. 626. May be amended to conform to amendment of complaint as to party plaintiff, s. c. Object to prevent surprise; liberal rules gov-

ern in their construction.—Robinson v. Allison, 36 Ala. 525; Fountain v. Ware, 56 Ala. 558; M. & B. R. Co. v. Worthington, 95 Ala. 598. Not demandable in action on notes.—Doss v. Peterson, 82 Ala. 253. Demand of list of items not a waiver of defense of misnomer.—Oates v. Clendenard, 87 Ala. 734. Objection to sufficiency of list must be made before trial.—Pryor v. Johnson, 32 Ala. 27. Bill of particulars not part of record, unless embraced in bill of exceptions. Hayes v. Woods, 72 Ala. 92. Objection that account introduced is variant from list furnished, not available, when first made on appeal.—White v. Craft, 91 Ala. 139.

ARTICLE 3.

THE COMPLAINT AND OTHER PLEADINGS.

3291 (2671) (2985) (2636) (2234). **Complaint accompanies summons.**—The complaint, which must in all cases accompany the summons, is in lieu of a declaration, and must be signed by the plaintiff or his attorney.

Signed by plaintiff or his attorney.—Browder v. Gaston, 30 Ala. 677. When amendment need not be signed.—Payne v. Crawford, 97 Ala. 604.

3292 (2672) (2986) (2637) (2235). **Actions on contracts united in one suit.**—All actions on contracts, express or implied, for the payment of money, whether under seal or not, may be united in the same action.

Purpose and effect of statute stated.—L. & N. R. Co. v. Cofer, 110 Ala. 491. **Joinder of actions ex contractu.**—Walker v. Ins. Co., 31 Ala. 529; Mahan v. Smitherman, 71 Ala. 563; Lagerfelt v. McKie, 100 Ala. 430; Steiner Bros. v. Clisby, 103 Ala. 181; Treadwell v. Tillis, 108 Ala. 262; Woodlawn v. Purvis, 108 Ala. 511; York Mfg. Co. v. Storage Co., 111 Ala. 332; T. & C. R. Co. v. Danforth, 112 Ala. 80. **Counts ex delicto may not be joined with others ex contractu.**—Whilden v. Bank, 64 Ala. 1; Wilson v. Stewart, 69 Ala. 302; Chambers v. Seay, 73 Ala. 372; s. c., 87 Ala. 558; Mobile L. Ins. Co. v. Randall, 74 Ala. 176; Capital City Water Co. v. City Council, 92 Ala. 366; Smith v. R. Co., 98 Ala. 154; Gurley v. McAnally, 109 Ala. 359; Baldwin v. R. Co., 111 Ala. 515. **Misjoinder cause of demurrer to entire complaint.**—Shotwell v. Gilkey, 31 Ala. 724; Whilden v. Bank, 64 Ala. 1; Baldwin v. R. Co., 111 Ala. 515.

3293 (2673). **Joinder of trover, trespass and case.**—Counts in trover, trespass and trespass on the case may be joined, when they relate to the same subject-matter.*

Formerly trover and trespass could not be joined.—Mecklin v. Deming, 111 Ala. 159. **Trover and case could always be joined.**—Dixon v. Barclay, 22 Ala. 370; Wilkinson v. Moseley, 30 Ala. 562; Elmore v. Simon, 67 Ala. 526; Henry v. Allen, 93 Ala. 197. **Joinder of trespass and case by virtue of statute.** Joseph v. Henderson, 95 Ala. 213; Buckalew v. R. Co., 112 Ala. 146.

3294 (2674) (2987) (2638) (2236). **Form and substance of plea.** The plea must consist of a succinct statement of the facts relied on in bar or abatement of the suit, and no objection can be taken thereto, if the facts are so stated that a material issue can be taken thereon.

Pleas in bar and in abatement stand upon same footing in respect to form. Hall v. Brazelton, 46 Ala. 359; Lang v. Waters, 47 Ala. 624; Mohr v. Chaffe, 75 Ala. 387. **Each plea must be complete in itself.**—Jones v. State, 100 Ala. 451. **Pleas in short good, if not objected to.**—Jackson v. Jackson, 7 Ala. 791; Harrison v. Harrison, 39 Ala. 489; Cotton v. Ward, 45 Ala. 359. **Pleas in short, how interpreted.**—Steele v. Walker, Ala. (21 So. 942). **Oral plea in abatement not receivable.**—Crawford v. State, 112 Ala. 1. **When formal pleadings will be treated as waived.**—R. & D. R. Co. v. Farmer, 97 Ala. 141; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; Andrews v. R. Co., 99 Ala. 438; Knight v.

*"Trover" inserted by joint committee.

Bradley, 101 Ala. 517; N. C. & St. L. Ry. Co. v. Hammond, 104 Ala. 191; Comer v. Way, 107 Ala. 300. **Effect of immaterial issue; repleader.**—Irion v. Lewis, 56 Ala. 190; Mudge v. Treat, 57 Ala. 1; Ex parte Pearce, 80 Ala. 195; Winter v. Pool, 100 Ala. 503; Taylor v. Smith, 104 Ala. 537. **Plea should contain statement of facts; not legal conclusions.**—Tenn. C. I. & R. Co. v. Herndon, 100 Ala. 451; Kolsky v. Enslen, 103 Ala. 97; Johnson v. R. Co., 104 Ala. 241; Milligan v. Pollard, 112 Ala. 465. See also citations to section 3285.

3295 (2675) (2988) (2639) (2237). **Pleas general or special.** The defendant may plead more pleas than one; and, if he does not rely solely on a denial of the plaintiff's cause of action, must plead specially the matter of defense. In all actions for defamation, or for injuries to the person, or to real or personal property, the general issue is "not guilty," and puts in issue all the material allegations of the complaint; in all other actions the general issue is an averment that the allegations of the complaint are untrue, and, except as may be otherwise provided, puts in issue only the truth of such allegations.

May plead more pleas than one; effect of inconsistent pleas.—Hopkinson v. Shelton, 37 Ala. 306; L. & N. R. Co. v. Hall, 87 Ala. 708; McDonald v. Ry., 110 Ala. 161; Stephenson v. Wright, 111 Ala. 579. **Pleas in bar and in abatement may not be pleaded together.**—Strouse v. Leipf, 101 Ala. 433. **When special plea necessary.**—Petty v. Dill, 53 Ala. 641; Daniel v. Hardwick, 88 Ala. 557; Lunsford v. Walker, 93 Ala. 36; Odum v. R. Co., 94 Ala. 488; K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412; Marlowe v. Rogers, 102 Ala. 510; Am. Oak. Ex. Co. v. Ryan, 112 Ala. 337. **Denial of character in which plaintiff sues or defendant is sued** must be specially pleaded.—Clarke v. Clarke, 51 Ala. 498; L. & N. R. Co. v. Trammell, 93 Ala. 350; Espalla v. Richard, 94 Ala. 159. **Scope of general issue.**—Phillips v. Kelly, 29 Ala. 628; Stein v. Ashby, 30 Ala. 363; Kannady v. Lambert, 37 Ala. 57; Petty v. Dill, 53 Ala. 641; Howland v. Wallace, 81 Ala. 238; A. G. L. Ins. Co. v. Ins. Co., 81 Ala. 329; Lunsford v. Walker, 93 Ala. 36; L. & N. R. Co. v. Trammell, 93 Ala. 350; K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412; Fields v. Brice, 108 Ala. 632; Scarborough v. Blackman, 108 Ala. 656; Am. Oak. Ex. Co. v. Ryan, 112 Ala. 337. **Averment that allegations of complaint are untrue as general issue.**—A. G. S. R. Co. v. Frazier, 93 Ala. 45; L. & N. R. Co. v. Trammell, 93 Ala. 350 (overruling M. & M. Ry. Co. v. Gilmer, 85 Ala. 422, and Ec. Ac. Ins. Co. v. Osborn, 90 Ala. 201); Mayor, etc., of Decatur v. White, 109 Ala. 389; Berlin M. Wks. v. Furniture Co., 112 Ala. 488. **Not guilty is not general issue in assumpsit.**—Espalla v. Richard, 94 Ala. 159; Cunyus v. Guenther, 96 Ala. 564; Montgomery F. Co. v. Hardaway, 104 Ala. 100. **General issue in detinue.**—Lucas v. Pittman, 94 Ala. 616; Ingersoll-Sergeant Drill Co. v. Worthington, 110 Ala. 332; Berlin M. Wks. v. Furniture Co., 112 Ala. 488. **General issue in ejectment; special pleas unnecessary.**—Bynum v. Gold, 106 Ala. 427 (explaining Slaughter v. Doe, 67 Ala. 494); Lomb v. Pioneer S. & L. Co., 106 Ala. 591; Richardson v. Stephens, Ala. (21 So. 949); Smith v. Cox, Ala. (22 So. 78).

3296 (2676) (2989) (2640) (2238). **What pleas must be sworn to.**—All pleas in abatement, unless it be of matter of record, pleas which deny the execution by the defendant, his agent, attorney, or partner, of any instrument in writing, the foundation of the suit, or the assignment of the same, or which set forth any instrument in writing, whether under seal or not, which is alleged to be lost or destroyed, and pleas since the last continuance must be verified by affidavit.

When agreement as to pleas does not cover sworn pleas.—Ala. & F. R. Co. v. Watson, 42 Ala. 75. **Pleas in abatement.**—Hall v. Wallace, 25 Ala. 438; Hall v. Brazelton, 46 Ala. 359; Tommey v. Gamble, 66 Ala. 469; Gaston v. State, 88 Ala. 459. **Non est factum.**—Martin v. Dortch, 1 Stew. 479; Fowlkes v. Baldwin, 2 Ala. 705; Lazarus v. Shearer, Ib. 718; McWhorter v. Lewis, 4 Ala. 198; Bryan v. Wilson, 27 Ala. 208; McDougald v. Rutherford, 30 Ala. 253; Ala. Mining Co. v. Brainard, 35 Ala. 476; M. & E. R. Co. v. Trebles, 44 Ala. 255; L. & N. R. Co. v. Trammell, 93 Ala. 350 (overruling Ec. Ac. Ins. Co. v. Osborn, 90 Ala. 201, and M. & M. R. Co. v. Gilmer, 85 Ala. 422); Levy v. Bloch, 88 Ala. 290; Lesser v. Scholze, 93 Ala. 338; K. C. M. & B. R. Co. v. Cobb, 100 Ala.

228; Smith v. Hiles-Carver Co., 107 Ala. 272; Cain L. Co. v. Dry Kiln Co., 108 Ala. 346; Ledbetter v. Vinton, 108 Ala. 644; Milligan v. Pollard, 112 Ala. 465. **Denying ownership of plaintiff.**—Agee v. Medlock, 25 Ala. 281; Manning v. Maroney, 87 Ala. 563; Paige v. Broadfoot, 100 Ala. 610. Writing, the foundation of the suit.—First Nat. Bank v. Nelson, 106 Ala. 535. **Since last continuance.** McDougald v. Rutherford, 30 Ala. 253; Penn v. Edwards, 50 Ala. 63. **Pleas of nul tiel corporation.**—Smith v. Hiles-Carver Co., 107 Ala. 272. Statute also **applicable to chancery suits.**—Bonner v. Young, 68 Ala. 35; Smith v. Hiles-Carver Co., 107 Ala. 272.

3297 (2677) (2990) (2641) (2239). **How character of plea determined.**—Whether a plea is in bar or abatement, is ascertained by the subject-matter and prayer of the plea.

Day v. Huckabee, 60 Ala. 425; Mohr v. Chaffe, 75 Ala. 388.

3298 (2585) (2997, 2998) (2648, 2649) (2245, 2246). **Plea of tender.**—A plea of tender of money, or of a thing in action, must be accompanied by a delivery of the money or such thing in action to the clerk of the court; if the tender be of ponderous articles or other personal property, the plea must aver a readiness to deliver it to the plaintiff, and judgment for the defendant upon the plea vests the title to the thing tendered in the plaintiff, subject to any claim the defendant may have for his trouble in keeping it.

Payment into court.—Alexander v. Caldwell, 61 Ala. 543; Ashworth v. State, 63 Ala. 120; Park v. Wiley, 67 Ala. 310; Frank v. Pickens, 69 Ala. 369; Foster v. Napier, 74 Ala. 393; Caldwell v. Smith, 77 Ala. 157; Com. F. Ins. Co. v. Allen, 80 Ala. 571; Maxwell v. Moore, 95 Ala. 166; Schuessler v. Simon, 100 Ala. 422; Christian v. Ins. Co., 101 Ala. 634; Beatty v. Brown, 101 Ala. 695. **When payment with plea waived.**—Rudulph v. Wagner, 36 Ala. 698. Payment into court **not necessary in actions before justices of the peace.**—Jonsen v. Nabring, 50 Ala. 392. **Effect of acceptance of money paid in.**—Hanson v. Todd, 95 Ala. 328; Gardner v. Black, 98 Ala. 638. **Question of costs.**—Schuessler v. Simon, 100 Ala. 422. **Effect of tender on interest.**—McCalley v. Otey, 99 Ala. 584.

3299 (2686) (3000) (2651) (2248). **Plea since last continuance.** A plea since the last continuance is not a waiver of any plea to the merits previously pleaded.

McDougald v. Rutherford, 30 Ala. 253; Dolberry v. Trice, 49 Ala. 207; Wright v. Evans, 53 Ala. 103; Dryer v. Lewis, 57 Ala. 551; Draper v. Walker, 98 Ala. 310; State v. Webb, 110 Ala. 214.

3300 (2687) (2999) (2650) (2247). **Indorsement on pleas.**—All pleas must, when filed, be indorsed by the clerk with the true date, and, for want of such indorsement, may be rejected by the court on motion, unless sufficient cause be shown.

3301 (2688) (3001, 3002, 3003) (2652, 2653, 2654) (2249, 2250, 2251). **Replication.**—The plaintiff may file more than one replication. The general replication is, "the plaintiff joins issue on said plea." A special replication is a brief statement, in plain language, of the facts relied on as an answer to the plea.

Replication must traverse or confess and avoid plea or present estoppel—departure not allowed.—Winter v. Bank, 54 Ala. 172; Christian v. Ins. Co., 101 Ala. 634; L. & N. R. Co. v. Mothershed, 110 Ala. 143; Watson v. Kirby, 112 Ala. 436; H. A. & B. R. Co. v. Smith, 112 Ala. 642. **Special replication.**—Lee v. Iron Co., 102 Ala. 628; Bridges v. R. Co., 109 Ala. 287; Davis v. Miller, 109 Ala. 589.

3302 (2689) (3004) (2655) (2252). **Subsequent pleadings.**—The rules of this chapter relative to pleas and replications apply to all subsequent pleadings.

3303 (2690) (3005) (2656) (2253). **Demurrer.**—No demurrer in

pleading can be allowed but to matter of substance, which the party demurring specifies; and no objection can be taken or allowed which is not distinctly stated in the demurrer.

Only consider grounds stated.—Cotten v. Rutledge, 33 Ala. 110; Sledge v. Swift, 53 Ala. 110; Thompson v. Lassiter, 86 Ala. 536; Lakeside Land Co. v. Dromgoole, 89 Ala. 505; Behr v. Gerson, 95 Ala. 438; Mary Lee C. & R. Co. v. Chambliss, 97 Ala. 171; Baker v. Boon, 100 Ala. 622; Turner Coal Co. v. Glover, 101 Ala. 289; Culver v. Ry. Co., 108 Ala. 330; Ala. Nat. Bank v. Halsey, 109 Ala. 196. **What is mere general demurrer.**—Morris v. Beall, 85 Ala. 598; Evitt v. Banking Co., 96 Ala. 381; Cook v. Brick Co., 98 Ala. 409; West. Un. Tel. Co. v. Cunningham, 99 Ala. 314; Baker v. Boon, 100 Ala. 622; Payne v. Crawford, 102 Ala. 387; Tranum v. Drum, 112 Ala. 277; Browder v. Irby, 112 Ala. 379; Milligan v. Pollard, 112 Ala. 465. **When ground not distinctly stated.**—Burns v. Mayor, 34 Ala. 485; Helvenstein v. Higgason, 35 Ala. 259; Robbins v. Mendenhall, 35 Ala. 722; Pomeroy v. State, 40 Ala. 63; Ala. & F. R. Co. v. Watson, 42 Ala. 74; Donegan v. Wood, 49 Ala. 242; Courts v. Happle, 49 Ala. 254; Eads v. Murphy, 52 Ala. 520; Daniels v. Hamilton, 52 Ala. 105; Sledge v. Swift, 53 Ala. 110; Masterson v. Gibson, 56 Ala. 56; Troy v. Coleman, 58 Ala. 570; Brewer v. Watson, 65 Ala. 88; Grimmet v. Henderson, 66 Ala. 521; Williams v. Bowdin, 68 Ala. 126. **When sufficiently stated.**—Brock v. R. Co., 65 Ala. 79. **Matter of substance.**—Hall v. Brazelton, 46 Ala. 360. **Demurrer to plea not visited on complaint.**—Henley v. Bush, 33 Ala. 636; Elliott v. Holbrook, 33 Ala. 659; West. Assurance Co. v. McGlathery, Ala. (22 So. 104). **Misjoinder must be specially assigned.**—Owsley v. R. Co., 37 Ala. 560.

3304 (2691) (3006) (2657) (2254). **Amendments; when allowed.** Either before or after judgment on demurrer, the court must permit an amendment of the pleadings; and such amendment must cause no delay in the trial of the cause, unless injustice will thereby be done.

Russell v. Erwin, 38 Ala. 44; Jones v. Ritter, 56 Ala. 270; Day v. Huckabee, 60 Ala. 425; S. A. M. R. Co. v. Buford, 106 Ala. 303.

3305 (2692) (3007) (2658) (2255). **Plea over after judgment on demurrer does not waive errors.**—The party against whom a judgment on demurrer is rendered may plead over as a matter of right, without waiving his privilege of assigning such judgment as error in an appellate court, unless he has subsequently had the benefit sought by the demurrer upon the trial of other equivalent issues.

Williams v. Ivey, 37 Ala. 242; Phœnix Ins. Co. v. Moog, 78 Ala. 284; Seaboard Mfg. Co. v. Woodson, 94 Ala. 143; Chestnut v. Tyson, 105 Ala. 149.

3306 (2693) (3008) (2659) (2256). **Terms for frivolous demurrer.** If, in the opinion of the court, a demurrer is interposed without cause, terms may be imposed, not exceeding the costs of the action, or a continuance of the cause.

ARTICLE 4.

TRIAL TERM; GENERAL RULES OF PRACTICE.

3307 (2731) (3011) (2660) (2257). **Trial term.**—When the summons is executed twenty days previous to the return-term thereof, the cause must be placed on the trial-docket, and stands for trial at that term.

Statute applied.—Cumming v. Richard, 32 Ala. 459; Ware v. Willis, 45 Ala. 120; Thrower v. Brandon, 89 Ala. 406. **How time computed.**—Garner v. Johnson, 22 Ala. 494; Thrower v. Brandon, 89 Ala. 406. **When summons not served for twenty days default judgment at return-term premature.**—Ivey v. Perry, 97 Ala. 583.

3308 (2732) (3012, 3013, 3014) (2662, 2664, 2663) (2258, 2260, 2259). **Time for pleading.**—When the term of the court is but one week, the defendant must plead or demur to the complaint within the first day; and when the term of the court is more than one week, by noon of the second day; other pleadings may be filed in such time as the court may direct.*

Court may, in its irrevisable discretion, allow filing of plea at any time before trial.—Bobe v. Frowner, 18 Ala. 89; Newman v. Pryor, 18 Ala. 186; Lang v. Waters, 47 Ala. 624; Donald v. Nelson, 95 Ala. 111. **Defendant has right to plead at any time before default entered.**—Woosley v. R. Co., 28 Ala. 536; Rhodes v. McFarland, 43 Ala. 95; Wagnon v. Turner, 73 Ala. 197. **But under acts governing certain special courts,** rule is different.—Reed Lumber Co. v. Lewis, 94 Ala. 626; U. S. Rolling Stock Co. v. Weir, 96 Ala. 396; Hudson v. Wood, 102 Ala. 631.

3309 (2733) (3015) (2665) (2261). **Causes set.**—The trial causes must be set for particular days when the term of the court is more than one week, to which day the witnesses must be subpœnaed; and no cause in which the defendant has pleaded or demurred can be called for trial before the day for which it is set, except by consent.

3310 (2734) (3022) (2672) (2268). **Copy of lost pleading.**—If the original pleading be lost or withheld by any person, the court may order a copy to be filed in the place of the original.

When notice of motion to substitute presumed.—Thomasson v. Grace, 42 Ala. 431.

3311 (2735) (3019) (2669) (2265). **Argument of counsel.**—But two attorneys can argue on a side, except by leave of the court.

3312 (2736) (3027) (2677) (2273). **Notice to attorney; effect of.** Written notice to the attorney of record is as effectual as notice to the party to be affected by it, and may be executed by the sheriff, whose return of service is evidence of the fact.

Notice to attorney is notice to party.—Jackson v. Hughes, 6 Ala. 257; Jefford v. Ringgold, 6 Ala. 544; Simington v. Kent, 8 Ala. 691; Jennings v. Pearce, 101 Ala. 538; Cain Lumber Co. v. Dry Kiln Co., 108 Ala. 346.

3313 (2737) (3020) (2670) (2266). **Nonsuits; when taken and effect of.**—Nonsuits must be taken before the jury retire, and two nonsuits, not set aside at the term at which they are suffered, or reversed on error, are equivalent to a verdict against the party suffering them.

3314 (2738) (3021) (2671) (2267). **Only two new trials granted.** No more than two new trials can be granted the same party in any cause.

3315 (2739) (3120) (2768) (2365). **Proceedings when amount sued for or recovered less than limit of jurisdiction.**—If suit be brought on any moneyed demand for a less amount than that of which the court has jurisdiction, the suit must be dismissed; or if suit be brought for such amount, and a less sum be recovered, unless the amount is reduced below that of which the court has jurisdiction by a set-off successfully made by the defendant, the judgment must be set aside and the suit dismissed, unless he, or some one for him, make affidavit, which must be filed in the cause, that the

*As amended by joint committee.

amount sued for is actually due, and that a recovery for the true amount was prevented by failure of proof, the interposition of the statute of limitations, or some other sufficient cause, to be judged of by the court; and in that event he must have judgment for the reduced sum.

Statute imperative.—McClure v. Lay, 30 Ala. 208. **As applicable to a county as to individuals.**—Camp v. Marion County, 91 Ala. 240. **And to all actions ex contractu.**—Mills v. Long, 58 Ala. 458; Atkinson v. James, 96 Ala. 214; First National Bank v. Pinson, 105 Ala. 588. But not to actions ex delicto. King v. Parmer, 34 Ala. 416; Haws v. Morgan, 59 Ala. 508; Morris v. Robinson, 80 Ala. 291. **Set-off successfully made.**—Wood v. Fowler, 37 Ala. 55. **Statutory affidavit conclusive.**—Ramsey v. Strobach, 52 Ala. 513. **Must state full amount sued for was due.**—First National Bank v. Pinson, 105 Ala. 588. **When amount claimed and recovered exceeds fifty dollars** motion to dismiss properly overruled.—M. & C. R. Co. v. Hembree, 84 Ala. 182. **Presumption indulged to support overruling of motion to dismiss.**—Wynn v. Simmons, 33 Ala. 272; Camp v. Marion Co., 91 Ala. 240.

3316 (2740) (3032) (2770) (2366). **Calculation of interest, etc., on judgment by default.**—In all actions founded on any instrument of writing, ascertaining the plaintiff's demand, if judgment by default, nil dicit, or on demurrer, be rendered for the plaintiff, such judgment may be entered up by the clerk, under the direction of the court, without the intervention of a jury; and the clerk must compute the interest, and, in case of a bill of exchange, the damages, if any be due thereon.

Statute **not applicable unless suit founded on writing.**—Kennon v. McRae, 3 Stew. & Port. 249; Hanrick v. Bank, 8 Port. 539; Kenum v. Henderson, 6 Ala. 132; Witherington v. Brantley, 18 Ala. 197; Porter v. Burleson, 38 Ala. 343; Warwick v. Brooks, 67 Ala. 252; Wagnon v. Turner, 73 Ala. 197; **Ascertaining plaintiff's demand.**—Amason v. Nash, 24 Ala. 279. **Without the statute are the following actions:** (1) On open account.—Beville v. Reese, 25 Ala. 451; Patterson v. Blakeney, 33 Ala. 338; Porter v. Burleson, 38 Ala. 343; Rhea v. Salt & Plaster Co., 59 Ala. 182. (2) Against sheriff for failing to return execution.—Warwick v. Brooks, 67 Ala. 252. (3) For damages for cutting timber. Wagnon v. Turner, 73 Ala. 197. (4) For unpaid calls for railroad-stock.—Connoly v. Ala. & Tenn. Rivers R. Co., 29 Ala. 373. (5) On administrator's bond. Amason v. Nash, 24 Ala. 279. (6) To recover foreign judgment and interest. Clarke v. Pratt, 20 Ala. 470. (7) On fire-insurance policies.—Manhattan F. Ins. Co. v. Fowler, 76 Ala. 372; Home Protection of N. Ala. v. Caldwell, 85 Ala. 607. **Within statute are:** (1) Bills of exchange.—McKenzie v. Clanton, 33 Ala. 528. (2) Promissory notes.—Chapman v. Arrington, 3 Stew. 480; Kennedy v. Young, 25 Ala. 563; Lenoir v. Broadhead, 50 Ala. 58. (3) And attorney's fees when amount may be ascertained from note.—Wood v. Machine Co., 83 Ala. 424; Ledbetter v. Vinton, 108 Ala. 644. (4) Certificate of deposit.—Talladega Ins. Co. v. Woodward, 44 Ala. 287. (5) Witness certificate.—Burns v. Howard, 68 Ala. 352. **Statute applicable in proper case, although default consists in failure to answer interrogatories.**—Allen v. Lumber Co., 90 Ala. 490. **When not applicable in suit on non-commercial paper.**—Langdon v. Williams, 22 Ala. 681. **Court may correct mistake of clerk as to amount, nunc pro tunc,** but ignoring credit erased before judgment not an error.—Burt v. Hughes, 11 Ala. 571. **If judgment excessive correction will be made on appeal.**—Lenoir v. Broadhead, 50 Ala. 58.

3317 (2741) (3025) (2675) (2271). **Dismissal in vacation.**—The plaintiff may dismiss his suit in vacation, by causing the clerk to make on the docket an entry of dismissal. When the summons has been executed, notice must be given to the defendant of the intended dismissal.

Cited arguendo.—Foster v. Napier, 73 Ala. 595; Coaldale Brick & Tile Co. v. Construction Co., 110 Ala. 605.

3318 (2742) (3024) (2674) (2270). **Consolidation of suits.**—Whenever two or more actions are pending at the same time, between the

same parties, in the same court, and which might have been joined, the court may order them to be consolidated.

Cases wherein consolidation held proper.—Berry v. Ferguson, 58 Ala. 314; Wilkinson v. Black, 80 Ala. 329; Birmingham Flooring Mills v. Wilder, 85 Ala. 593.

ARTICLE 5.

TRIAL WITHOUT JURY AND DEMURRER TO EVIDENCE.

3319 (2743) (3029). **Trial without jury.**—An issue of fact in a civil case may be tried and determined by the court without the intervention of a jury, whenever the parties, or their attorneys of record, file an agreement in writing with the clerk, waiving a jury; and in such case, the finding of the court upon the facts shall have the same effect as the verdict of a jury.

Under special acts, authorizing non-jury trials, and review of finding, **conclusion of court accorded weight of jury's verdict.**—Skinner v. State, 87 Ala. 105; Woodrow v. Hawving, 105 Ala. 240; Bridgeport Lumber Co. v. Ladd, 107 Ala. 244; Ramey v. Grocery Co., 108 Ala. 476; McAnally v. Lumber Co., 109 Ala. 397; Simpson v. Golden, Ala. (21 So. 990). **Objection that statutory agreement not in writing personal to party.**—Heyman v. McBurney, 66 Ala. 511. **Agreement waiving jury not operative on second trial,** particularly after introduction of a new party.—Martin v. King, 72 Ala. 354. See citations to two succeeding sections.

3320 (2744) (3030). **Finding may be general or special.**—The finding of the court may be general or special, unless the parties, or either of them, in writing, request a special finding of the facts; if a special finding is requested, the court must state in writing the facts as it finds them, and such statement, with the judgment of the court, must be entered on the minutes.

Special finding: (1) Must be entered on minutes.—McCarthy v. Zeigler, 67 Ala. 43; Quillman v. Gurley, 85 Ala. 594. (2) Court may make ex mero motu and must make when requested in writing.—Sayre v. Weil, 94 Ala. 466. (3) Agreed statement of facts as special finding.—Le Bron v. Morris, 110 Ala. 115. (4) What is not.—McCarthy v. Zeigler, 67 Ala. 43; Gill v. Daily, 105 Ala. 323; Brock v. L. & N. R. Co., Ala. (21 So. 994). (5) Essentials of, not aided by intendment or reference to extrinsic facts.—Betancourt v. Eberlin, 71 Ala. 461; Bibb v. Hall, 101 Ala. 79; Brock v. L. & N. R. Co., Ala. (21 So. 994).

3321 (2745) (3031). **Reservation of exceptions; revision on appeal.**—On the trial, either party may reserve, by bill of exceptions, any ruling, opinion, or decision of the court, to which an exception could have been reserved if a trial by jury had not been waived, and is entitled to an appeal from the judgment of the court, as if the judgment had been rendered on the verdict of a jury; and if the finding is special, on appeal, the supreme court must examine and determine whether the facts are sufficient to support the judgment.

Prior to the statute, decision by court upon the facts, a jury being waived, **was final and conclusive.**—Betancourt v. Eberlin, 71 Ala. 461; citing Etheridge v. Malempre, 18 Ala. 565; Barnes v. Mayor, 19 Ala. 707; Bott v. McCoy, 20 Ala. 578; DeVendell v. Hamilton, 27 Ala. 156; Stein v. Jackson, 31 Ala. 24. **If special finding not asked or made, conclusion of court** as to the facts **equivalent to jury's verdict** and irrevisable.—Bell v. State, 75 Ala. 25; Calloway v. State, 75 Ala. 37; Knowles v. State, 80 Ala. 9; Quillman v. Gurley, 85 Ala. 594; Gill v. Daily, 105 Ala. 323. **Duty of supreme court, on appeal, where special finding made.**—McCarthy v. Zeigler, 67 Ala. 43; Betancourt v. Eberlin, 71 Ala. 461; Hardy v. Ingram, 84 Ala. 544; Ins. Co. of North America v.

Forcheimer, 86 Ala. 541; Woodstock Iron Co. v. Fullenwider, 87 Ala. 584; Sayre v. Weil, 94 Ala. 466; Bibb v. Hall, 101 Ala. 79; Le Bron v. Morris, 110 Ala. 115.

3322 (2746) (3103) (2750) (2349). **Demurrer to evidence; when allowed.**—In all actions upon contracts, when the testimony on both sides is written, either party may demur thereto; when the testimony on either side is parol, the opposite party, having offered no parol testimony, may also demur thereto; and the other party must be required by the court to join in the demurrer.

In all civil cases **party may demur to evidence as matter of right.**—Alexander v. Fitzpatrick, 4 Port. 405; Williams v. McConico, 27 Ala. 572; Martin v. State, 62 Ala. 240. **Statute not operative to confine right to actions upon contracts.**—Gluck v. Cox, 90 Ala. 331. **In criminal cases,** such demurrer authorized **only by consent.**—Bryan v. State, 26 Ala. 65; Brister v. State, 26 Ala. 107; Martin v. State, 62 Ala. 240.

3323 (2747) (3104) (2751) (2350). **Effect of such demurrer.** The effect of a demurrer to evidence is an admission by the party demurring of the truth of the evidence demurred to, and of every inference and conclusion which a jury could legally deduce therefrom; and devolves on the court the determination of the issue of fact between the parties, as well as the law.

Statute **declaratory of established common-law rule.**—Martin v. State, 62 Ala. 240; Curtis v. Daughdrill, 71 Ala. 590. Court must find against demurrant if jury could legally have done so.—Shaw v. White, 28 Ala. 637; Armstrong v. Armstrong, 29 Ala. 538; Donaldson v. Waters, 30 Ala. 175; Bates v. Bates, 33 Ala. 102; Patterson v. Blakeney, 33 Ala. 338. **Scope and effect of demurrer to evidence.**—Gale v. R. Co., 8 Ala. 587; Boyd v. Gilchrist, 15 Ala. 849; Bryan v. State, 26 Ala. 65; Buffington v. Cook, 39 Ala. 647; Curtis v. Daughdrill, 71 Ala. 590; Central R. Co. v. Roquemore, 96 Ala. 236.

3324 (2748) (3105) (2752) (2351). **Testimony written out; part of record.**—Upon a demurrer to evidence being tendered, the court must reduce the testimony to writing, or cause it to be done, which, being signed by the judge, constitutes part of the record.

Ruling on demurrer to evidence to be shown by record, not by bill of exceptions.—Sivoly v. Scott, 56 Ala. 555.

3325 (2749) (3106) (2753) (2352). **Damages assessed by jury.** If the court determine the issue for the plaintiff, a jury must be immediately impaneled to ascertain the damages, if unliquidated; or the jury, if one has been impaneled, may be required to assess the damages conditionally previous to their being discharged.

Practice as to assessment of damages.—Young v. Foster, 7 Port. 420; Gluck v. Cox, 90 Ala. 331.

ARTICLE 6.

THE CHARGE TO THE JURY.

3326 (2754) (3028) (2678) (2274). **Charge of court.**—The court may state to the jury the law of the case, and may also state the evidence when the same is disputed, but shall not charge upon the effect of the testimony, unless required to do so by one of the parties.

Principles governing giving or refusal of general charge on effect of evidence.—Freeman v. Scurlock, 27 Ala. 407; Lawler v. Norris, 28 Ala. 675; Allman v. Gann, 29 Ala. 240; Williams v. Hartshorn, 30 Ala. 211; White v. Hass, 32 Ala. 430; Drake v. Flewellen, 33 Ala. 106; Morris v. Hall, 41 Ala. 510;

Weil v. State, 52 Ala. 19; Sanders v. State, 58 Ala. 371; Schmidt v. Joseph, 65 Ala. 475; Smoot v. M. & M. R. Co., 67 Ala. 13; Green v. State, 68 Ala. 539; Ins. Co. v. Felrath, 77 Ala. 194; Seals v. Holloway, 77 Ala. 344; Hall v. Posey, 79 Ala. 84; Ala. G. Ins. Co. v. Ins. Co., 81 Ala. 329; Tabler v. Coal Co., 87 Ala. 305; A. G. S. R. v. Moody, 90 Ala. 46; Payne v. Mathis, 92 Ala. 585; Gibson v. Hardware Co., 94 Ala. 346; Bromby v. R. Co., 95 Ala. 397; Central R. Co. v. Roquemore, 96 Ala. 236; Sanders v. Edmonds, 98 Ala. 157; Home Protection of N. A. v. Whidden, 103 Ala. 203; Goetter v. Smith, 104 Ala. 481; Chambliss v. R. Co., 104 Ala. 655; Rogers v. Brooks, 105 Ala. 549; Hudson v. Bauer Grocery Co., 105 Ala. 200; Smart v. Hodges, 105 Ala. 634; Anniston L. & C. Co. v. Lewis, 107 Ala. 535; Bridges v. R. Co., 109 Ala. 287; Aultman v. Fletcher, 110 Ala. 452; Wells v. Cody, 112 Ala. 278; Ala. Midland Ry. Co. v. Parker, 112 Ala. 479. **When affirmative charge may be given in criminal case.**—Bell v. State, 104 Ala. 79. **Charge upon effect of testimony without request erroneous.**—English v. McNair, 34 Ala. 40; Baker v. Russell, 41 Ala. 279; Morris v. Hall, 41 Ala. 510; Edgar v. State, 43 Ala. 312; Foster v. State, 47 Ala. 643; Belisle v. Clark, 49 Ala. 98; Beasley v. State, 50 Ala. 149; Crawford v. McLeod, 64 Ala. 240; Pleasants v. Erskine, 82 Ala. 386; L. & N. R. Co. v. Markee, 103 Ala. 160; Postal Tel. Co. v. Brantley, 107 Ala. 683; Gary v. Woodham, 103 Ala. 421; White v. State, 111 Ala. 92; Bessemer L. & I. Co. v. Jenkins, 111 Ala. 135; Dennis v. State, 112 Ala. 64. **When must refer credibility of evidence to jury.** Crutcher v. M. & C. R. Co., 38 Ala. 579; Davidson v. State, 63 Ala. 432; A. G. S. R. Co. v. McAlpine, 80 Ala. 73; Scott v. State, 110 Ala. 48.—When court may direct verdict.—Cowen v. Hardware Co., 95 Ala. 324; Watt v. Gans, Ala. (21 So. 1011). **Court may state there is no evidence of a fact.**—Peck v. Ryan, 110 Ala. 336. **When charge based upon disbelief of all the evidence properly refused.**—Koch v. State, Ala. (22 So. 471), modifying Seibold v. Rogers, 110 Ala. 438. **Court may state conceded incidents of case without hypothesis.** Carter v. Chambers, 79 Ala. 223; Marx v. Strauss, 93 Ala. 453; Stephenson v. Wright, 111 Ala. 579; Drennen v. Smith, Ala. (22 So. 442). **And may state the theories of the parties** as established by the tendencies of the evidence. Hawes v. State, 88 Ala. 37. **May read from law-book.**—R. & D. R. Co. v. Hissong, 97 Ala. 187. **Recalling jury for additional instructions.**—Cooper v. State, 79 Ala. 54; Marcus v. State, 89 Ala. 23; Shepperd v. State, 94 Ala. 102. **Proper practice as to additional instructions after jury's retirement.**—Johnson v. State, 100 Ala. 55; Kuhl v. Long, 102 Ala. 563; Feibleman v. Ins. Co., 108 Ala. 180; Harper v. State, 109 Ala. 66. **Court may "state the evidence"; power to direct attention to admitted facts not abridged.**—Tidwell v. State, 70 Ala. 33; R. & D. R. Co. v. Trousdale, 99 Ala. 389; Dennis v. State, 112 Ala. 64. **Instructions should be given only in open court in presence of parties.**—Johnson v. State, 100 Ala. 55.

3327 (2755) (3110) (2757). **When charge must be in writing.** In all civil and criminal cases, the judge must charge the jury in writing, if the charge is required to be so given by either party, and notice of such requisition is given after the testimony is closed, and before the argument to the jury is commenced.

Oral qualification of written charge.—L. & N. R. Co. v. Hall, 91 Ala. 112.

As amended Feb. 28, 1889, p. 90.

3328 (2756) (3109) (2756) (2355). **Charges moved for by the parties.**—Charges moved for by either party must be in writing, and must be given or refused in the terms in which they are written; and it is the duty of the judge to write "given" or "refused" as the case may be, on the document, and sign his name thereto; which thereby becomes a part of the record, and charges which are given must be taken by the jury with them on retirement, and those refused must be retained by the clerk.

Statute not applicable to oral requests.—Warren v. State, 46 Ala. 549; Baker v. State, 49 Ala. 350; Richardson v. State, 54 Ala. 158. **Statute contemplates request of separate instructions.**—Teague v. Lindsey, 106 Ala. 266. **Must be given or refused in terms in which written.**—Ivey v. Phifer, 11 Ala. 535; Clealand v. Walker, 11 Ala. 1058; Phillips v. Beene, 16 Ala. 720; Bell v. Troy, 35 Ala. 184; Polly v. McCall, 37 Ala. 20; Edgar v. State, 43 Ala. 45; Knight v. Clements, 45 Ala. 89; Milner v. Wilson, 45 Ala. 478; Lyon v. Kent, 45 Ala. 656; Warren v. State, 46 Ala. 549; Bush v. Glover, 47 Ala. 167 Sawyer v. Lorillard, 48 Ala. 332; Baker v. State, 49 Ala. 350; Carson v. State, 50 Ala. 134; Eiland v. State, 52 Ala. 322; E. T. V. & G. R. Co.

v. Bayliss, 77 Ala. 420; A. G. S. R. Co. v. Moody, 92 Ala. 279; Franke v. Riggs, 93 Ala. 252; Pierson v. State, 99 Ala. 148; Hooper v. State, 106 Ala. 41; **But mere repetition of charges already given properly refused.**—Smith v. State, 92 Ala. 30; K. C. M. & B. R. Co. v. Burton, 97 Ala. 240; L. & N. R. Co. v. Hurt, 101 Ala. 34; Murphy v. State, 108 Ala. 10; Newell v. State, 109 Ala. 5; Miller v. State, 110 Ala. 69; Allen v. State, 111 Ala. 80; Koch v. State, Ala. (22 So. 471). **Court may not qualify written charge requested.**—Edgar v. State, 43 Ala. 45; Lyon v. Kent, 45 Ala. 656; Hooper v. State, 106 Ala. 41. **But if charge erroneous, proper qualification not reversible error.**—Franke v. Riggs, 93 Ala. 252; Williams v. State, Ala. (21 So. 463). **When oral remark in reference to given charge not erroneous.**—Malachi v. State, 89 Ala. 134. Explanatory charges when proper.—Bell v. Troy, 35 Ala. 184; Eiland v. State, 52 Ala. 322; Blair v. State, 52 Ala. 343; Cunningham v. State, 73 Ala. 51; McKleroy v. State, 77 Ala. 95; Lowe v. State, 88 Ala. 9; Barnard v. State, 88 Ala. 111; A. G. S. R. Co. v. Moody, 92 Ala. 279; Shepperd v. State, 94 Ala. 102; Lewis v. State, 96 Ala. 6; Brown v. State, 108 Ala. 18. **Written charges to be taken in connection with oral charge.**—Home Protection of N. A. v. Whidden, 103 Ala. 203; Martin v. State, 104 Ala. 71. **Written charges not entitled to undue prominence.**—Smith v. State, 103 Ala. 40. **"Given" or "refused" to be indorsed, etc.**—Little v. State, 58 Ala. 265; Tyree v. Parham, 66 Ala. 424; Mobile Savings Bank v. Fry, 69 Ala. 348; Allen v. State, 74 Ala. 557; Holley v. State, 75 Ala. 14; Barnewall v. Murrell, 108 Ala. 366. **How judge may sign name.**—Kennedy v. Smith, 99 Ala. 83. **"Become part of record"—bill of exceptions necessary for review.**—Tuscaloosa Co. v. Logan, 50 Ala. 503; Mobile Savings Bank v. Fry, 69 Ala. 348; A. G. S. R. Co. v. Dobbs, 101 Ala. 219; Nuckols v. State, 109 Ala. 2. **To what extent considered without bill of exceptions.**—H. A. & B. R. Co. v. South, 112 Ala. 642. **Given charges must be read to jury.**—A. G. S. R. Co. v. Arnold, 80 Ala. 600. **Right of opposite party to examine requested charges.**—A. G. S. R. Co. v. Arnold, 80 Ala. 600. **Formerly, refused charges also taken out by jury.**—Beard v. Ryan, 78 Ala. 37; Redus v. State, 82 Ala. 53. **Now jury takes only those given.**—Acts 1888-9, p. 90; Washington v. State, 106 Ala. 58. Error to disallow jury to take given charges.—Miller v. Hampton, 37 Ala. 342. Right of party to withdraw given charge.—Bonner v. State, 107 Ala. 97, distinguishing Redus v. State, 82 Ala. 53. **Formerly, exception to charges given or refused necessary to obtain review.** Tennile v. Walshe, 81 Ala. 160. **Exception not now necessary** (sec. 613).—Whitaker v. State, 106 Ala. 30; O'Connor M. & M. Co. v. Dickson, 112 Ala. 304. **But errors must be assigned thereon.**—Wesson v. State, 109 Ala. 61. **What sufficient showing that requested charge was in writing.**—Mobile Savings Bank v. Fry, 69 Ala. 348; M. & B. R. Co. v. Ladd, 92 Ala. 287; A. G. S. R. Co. v. Dobbs, 101 Ala. 219. **Must be asked in writing.**—Crosby v. Hutchinson, 53 Ala. 5; Wheelis v. Rhodes, 70 Ala. 419; Winslow v. State, 76 Ala. 42; Ricketts v. R. Co., 85 Ala. 600; Bellinger v. State, 92 Ala. 86.

3329 (2757) (3023) (2673) (2269). **Jury take out written evidence.**—All instruments of evidence, and depositions read to the jury may be taken out by them on their retirement.

Jury may take out copies of accounts used by witnesses.—Mooney v. Hough, 84 Ala. 80; Foster v. Smith, 104 Ala. 248.

ARTICLE 7.

AMENDMENTS TO PLEADINGS BEFORE AND AFTER JUDGMENT.

3330 (2832) (3155) (2808) (2402). **Proceedings not vitiated by want of form.**—No summons, complaint, plea, return, process, judgment, or other proceeding, can be arrested, quashed, or reversed for any defect or want of form, in any of the courts of this state; but the courts must proceed and give judgment according to the right of the cause and matter in law, without regard to any defect or want of form in the summons, complaint, or other pleading.

Drummond v. Wright, 1 Ala. 205; Sheppard v. Melloy, 12 Ala. 561; Ala. Conference v. Price, 42 Ala. 39.

3331 (2833) (3156) (2809) (2403). **Amendments allowed.**—The

courts, respectively, must, whilst the cause is in progress, amend all and every such imperfection and defect of form, on motion of the party, without costs and without delay, unless injustice will thereby be done to the opposite party; and must permit the amendment of the complaint by striking out or adding new parties plaintiff, or by striking out or adding new parties defendant, upon such terms and conditions as the justice of the case may require.

General scope of statute.—Crimm v. Crawford, 29 Ala. 623; Johnson v. Martin, 54 Ala. 271; Sanders v. Knox, 57 Ala. 80; Beavers v. Hardie, 59 Ala. 570; Steed v. McIntyre, 68 Ala. 407; Mahan v. Smitherman, 71 Ala. 563; Mobile Life Ins. Co. v. Randall, 74 Ala. 170; Doe v. Richardson, 76 Ala. 329; Semple v. Glenn, 91 Ala. 245; L. & N. R. Co. v. Markee, 103 Ala. 160; Ex parte Sullivan, 106 Ala. 80; Springfield F. & M. Ins. Co. v. De Jarnett, 111 Ala. 248. **Amendment by striking out or adding parties plaintiff; when allowable.** Godbold v. Blair, 27 Ala. 592; Sanders v. Knox, 57 Ala. 80; Berry v. Ferguson, 58 Ala. 314; Harris v. Swanson, 62 Ala. 299; McBrayer v. Cariker, 64 Ala. 50; Williams v. Bowdin, 68 Ala. 126; So. Ex. Co. v. Boullemet, 100 Ala. 275; Lowery v. Rowland, 104 Ala. 420; Weeden v. Jones, 106 Ala. 336. When not. Leaird v. Moore, 27 Ala. 326; Friend v. Oliver, 27 Ala. 532; Stodder v. Grant, 28 Ala. 416; Pickens v. Oliver, 32 Ala. 626; Tarver v. Smith, 38 Ala. 135. **Striking out or adding parties defendant.**—McCaskey v. Pollock, 82 Ala. 174; Englehardt v. Clanton, 83 Ala. 336; Rand v. Gibson, 109 Ala. 266. **Amendment striking out name of nominal plaintiff allowable.**—Dwyer v. Kennemore, 31 Ala. 404. **Also inserting name of nominal plaintiff.**—Harris v. Plant, 31 Ala. 639; Johnson v. Martin, 54 Ala. 271; Am. Un. Tel. Co. v. Daughtery, 89 Ala. 191. **Also striking out "for the use of" another.**—Dane v. Glennon, 72 Ala. 160; Caldwell v. Smith, 77 Ala. 157. **Also changing capacity in which plaintiff or defendant sues.**—Crimm v. Crawford, 29 Ala. 623; Farrow v. Bragg, 30 Ala. 261; Agee v. Williams, 30 Ala. 636; Ikelheimer v. Chapman, 32 Ala. 676; Longmire v. Pilkington, 37 Ala. 296; McCoy v. Watson, 51 Ala. 466; Long v. Patterson, 51 Ala. 414; Lucas v. Pittman, 94 Ala. 616 (overruling Taylor v. Taylor, 43 Ala. 649, and Christian v. Morris, 50 Ala. 585). **Also adding new beneficiaries.**—Humphries v. Dawson, 38 Ala. 199. **Change from guardian of ward to ward by next friend not allowable.**—Fowlkes v. R. Co., 38 Ala. 310. **Amendment correcting Christian name allowable.**—N. Y. Con. Co. v. Meyer, 51 Ala. 325; S. & N. Ala. R. Co. v. Small, 70 Ala. 499. **Also inserting full name in lieu of initial.**—Beggs v. Wellman, 82 Ala. 391. **Also striking out middle name or initial.**—Griel v. Solomon, 82 Ala. 85. **Also inserting individual names of parties plaintiff and defendant.**—Sims v. Jacobson, 51 Ala. 186. **Also averring corporate character.**—Ala. Conference v. Price, 42 Ala. 47; So. Life Ins. Co. v. Roberts, 60 Ala. 431; Western Ry. v. Sistrunk, 85 Ala. 352; Rosenberg v. Claflin Co., 95 Ala. 249. **Also correcting corporate name.**—Caldwell v. Branch Bank, 11 Ala. 549; Smith v. Tallassee, 30 Ala. 650; Georgia Pac. Ry. Co. v. Propst, 83 Ala. 518; Singer Mfg. Co. v. Greenleaf, 100 Ala. 272; Ex parte Nicrosi, 103 Ala. 104; S. A. M. Ry. v. Buford, 106 Ala. 303, distinguishing Western Ry. v. McCall, 89 Ala. 375. **Amendment striking out sole plaintiff or defendant not allowable.**—Ex parte Collins, 49 Ala. 69; Davis Ave. R. Co. v. Mallon, 57 Ala. 168; Western Ry. v. McCall, 89 Ala. 375. **Nor adding defendant not liable at commencement of suit.**—Burns v. Campbell, 71 Ala. 272. **Nor when it operates discontinuance.**—Mock v. Walker, 42 Ala. 668; Whitaker v. Van Horn, 43 Ala. 255; Fennell v. Masterson, 43 Ala. 268; Bachus v. Mickle, 45 Ala. 445; Masterson v. Gibson, 56 Ala. 56. **When striking out one defendant will not discontinue as to another.** Jones v. Nelson, 51 Ala. 471; Steed v. McIntyre, 68 Ala. 407; Jones v. Englehardt, 78 Ala. 505; Englehardt v. Cannon, 83 Ala. 336; Cobb v. Keith, 110 Ala. 614. **When amendment introduces no new cause of action.**—Prater v. Miller, 25 Ala. 320; Burch v. Taylor, 32 Ala. 26; Taylor v. Perry, 48 Ala. 240; Robinson v. Darden, 50 Ala. 71; Boardman v. Parrish, 56 Ala. 54; Mitchell v. Davis, 58 Ala. 615; Phillips v. Smith, 62 Ala. 575; Stringer v. Waters, 63 Ala. 361; Ricketts v. Weeden, 64 Ala. 548; Simpson v. R. Co., 66 Ala. 85; Steed v. McIntyre, 68 Ala. 407; Mohr v. Lemle, 69 Ala. 180; Dowling v. Blackman, 70 Ala. 303; Foster v. Napier, 73 Ala. 595; A. G. S. R. Co. v. Chapman, 83 Ala. 453; Young v. Arntze, 86 Ala. 116; Albright v. Mills, 86 Ala. 324; Elyton Land Co. v. Mingea, 89 Ala. 521; Oden v. Bonner, 93 Ala. 393; K. C. M. & B. R. Co. v. Cobb, 102 Ala. 356; L. & N. R. Co. v. Woods, 105 Ala. 561; Ex parte Sullivan, 106 Ala. 80; Springfield F. & M. Co. v. De Jarnett, 111 Ala. 248. **When new cause introduced.**—Harris v. Hillman, 26 Ala. 380; Mobile Ins. Co. v. Randall, 74 Ala. 176; Leatherwood v. Suggs, 96 Ala. 383. **Adding common counts.** Boylston v. Sherran, 31 Ala. 538; Mahan v. Smitherman, 71 Ala. 563; Semple

v. Glenn, 91 Ala. 245; Collins v. Stix, 96 Ala. 338; Springfield F. & M. Ins. Co. v. De Jarnett, 111 Ala. 248. **Amendment causing misjoinder not allowable.**—Wilson v. Stewart, 69 Ala. 302; Sharpe v. Bank, 87 Ala. 644. **Nor demurrable amendment.**—Beavers v. Hardie, 59 Ala. 570. **Nor when not supported by evidence.**—Ib. **Doctrine of relation as affecting statute of limitations.**—Agee v. Williams, 30 Ala. 636; Bradford v. Edwards, 32 Ala. 628; King v. Avery, 37 Ala. 169; Lansford v. Scott, 51 Ala. 557; Stringer v. Waters, 63 Ala. 361; Ricketts v. Weeden, 64 Ala. 548; Mohr v. Lemle, 69 Ala. 180; Dowling v. Blackman, 70 Ala. 303; Evans v. Richardson, 76 Ala. 329; Seibs v. Englehardt, 78 Ala. 508; A. G. S. R. Co. v. Arnold, 80 Ala. 600; West. Un. Tel. Co. v. Way, 83 Ala. 542; Barker v. Ry. Co., 92 Ala. 314; A. & A. R. Co. v. Ledbetter, 92 Ala. 326; B'ham F. & M. Co. v. Gross, 97 Ala. 220; Taylor v. Smith, 104 Ala. 537; L. & N. R. Co. v. Woods, 105 Ala. 561; M. & A. of B'ham v. Coleman, 111 Ala. 407; H. A. & B. R. Co. v. Sampson, 112 Ala. 425; City Council of Sheffield v. Harris, 112 Ala. 614. **When objection to amendment waived.**—Bryan v. Wilson, 27 Ala. 208; Felkel v. Hicks, 32 Ala. 25. **Notice to strike, not demurrer, mode of reaching variance or departure.**—Turner v. Roundtree, 30 Ala. 706; Springfield F. & M. Ins. Co. v. De Jarnett, 111 Ala. 248; T. & C. R. Co. v. Danforth, 112 Ala. 80. **Allowance not revisable, without objection.**—Stewart v. Goode, 29 Ala. 476. **Abatement not curable by amendment.**—Evans v. Welch, 63 Ala. 250. **Amendment of information against attorney allowable.**—Thomas v. Stepney, 58 Ala. 365. **Amendments by reference to and adoption of portions of other counts.**—B'ham Ry. & El. Co. v. Allen, 99 Ala. 359. **When amendment need not be signed by counsel.**—Payne v. Crawford, 97 Ala. 604. **After amendment to complaint pleas and demurrers should be refiled.**—Gadsden L. & I. Co. v. Bank, 96 Ala. 618; L. & N. R. Co. v. Woods, 105 Ala. 561.

3332 (2834) (3157) (2810) (2404). **Mistake of name, sum, quantity, or date, cured by judgment.**—Any mistake in the Christian or surname of either party, sum of money, quantity of merchandise, day, month, or year, in the summons, complaint, or other pleading, the same being right in any part of the record or proceedings, must, after judgment, be considered as having been amended whilst the cause was in progress.

See citations to two preceding sections.

3333 (2835) (3158) (2811) (2405). **When judgment not set aside, if complaint contain cause of action.**—No judgment can be arrested, annulled, or set aside, for any matter not previously objected to, if the complaint contain a substantial cause of action.

Per contra, when substantial cause of action not stated, recovery either by default or after trial not sustainable.—Browder v. Gaston, 30 Ala. 677; Childress v. Mann, 33 Ala. 206; Douglas v. Beasley, 40 Ala. 142; Winnemore v. Matthews, 45 Ala. 449; Taylor v. Jones, 52 Ala. 78; Thomas v. Stepney, 58 Ala. 365; St. Clair Co. v. Smith, 112 Ala. 347; L. & N. R. Co. v. Williams, Ala. (21 So. 938); Goodwin v. Forman, Ala. (21 So. 946). **Complaint not first assailable on appeal for defects available on demurrer, when substantial cause of action stated.**—Blount v. McNeill, 29 Ala. 473; Stewart v. Goode, 29 Ala. 476; Walker v. Ins. Co., 31 Ala. 529; Mahoney v. O'Leary, 34 Ala. 97; Randolph v. Sharpe, 42 Ala. 265; Watson v. Knight, 44 Ala. 352; Relfe v. Valentine, 45 Ala. 286; Ware v. Rope Co., 47 Ala. 667; Ritch v. Thornton, 65 Ala. 309; Home Protection of N. A. v. Caldwell, 85 Ala. 607; H. A. & B. R. Co. v. Dusenberry, 94 Ala. 413; Marion v. Regenstein, 98 Ala. 475; Kyle v. Caravello, 103 Ala. 150. **When individual names of partners not given in suit by partnership, judgment by default not supportable.**—Lanford v. Patton, 44 Ala. 584; Moore v. Burns, 60 Ala. 269; Simmons v. Titche, 102 Ala. 317. **But defect waived if defendant appears and makes no objection.**—Moore v. Watts, 81 Ala. 265; Foreman v. Weil, 98 Ala. 495; B'ham L. & A. Co. v. Bank, 100 Ala. 249. **Objection to verdict first made on appeal, when not available.**—Roddy v. McGetrick, 49 Ala. 159. **Judgment not arrested nor reversed for an irregularity, amendable or waived by appearance.**—Pool v. Minge, 50 Ala. 100; Parker v. Abrams, 50 Ala. 35; Shouse v. Lawrence, 51 Ala. 559; M. & M. R. Co. v. Smith, 51 Ala. 329; Hayes v. Solomon, 90 Ala. 520; K. C. M. & B. R. Co. v. Crocker, 95 Ala. 412. **Objection that judgment exceeds amount claimed must be made in lower court.**—Drake v. Johnston, 50 Ala. 1; Gov. St. R. Co. v. Hanlon, 53 Ala. 70; Smith v. Dick, 95 Ala. 311. **When error will be corrected on appeal.**—Smith v. Robinson, 11 Ala. 270.

3334 (2836) (3154) (2807) (2401). **Amendment within three years; when allowed.**—The judges of the circuit courts may, at any time within three years after the rendition of final judgment, upon the application of either party, amend any clerical error, mistake in the calculation of interest, or other mistake of the clerk, when there is sufficient matter apparent on the record or entries of the court to amend by. No cause can be reversed for such error or defect by the supreme court, unless the court of original jurisdiction refuses to make the amendment.

Not a statute of limitations—amendment may be made after three years. Sartor v. Bank, 29 Ala. 353. **Scope of power to amend—not a revisory power.** Gibson v. Wilson, 18 Ala. 63; Harris v. Billingsley, 18 Ala. 438; Whorley v. R. Co., 72 Ala. 20; Stoutz v. Rouse, 75 Ala. 431; Browder v. Faulkner, 82 Ala. 257; Tippins v. Peters, 103 Ala. 196. **Some instances of clerical errors.**—Dickson v. Dobson, 8 Ala. 252; Sellers v. Smith, 11 Ala. 264; Philipe v. Harberlee, 45 Ala. 597; Ex parte Jones, 61 Ala. 399; Whorley v. M. & C. R. Co., 72 Ala. 20; Ladiga Mill Co. v. Smith, 78 Ala. 108; Neff v. Edwards, 81 Ala. 246; Brown v. Barnes, 93 Ala. 58; Jones v. Woodstock Iron Co., 95 Ala. 551; Kyle v. Caravello, 103 Ala. 150. **Clerical errors will be corrected on appeal.**—Gray v. Raiborn, 53 Ala. 40; Ladiga Mill Co. v. Smith, 78 Ala. 108; Kennon v. Adams, 100 Ala. 288; Seisel v. Folmar, 103 Ala. 491; Tobias v. Treist, 103 Ala. 664; Ramey v. Grocery Co., 108 Ala. 476. **Circuit court may not amend judgment after affirmance by supreme court.**—Stephens v. Norris, 15 Ala. 79. While statute does not extend to criminal cases, **court has inherent power of amendment in all cases.**—Ex parte Jones, 61 Ala. 399.

ARTICLE 8.

NOTICE OF MOTIONS TO SATISFY JUDGMENTS OR TO AMEND NUNC PRO TUNC.

3335 (2865) (3172) (2828). **Motion to enter satisfaction of judgment or decree; notice.**—When a motion is made to enter satisfaction of a judgment or decree, because of matters extrinsic to the record, notice to the plaintiff therein, or, if he be dead, to his personal representative, is essential; if the plaintiff, or his personal representative, reside within the state, the notice must be in writing, and must be served ten days before the time of hearing the motion; if he or they reside without the state, or their residence be unknown, affidavit of the fact being made and filed, notice must be given by the clerk, register, judge of probate, or justice of the peace, by advertisement in some newspaper published in the county, for three consecutive weeks, or if there be no such paper published in the county, by advertisement in a newspaper published nearest to the county.

Parties have right to demand jury trial and to cross-examine witnesses. Bruce v. Barnes, 20 Ala. 219. **When judgment satisfied by purchase of property under execution,** although defendant without title.—Thomas v. Glazener, 90 Ala. 537.

3336 (2866) (3172) (2828). **Motion to set aside judgment or decree, or to set aside entry of satisfaction; notice.**—When a motion is made to set aside a final judgment or decree, or the entry of satisfaction thereof for any cause, notice to the party adversely interested, or, if he be dead, to his personal representative, is essential; and if such party, or his personal representative, reside within the state, the notice must be in writing, and must be served ten days before the hearing of the motion; if he or they reside without the state,

or their residence be unknown, affidavit of the fact being made and filed, notice must be given by the clerk, register, judge of probate, or justice of the peace, by advertisement for three consecutive weeks in a public newspaper published in the county, or if there be no such paper published in the county, by advertisement in a newspaper published nearest to the county.

Unless judgment void on its face, notice necessary.—Glass v. Glass, 76 Ala. 368. **What sufficient notice.**—Jennings v. Pearce, 101 Ala. 538. **Order, judgment or decree void on its face may be expunged or vacated at subsequent term.**—Buchanan v. Thomason, 70 Ala. 401; Baker v. Barclift, 76 Ala. 414; Schwarz v. Oppenheimer, 90 Ala. 462; Carlisle v. Killebrew, 91 Ala. 351; Morgan v. Lehman, 92 Ala. 440; Kohn v. Haas, 95 Ala. 478; Wiggins v. Steiner, 103 Ala. 655; Martin v. Atkinson, 108 Ala. 314.

3337 (2867). **Amendments of judgments, decrees, or orders nunc pro tunc.**—Notice is essential of a motion or application to amend nunc pro tunc the judgment, decree, or order of a court of record, if the amendment be not of mere clerical errors; if the party adversely interested, or, if he be dead, his personal representative, reside in the state, the notice must be in writing, and must be served ten days before the hearing of the motion or application; if he or they reside without the state, or their residence be unknown, affidavit of the fact being made and filed, notice must be given by the clerk, register, or judge of probate, by advertisement in some newspaper published in the county for three consecutive weeks; or if there be no such paper published in the county, by advertisement in a newspaper published nearest to the county.

Notice essential.—McEachin v. Warren, 92 Ala. 554. Power of court to amend nunc pro tunc; purpose and scope of such amendments.—Worley v. M. & C. R. Co., 72 Ala. 20; Emerson v. Heard, 81 Ala. 443; Browder v. Faulkner, 82 Ala. 257; Brown v. Barnes, 93 Ala. 58; Tippins v. Peters, 103 Ala. 196. **Clerical errors in record amendable at subsequent term and after appeal.**—Moore v. Horne, 5 Ala. 234; Cunningham v. Fontaine, 25 Ala. 644; Ware v. Brewer, 34 Ala. 114; Harris v. Martin, 39 Ala. 556; Gray v. Raiborn, 53 Ala. 40; Parker v. Wimberly, 78 Ala. 64; Seymour v. Harrow Co., 81 Ala. 250; Myers v. Conway, 90 Ala. 109.

3338 (3306) (2868). **Cost of motion or application.**—If a motion or application made under either of the three preceding sections is not contested, the costs must be adjudged against the applicant; if contested, the costs must be adjudged against the unsuccessful party.

3339 (2869). **Bill of exceptions; appeal.**—An exception may be taken on the hearing of any motion or application made under either of such three sections to any ruling, charge, opinion, or decision of the court, and a bill of exceptions signed and certified as part of the record, as in civil cases in courts of law; and from the judgment, decree, or order of the court, an appeal may be taken to the supreme court within thirty days after the rendition of the judgment, decree, or order, under the rules and regulations governing appeals from the final judgments or decrees of the circuit or chancery court, or court of probate.

Without bill of exceptions, evidence presumed to support judgment on motion.—Dobson v. Dickson, 8 Ala. 252; Burdeshaw v. Comer, 108 Ala. 617.

3340 (2870). **Issues of fact triable by jury.**—If the motion

or application is to enter satisfaction of a judgment or decree, or to set aside the entry of satisfaction of a judgment or decree, on request of either party, the issues of fact must be tried by a jury.

Declaratory of law as announced in Bruce v. Barnes, 20 Ala. 219.

ARTICLE 9.

NEW TRIAL ON RELEASE FOUND WITHIN TWO YEARS; REHEARING IN FOUR MONTHS.

3341 (2871) (3160) (2813) (2407). **Right of new trial on release found.**—When a party had a release or discharge in writing of a claim upon which judgment has been rendered against him, which was lost or mislaid at the trial, and which such party was unable to prove by secondary evidence, but has since found, the circuit court may cause the action to be retried at any time after the discovery of the release or discharge, within two years after judgment.

Not applicable when lost writing merely disproves consideration of claim sued on.—Davis v. McCampbell, 37 Ala. 609. **Nor when party at the trial proved contents** of lost receipt by parol.—Reeves v. Skipper, 94 Ala. 407. Statute **extends time otherwise allowed for motion for new trial.**—Ex parte Highland Ave. & B. R. Co., 105 Ala. 221.

3342 (2872) (3161) (2814) (2408). **When rehearing granted within four months.**—When a party has been prevented from making his defense by surprise, accident, mistake, or fraud, without fault on his part, he may, in like manner, apply for a rehearing at any time within four months from the rendition of the judgment.

When not entitled to rehearing.—White v. Ryan, 31 Ala. 400; Shields v. Burns, 31 Ala. 535; Elliott v. Cook, 33 Ala. 490; Stewart v. Williams, 33 Ala. 492; Davis v. McCampbell, 37 Ala. 609; Allington v. Tucker, 38 Ala. 655; Dothard v. Teague, 40 Ala. 583; Callahan v. Lott, 42 Ala. 167; Ex parte North, 49 Ala. 385; Bruce v. Williamson, 50 Ala. 313; Wheeler v. Morgan, 51 Ala. 573; Martin v. Hudson, 52 Ala. 279; Waddill v. Weaver, 53 Ala. 58; Ex parte Walker, 54 Ala. 577; Bingham v. Montgomery, 59 Ala. 334; Ex parte Wallace, 60 Ala. 267; Brock v. S. & N. R. Co., 65 Ala. 79; Blood v. Beadle, 65 Ala. 103; Renfro v. Merryman, 71 Ala. 195; Ex parte O'Neal, 72 Ala. 560; Freeman v. Gragg, 73 Ala. 199; Talladega Mercantile Co. v. McDonald, 97 Ala. 508; Barron v. Robinson, 98 Ala. 351; Turner Coal Co. v. Glover, 101 Ala. 289; National Fertilizer Co. v. Hinson, 103 Ala. 532. **A suit within statute requiring security for costs.**—Garrett v. Terry, 33 Ala. 514. **When security for costs waived.**—Heflin v. Rock Mills, 58 Ala. 613. **Nature of case, proof and judgment.**—Pratt v. Keils, 28 Ala. 390. **Statute not applicable to cases of common-law certiorari.** Ex parte Madison T. Co., 62 Ala. 93. **Petition after four months too late.** White v. Ryan, 31 Ala. 400; State v. Gardner, 45 Ala. 46; Ex parte Johnson, 60 Ala. 429. **Statute extends time otherwise allowed for new trial or rehearing.**—Ex parte Highland Ave. & B. R. Co., 105 Ala. 221. **From order refusing rehearing, appeal lies.**—White v. Ryan, 31 Ala. 400; Dothard v. Teague, 40 Ala. 583; Ex parte North, 49 Ala. 385; O'Neal v. Kelly, 72 Ala. 559; Seymour v. Farquhar, 95 Ala. 527. **When rehearing improperly granted, mandamus, not appeal, proper remedy.**—Callahan v. Lott, 42 Ala. 167; Carroll v. Vaughan, 48 Ala. 352; Fuller v. Boggs, 49 Ala. 127; Ex parte North, 49 Ala. 385; Bruce v. Williamson, 50 Ala. 313; Ex parte Walker, 54 Ala. 577; Heflin v. Rock Mills, 58 Ala. 613; Ex parte Wallace, 60 Ala. 267; O'Neal v. Kelly, 72 Ala. 559; Chastain v. Armstrong, 85 Ala. 215. **When rulings upon pleadings and evidence not considered on mandamus.**—Ex parte Farquhar, 99 Ala. 375. **Practice after order granting rehearing is vacated on mandamus.** Seymour v. Farquhar, 95 Ala. 527.

3343 (2873) (3162) (2815) (2409). **Contents of petition; notice; how petition controverted.**—In the cases specified in the two preceding sections, the proceeding is by petition to a judge of the circuit

court, stating the matter complained of, with a prayer for the appropriate relief. The facts stated in the petition must be sworn to, unless they appear from a transcript of the record, submitted with the petition; and the petitioner shall give the adverse party, or his attorney, ten days' notice of the judge before whom, and the time when, and place where the application will be made, and also cause a copy of the petition to be served on such adverse party ten days before such application is made; and the adverse party may controvert the petition by affidavit in writing.

Petition must be presented to judge; filing with clerk not sufficient.—Ex parte Johnson, 60 Ala. 429. **Jurisdiction to hear and determine petition conferred upon the court, not the judge.**—Ex parte Farquhar, 99 Ala. 375. **Petition amendable.**—Dothard v. Teague, 40 Ala. 583; Ex parte North, 49 Ala. 385; Seymour v. Farquhar, 95 Ala. 527; Ex parte Farquhar, 99 Ala. 375. **Affidavits of third persons no aid to petition.**—Callahan v. Lott, 42 Ala. 167. **What petition must show.**—White v. Ryan, 31 Ala. 400; Dothard v. Teague, 40 Ala. 583; Callahan v. Lott, 42 Ala. 167; Bingham v. Montgomery, 59 Ala. 334; Ex parte Wallace, 60 Ala. 267; Chastain v. Armstrong, 85 Ala. 215; Barron v. Robinson, 98 Ala. 351; Turner Coal Co. v. Glover, 101 Ala. 289; National Fertilizer Co. v. Hinson, 103 Ala. 532. **Petition should not be dismissed on general motion.** State v. Gardner, 45 Ala. 46; Martin v. Hudson, 52 Ala. 279.

3344 (2874)(3163)(2816)(2410). **Supersedeas ordered by judge.** The judge to whom the petition is made must, if satisfied that the petitioner is entitled to the relief sought, make the necessary order for a supersedeas to issue, or in restraint of the issue or collection of the execution; and the judge shall have power to impose such terms as he may think proper for granting an order for the supersedeas.

When supersedeas may be reinstated.—Ex parte Farquhar, 99 Ala. 375.

3345 (2875) (3164) (2817) (2411). **Bond before supersedeas issues.**—The supersedeas must not issue, nor the execution be suspended, unless the petitioner, or some one for him, give bond in double the amount of the judgment or execution, or in double the amount superseded or restrained, payable to the plaintiff in the judgment, or his personal representative, with sufficient sureties, to be approved by the clerk, and conditioned to pay such judgment or execution, with interest, and all damages and costs awarded on the trial of the proceeding against him.

3346 (2876) (3165, 3170) (2818, 2823) (2412, 2417). **Petition tried at first term; on denial on oath supersedeas dismissed.**—The facts alleged in the petition must be tried, or the cause reheard, at the first term after the granting of the order, unless for cause the same is continued; and the court may direct the trial of all questions of fact by a jury, upon an issue made up under its direction. When the cause is not tried or reheard at such first term, the court may, on the denial on oath by the adverse party of the facts alleged in the petition, make an interlocutory order dismissing the supersedeas, or dissolving the restraining order.

After vacation, on mandamus, of order granting rehearing, **case stands for trial at first term** under this section.—Seymour v. Farquhar, 95 Ala. 527. **Jurisdiction** to hear and determine petition **conferred on the court, not the judge.**—Ex parte Farquhar, 99 Ala. 375.

3347 (2877) (3166) (2819) (2413). **Refunding bond required, on such dismissal, before execution issues.**—In the case provided for

in the preceding section, no execution can issue, unless such party, his agent, or attorney, execute a refunding bond, in double the amount of the judgment or execution, payable to the adverse party, with sufficient surety, to be approved by the clerk, and conditioned that if the final determination of the cause is against him, he will refund the amount collected, and interest.

3348 (2878) (3167) (2820) (2414). **Damages when petition not meritorious.**—If, on the final hearing of the cause, it is decided against the petitioner, and it appears that the petition was not founded on a just or meritorious cause, the court may award damages, not exceeding ten per cent. on the amount superseded or restrained.

3349 (2879) (3171) (2824). **Applicable to plaintiffs.**—The provisions of this article shall be construed as applicable to plaintiffs, and those for whose benefit suits are brought, who must comply with its provisions, so far as applicable to them, before they are entitled to relief.

3350 (2880) (3168) (2821) (2415). **Bonds have the force and effect of judgments.**—The bonds given under this article have the force and effect of judgments, and executions may issue against all or any of the obligors, either for the amount superseded or restrained, damages and costs, or the amount collected of the petitioner, after the execution of the refunding bond, and interest on such amount.

3351 (2881) (3169) (2822) (2416). **Right to pass on validity of execution not affected.**—The provisions of this article must not be construed to prevent the circuit court from deciding, on an application made in term time, on the validity of any writ of execution.

ARTICLE 10.

FORMS OF PLEADINGS IN CIVIL CASES.

3352 (p. 790) (3009) (p. 673) (p. 551). **Complaints.**

1. ON PROMISSORY NOTE BY PAYEE AGAINST MAKER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due by promissory note made by him on the —— day of ———, and payable on the —— day of ———, with interest thereon.

E. F., Att'y for pl'ff.

Letondal v. Huguenin, 26 Ala. 552; Cumming v. Richards, 32 Ala. 459; Beggs v. Arnotte, 80 Ala. 179; McCrummen v. Campbell, 82 Ala. 566.

2. ON BILL OF EXCHANGE BY INDORSEE AGAINST ACCEPTOR.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due on a bill of exchange drawn by one E. F. on the —— day of ———, for ——— dollars, upon the defendant, and accepted by him, payable to one G. H. on the —— day of ———, which bill, before maturity, was

indorsed to the plaintiff, and, with interest thereon, is due and unpaid.

I. J., Att'y for pl'ff.

Ala. Mining Co. v. Brainard, 35 Ala. 476; Woodlawn v. Purvis, 108 Ala. 511.

3. INDORSEE AGAINST DRAWER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due on a bill of exchange drawn by him on the —— day of ——, on E. F. for the payment of —— dollars to G. H., on the —— day of ——, by whom the said bill was indorsed to the plaintiff, and the said bill, not being paid at maturity (or not being accepted, as the case may be), was duly protested, of which the defendant had due notice. The said bill, with the damages and interest thereon, is still unpaid.

I. J., Att'y for pl'ff.

NOTE.—If the bill sued on is a foreign bill of exchange, the fact should be stated, and the place on which it was drawn.

4. INDORSEE AGAINST INDORSER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due on a bill of exchange drawn by E. F. on the —— day of ——, upon G. H. for the payment of —— dollars to the defendant, by whom the said bill was indorsed to the plaintiff, and the said bill, not being paid at maturity (or not being accepted, as the case may be), was duly protested, of which the defendant had due notice. The said bill, with the damages and interest thereon, is still unpaid.

I. J., Att'y for pl'ff.

Battle v. Weems, 44 Ala. 105.

5. ON BOND WITHOUT PENALTY BY OBLIGEE AGAINST OBLIGOR.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due by bond executed by him on the —— day of ——, payable on the —— day of ——, with interest thereon.

E. F., Att'y for pl'ff.

6. ON NOTE, OR BOND WITHOUT PENALTY, BY ASSIGNEE AGAINST ASSIGNOR.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars as the assignee of a note (or bond, as the case may be), executed on the —— day of ——, by E. F., payable to the defendant (or as the case may be) on the —— day of ——, and assigned to the plaintiff, upon which suit has been brought according to law to charge the maker, judgment obtained, execution issued according to law and returned "no property found," which note (or bond), with the interest thereon, is still unpaid.

G. H., Att'y for pl'ff.

NOTE.—If the maker has not been sued for sufficient reason, the facts should be concisely stated.

Fournier v. Black, 32 Ala. 41.

7. ON BOND WITH CONDITION.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars for the breach of the condition of a bond (or agreement, as the case may be), made by the defendant on the —— day of ——, payable to the plaintiff, in the sum of —— dollars, with condition (here state the condition concisely). And the plaintiff says the condition of the said bond (or agreement) has been broken by the defendant in this (here state concisely the breaches complained of, first, second, third, etc.), to the damage of the plaintiff as above stated.

E. F., Att'y for pl'ff.

Dothard v. Shied, 69 Ala. 135; Sprowl v. Lawrence, 33 Ala. 675; Ladd v. Smith, 10 So. 836 (not officially reported).

8. ON AN INDEPENDENT COVENANT OR AGREEMENT.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for the breach of a covenant (or agreement, as the case may be), entered into by him on the —— day of ——, by which he promised (here set out the covenant or agreement, and the breach complained of).

E. F., Att'y for pl'ff.

NOTE.—If a demand is necessary to entitle the plaintiff to his action, it must be averred.

9. ON A DEPENDENT COVENANT OR AGREEMENT.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for the breach of a covenant (or agreement, as the case may be), entered into by him on the —— day of ——, in substance as follows: (Here set out the covenant or agreement, or according to its legal effect.) And the plaintiff says that, although he has complied with all its provisions on his part, the defendant has failed to comply with the following provisions thereof, viz.: (Here insert the matter complained of.)

E. F., Att'y for pl'ff.

Bonifay v. Hassell, 100 Ala. 269.

10. ON AN ACCOUNT OR VERBAL CONTRACT (COMMON COUNTS).

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due from him by account on the —— day of —— (or for money loaned by the plaintiff to the defendant on the —— day of ——; or on account stated between the plaintiff and defendant on the —— day of ——; or for merchandise, goods and chattels sold by the plaintiff to the defendant on the —— day of ——; or for money paid by the plaintiff for the defendant on the —— day of —— at his request; or for work and labor done for the defendant by the plaintiff on the —— day of —— at his request; or for money on the —— day of —— received by the defendant to the use of the plaintiff), which sum of money

(or sums of money, if there are more than one of the above counts set out), with the interest thereon, is still unpaid.

E. F., Att'y for pl'ff.

Chickering v. Bromberg, 52 Ala. 528; Smith v. Dick, 95 Ala. 311; Bradfield v. Patterson, 106 Ala. 397.

11. ON AN ACCOUNT OR VERBAL CONTRACT BY TRANSFEREE.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, due from him by account between the defendant and E. F. on the —— day of —— (or for money loaned by E. F. to the defendant on the —— day of ——; or on account stated between the defendant and E. F. on the —— day of ——; or for merchandise, goods and chattels sold by E. F. to the defendant on the —— day of ——; or for money paid by E. F. for the defendant on the —— day of —— at his request; or for work and labor done by E. F. for the defendant on the —— day of —— at his request; or for money on the —— day of —— received by the defendant to the use of E. F.), which sum of money (or sums of money, if there are more than one of the above counts set out), with the interest thereon, is still unpaid, and is the property of the plaintiff.

G. H., Att'y for pl'ff.

12. ON A POLICY OF LIFE-INSURANCE.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars due on a policy, whereby the defendant, on the —— day of ——, insured for the term of —— years, the life of E. F., who died on the —— day of ——, of which the defendant has had notice. Said policy is the property of the plaintiff.

G. H., Att'y for pl'ff.

13. ON A POLICY OF FIRE-INSURANCE.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, the value of a dwelling-house (or other property, as the case may be), which the defendant, on the —— day of ——, insured against loss or injury by fire and other perils in the policy of insurance mentioned, for the term of —— years, which house (or other property) was wholly destroyed (or was damaged) by fire on the —— day of ——, of which the defendant has had notice.

E. F., Att'y for pl'ff.

Com. F. Ins. Co. v. Capital City Ins. Co., 81 Ala. 320; Home Protection of N. Ala. v. Caldwell, 85 Ala. 607; Com. F. Ins. Co. v. Morris, 105 Ala. 498; Feibelman v. Assurance Co., 108 Ala. 180.

14. ON A POLICY OF MARINE INSURANCE.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, the value of certain goods which the defendant, on the —— day of ——, insured against loss or injury by the perils of the seas, and other perils in the policy of insurance mentioned, from the port of New York to the port of Mo-

bile, on board the bark Neptune, which goods were wholly lost by the shipwreck of the said vessel on her voyage, of which the defendant has had notice.

E. F., Att'y for pl'ff.

15. ON A BILL OF LADING OF A COMMON CARRIER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for the failure to deliver certain goods, viz.: (Here set them out) received by him as a common carrier, to be delivered to the plaintiff at —— for a reward, which he failed to deliver.

E. F., Att'y for pl'ff.

NOTE.—If the injury complained of is the failure to deliver the goods by the time stipulated, or within a reasonable time, or injury to the goods, it should be so stated.

Howland v. Wallace, 81 Ala. 238; A. G. S. R. Co. v. Grabfelder, 83 Ala. 200.

16. FOR SLANDER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for falsely and maliciously charging the plaintiff with perjury (larceny, or as the case may be), by speaking of and concerning him in the presence of divers persons, in substance, as follows: (Here set out the defamatory language), viz., on the —— day of ———.

E. F., Att'y for pl'ff.

17. FOR LIBEL.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for falsely and maliciously publishing of and concerning him in a newspaper published at ——, called —— (or book, or writing, as the case may be), the following matter, with intent to defame the plaintiff, viz.: (Here set out the language charged as libelous), on the —— day of ———.

E. F., Att'y for pl'ff.

Henderson v. Hale, 19 Ala. 154; Trimble v. Anderson, 79 Ala. 514; Iron Age Pub. Co. v. Crudup, 85 Ala. 519; Gaither v. Advertiser Co., 102 Ala. 458.

18. FOR ASSAULT AND BATTERY.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for an assault and battery committed by the defendant on the plaintiff, viz., on the —— day of ———.

E. F., Att'y for pl'ff.

Williams v. Ivey, 37 Ala. 242; s. c., Ib. 244; Thomason v. Gray, 82 Ala. 291; Lunsford v. Walker, 93 Ala. 36.

19. FOR FALSE IMPRISONMENT.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for maliciously, and without probable cause therefor, arresting and imprisoning the plaintiff (or causing the plaintiff to be arrested and imprisoned,

as the case may be), on a charge of larceny (or as the case may be), for —— days, viz., on the —— day of ———.

E. F., Att'y for pl'ff.

Ragsdale v. Bowles, 16 Ala. 62; Williams v. Ivey, 37 Ala. 242; s. c., Ib. 244; Holly v. Carson, 39 Ala. 345; Leib v. Shelby Iron Co., 97 Ala. 626; Rich v. McInerny, 103 Ala. 345.

20. FOR MALICIOUS PROSECUTION.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for maliciously, and without probable cause therefor, causing the plaintiff to be arrested under a warrant issued by E. F., a justice of the peace, on the —— day of ——, on a charge of larceny (or as the case may be), which charge, before the commencement of this action, has been judicially investigated, and said prosecution ended, and the plaintiff discharged.

G. H., Att'y for pl'ff.

21. FOR DECEIT IN SALE OF CHATTELS.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for deceit in the sale of a horse (or as the case may be), which the defendant, at the time of the sale, knew to be unsound.

E. F., Att'y for pl'ff.

22. ON A WARRANTY.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for a breach of warranty in the sale of a horse (or as the case may be), by him to the plaintiff, on the —— day of ——, which the defendant warranted (here insert the substance of the warranty), when in fact (here state the breach according to the facts).

E. F., Att'y for pl'ff.

Herring v. Skaggs, 73 Ala. 446; Roberts v. Fleming, 31 Ala. 684.

23. FOR TRESPASS IN TAKING GOODS.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for wrongfully taking the following goods and chattels, the property of the plaintiff, viz.: (Here describe the goods).

E. F., Att'y for pl'ff.

Harris v. Russell, 93 Ala. 59; Joseph v. Henderson, 95 Ala. 213.

24. FOR THE CONVERSION OF CHATTELS.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for the conversion by him, on the —— day of ——, of the following chattels: (Describing them), the property of the plaintiff.

E. F., Att'y for pl'ff.

25. FOR THE RECOVERY OF CHATTELS IN SPECIE.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant the following personal property, viz.: (Describing it), with the value of the hire or use thereof during the detention, viz., from the —— day of ——.

E. F., Att'y for pl'ff.

Thompson v. Pearce, 49 Ala. 210; Crimm v. Crawford, 29 Ala. 623.

26. FOR TRESPASS TO LAND.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, damages for a trespass by the defendant on the following tract of land, viz.: (Describing it), belonging to (or in the possession of) the plaintiff, and for cutting the timber (or other injury, as the case may be), on the —— day of ——.

E. F., Att'y for pl'ff.

Pike v. Elliott, 36 Ala. 69; O'Neal v. Simonton, 109 Ala. 167; Bessemer L. & I. Co. v. Jenkins, 111 Ala. 135.

27. UNLAWFUL DETAINER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff sues to recover possession of the following tract of land: (Describing it), of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the defendant lawfully entered, on demise of the plaintiff for one year (or otherwise, as the case may be), and which now the defendant, after the termination of his possessory interest, and after the plaintiff's demand in writing therefor, unlawfully detains, together with —— dollars for the detention thereof.

E. F., Att'y for pl'ff.

28. FOR FORCIBLE ENTRY AND UNLAWFUL DETAINER.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff sues to recover the following tract of land (or its possession, as the case may be, describing it), of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the defendant forcibly entered, and now unlawfully detains.

E. F., Att'y for pl'ff.

29. FOR THE RECOVERY OF LAND (STATUTORY EJECTMENT).

A. B., plaintiff, vs. C. D., defendant. } The plaintiff sues to recover possession of the following tract of land: (Describing it), of which he was in possession, and upon which, pending such possession, and before the commencement of this suit, the defendant entered and unlawfully withholds, together with —— dollars for the detention thereof.

E. F., Att'y for pl'ff.

Bush v. Glover, 47 Ala. 167.

30. FOR RENT ON DEMISE.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars, the rent of a tract of land, viz.: (Describing it), demised by the plaintiff to the defendant on the —— day of ——, said rent commencing on the —— day of ——, and ending on the —— day of ——.

E. F., Att'y for pl'ff.

31. FOR USE AND OCCUPATION OF LAND.

A. B., plaintiff, vs. C. D., defendant. } The plaintiff claims of the defendant —— dollars for the use and occupation by him of the following tract of land, viz.: (Describing it), belonging to the plaintiff, from the —— day of —— to the —— day of ——.

E. F., Att'y for pl'ff.

3353 (p. 796) (3010) (p. 678) (p. 556). **Pleas.**

32. STATUTE OF LIMITATIONS.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the complaint, saith that the note (contract, or as the case may be), is barred by the statute of limitations of —— years.

X. Y., Att'y for def't.

33. NON EST FACTUM.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the complaint, saith that the note (or bond, as the case may be), upon which the action was founded, was not executed by him, or by any one authorized to bind him in the premises; and he makes oath that this plea is true. (If filed by an executor or administrator, that he believes it to be true.)

X. Y., Att'y for def't.

Ala. Mining Co. v. Brainard, 35 Ala. 476.

34. NOT GUILTY.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the complaint, saith he is not guilty of the matters alleged therein.

X. Y., Att'y for def't.

35. PAYMENT.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the said complaint, saith that he has paid the debt (or demand), for the recovery of which this suit was brought, before the action was commenced.

X. Y., Att'y for def't.

Barbour v. Washington, 60 Ala. 433.

36. TENDER.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the complaint, saith that he tendered to the plaintiff the amount due to him, to wit, —— dollars, before

the action was commenced, and now brings the money into court. (In the case of chattels, that he is and always has been ready and willing to perform his contract with the plaintiff, or deliver the chattels in suit, as the case may be, and offered to do so before the action was commenced.) X. Y., Att'y for def't.

Gardner v. Black, 98 Ala. 638; Christian v. Niagara F. Ins. Co., 101 Ala. 634.

37. SET-OFF.

A. B., plaintiff, vs. C. D., defendant. } The defendant, as a defense to the action of the plaintiff, saith that, at the time said action was commenced, the plaintiff was indebted to him in the sum of —— dollars by note (liquidated or unliquidated demand, as the case may be, describing it by its date, amount, when, and to whom payable), which he hereby offers to set-off against the demand of the plaintiff, and he claims judgment for the excess (if the set-off exceeds the plaintiff's demand). X.Y., Att'y for def't.

Lang v. Waters, 47 Ala. 624.

38. USURY.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the complaint, saith that the said note (bond or contract, as the case may be), upon which the action is founded, is usurious and void for the interest thereon.

X. Y., Att'y for def't.

NOTE.—If the usurious interest has been included with the principal, the fact should be stated, and the amount of such interest.

Powell v. Crawford, 110 Ala. 294.

39. INFANCY.

A. B., plaintiff, vs. C. D., defendant. } The defendant, for answer to the complaint, saith that, at the time of the execution of the note, the foundation of the suit, (or at the time of the creation of the debt, or making of the contract, as the case may be,) he was a minor, under the age of twenty-one years.

X. Y., Att'y for def't.

CHAPTER 92.

PROBATE COURTS. 3354-3384.

Feb. 21, 1893, p. 1091.

3354 (778) (684) (781) (661). **Judge of probate; election and term of office.**—A judge is elected by the qualified voters of each county, who is styled the judge of probate, and who holds office for the term of six years from the third day of November next after his election, and until his successor is elected and qualified.

3355 (780) (686) (783) (663). **Vacancies; how filled.**—Vacancies in the office of judge of probate are filled by the governor, and the person appointed holds office until the election and qualification of his successor.

3356 (779) (685) (782) (662). **Eligibility.**—The judge must be a citizen of the state, and must have resided in the county for which he is elected, or appointed, one year preceding the election or appointment.

3357 (781) (687) (784) (664). **Bond.**—Before entering on the duties of his office, the judge must give bond with surety to be approved, and for a sum, not less than five thousand dollars, to be fixed by a judge of the supreme court, or by the judge of the circuit, or the chancellor of the division, in which such judge resides.

Thompson v. Holt, 52 Ala. 491; Grider v. Tally, 77 Ala. 422.

3358 (782) (688) (785) (664). **Bond recorded and filed.**—Such bond, after being recorded in the office of the clerk of the circuit court of the county for which he was elected or appointed, must be filed in the office of the secretary of state, with the certificate of the clerk of the circuit court, that the bond has been recorded in his office.

3359 (783) (689) (786) (665). **Who may sue on the bond.**—All bonds given by judges of probate may be sued on by any one sustaining any injury, by reason of any neglect or omission of such officer to take good and sufficient surety from any executor, administrator, or guardian, or from any officer whose bond it is his duty to approve, or in any case in which it is his duty to require additional bond, and he fails so to do, or by the failure of such judge to perform any other official duty.

3360 (784) (690) (787) (666). **Conservator of the peace.**—Judges of probate are conservators of the peace in their respective counties.

3361 (785) (691) (788) (667). **Office and office hours.**—He must keep his office at the court-house, and open for the transaction of business on every day, except Sundays and legal holidays, from nine in the morning until four in the afternoon, with an interval of one hour at noon.

3362 (786) (692) (789) (669). **To keep a seal of office.**—He must have a seal of office, using a private seal until the same is provided.

3363 (787) (693) (790) (670). **Jurisdiction of courts of probate.** Courts of probate have, in the cases defined by law, original jurisdiction of—

1. The probate of wills.

2. The granting of letters testamentary and of administration, and the repeal or revocation of the same.

Subdivisions 1 and 2.—Jurisdiction general.—Ikelheimer v. Chapman, 32 Ala. 676; Bradley v. Broughton, 34 Ala. 694; Gray v. Cruise, 36 Ala. 559; Coltart v. Allen, 40 Ala. 155; Hall v. Hall, 47 Ala. 290; Bean v. Chapman, 62 Ala. 58; Sims v. Waters, 65 Ala. 442; Steele v. Tutwiler, 68 Ala. 107; Landford v. Dunklin, 71 Ala. 594; Morgan v. Casey, 73 Ala. 222; Barclift v. Treece, 77 Ala. 528.

3. All controversies in relation to the right of executorship, or of administration.

4. The settlement of accounts of executors and administrators.

5. The sale and disposition of the real and personal property belonging to, and the distribution of intestates' estates.

Jurisdiction limited; sales of personalty.—Wyatt v. Rambo, 29 Ala. 510; Ikelheimer v. Chapman, 32 Ala. 676; Hall v. Chapman, 35 Ala. 553. **Sales of lands.**—Wyman v. Campbell, 6 Port. 219; Couch v. Campbell, Ib. 262; Duvall v. McLoskey, 1 Ala. 708; Perkins v. Winter, 7 Ala. 855; Bishop v. Hampton, 15 Ala. 761; Pettit v. Pettit, 32 Ala. 288; Landford v. Dunklin, 71 Ala. 594.

6. The appointment and removal of guardians for minors and persons of unsound mind.

7. All controversies as to the right of guardianship, and the settlement of guardians' accounts.

8. The binding out of apprentices, and all controversies between master and apprentice.

9. The allotment of dower in lands in the cases by law provided.

10. The partition of lands within their counties.

11. The change of the name of any person residing in their county, upon filing his declaration in writing, signed by him, stating the name by which he is known, and the name to which he wishes it to be changed.

12. In such other cases as jurisdiction is or may be given to such courts by law, and in all cases to be exercised in the manner prescribed by law.

Court has no jurisdiction of trusts.—Ex parte Dickson, 64 Ala. 188; Pinney v. Werborn, 72 Ala. 58; Foxworth v. White, Ib. 224; Hinson v. Williamson, 74 Ala. 180. **Probate of wills and grant of letters during late war.**—Nelson v. Boynton, 54 Ala. 368; Allen v. Kellam, 69 Ala. 442; Bean v. Chapman, 73 Ala. 140. **Presumptions indulged on collateral attack.**—Boynton v. Nelson, 46 Ala. 501; Wright v. Ware, 50 Ala. 549; Pettus v. McClannahan, 52 Ala. 55; Doe v. Hardy, Ib. 291; Gamble v. Jordan, 54 Ala. 432; Kent v. Mansel, 101 Ala. 334; Cobb v. Garner, 105 Ala. 467; Kling v. Connell, 105 Ala. 590. **Is a court of law and has not chancery powers.**—Moore v. Winston, 66 Ala. 296. **Decree conclusive and not open to collateral attack**; of equal dignity with judgments of courts of law.—Knabe v. Rice, 106 Ala. 516.

3364 (788) (694) (791) (671). **May punish contempts of court.** Such courts may issue rules and attachments for contempts offered to the court, or its process, by any executor, administrator, guardian, or other person, and may punish the same by fine as high as twenty dollars, and imprisonment, not exceeding twenty-four hours; one or both.

3365 (789) (695) (792) (672). **Duties, etc.**—It is the duty of the judge of probate—

1. To issue all citations, letters testamentary, of administration and guardianship, subpœnas, executions, and all other process which is necessary for the exercise of his powers, the jurisdiction of the court, and the enforcement of its judgments, orders and decrees.

2. To keep minutes of all his official acts and proceedings; and, within three months thereafter, to record the same in well-bound books.

3. To keep all the books, papers and records belonging to his office with care and security; the papers arranged, filed and labeled, so as

to be of easy reference; and the books and records lettered, and kept with general, direct and reverse indexes; but, without authority of the court of county commissioners, must not make new indexes.

4. To keep constantly in his office a well-arranged docket, showing the date of the issue, and return of all process, the day set for the hearing, the kind of notice ordered, the returns of the sheriff, and such other entries as may be necessary to show the true condition of all proceedings pending in the court, and all fees accruing in the case, and to whom due.

5. To keep a correct account of the fees accruing to the sheriff, for service of notices, citations and other process in relation to estates of deceased persons and minors; he may receive and receipt for such fees, and must, on demand, pay the same to the sheriff, and before the final settlement of any estate is allowed, the fees of the sheriff, or such part thereof as he is entitled to receive, must be paid.

6. To enter on the fee-book, execution-docket, and on the execution, the name of the attorney of the plaintiff in the judgment.

7. On application of any person, and the payment or tender of the lawful fees, to give transcripts of any paper or record required to be kept in his office, properly certified.

8. To perform such other duties as are, or may be required of him by law.

9. To keep the acts, reports and digests furnished by the state to the county in his office, or in the bar library, if there be one in the county convenient to his office, except when delivered to the sheriff for the use of the circuit court.

10. To have suitably bound at the expense of the county, and for the payment of which binding the court of county commissioners must issue a warrant on the county treasury, the reports of the census enumerators of the county; and must keep such reports in the office, open to examination without charge.

11. To provide a suitable and convenient place in the office for keeping the United States census reports, and to preserve such reports, giving free access to them.

12. To keep large and well-bound books for the registration of deeds of conveyance, and other and separate books of like character for the registration of mortgages and other instruments to secure the payment of debts.

13. To keep a large and well-bound book for the registration of liens of judgments and decrees, with direct and reversed indexes thereto. Feb. 26, 1889, p. 60, §1.

14. To keep a well-bound book for the registration of notices of the adverse possession of lands, with a proper index thereto. Feb. 11, 1893, p. 478, §2.

15. To make weekly visits to the county jail as prescribed by section 1415 (900) of this Code, and on each weekly visit to inspect the record-books of the sheriff descriptive of prisoners in jail and see that the entries are properly made, and verify each entry therein made, and report to the grand jury any failure of the sheriff to keep such record as is required of him by law. Feb. 28, 1889, p. 88, §3.

3366 (790) (697) (740). **Recopy of books.**—The judge of probate, deeming it necessary to recopy or rebind any books in his office, in order to secure their contents from damage or loss, must submit the same to the examination of the court of county commissioners, which, if it deems such rebinding or recopy necessary, must upon its minutes order the same to be made; and the judge of probate must make the same in good and substantial books or binding, and such court must allow him a reasonable compensation therefor.

As amended Feb. 27, 1889, p. 73.

3367 (791) (698) (741). **Free for examination.**—The records of the office must be free for the examination of all persons, when not in use by the judge, whether such persons are interested in such records or not.

Randolph v. State, 82 Ala. 527.

Feb. 14, 1891, p. 705.

3368. Duty as to dead bodies; analysis of stomach when poison suspected.—Whenever the judge of probate has reason to believe that the death of any person dying or buried in the county was caused by poison, he may order and obtain a chemical analysis of the stomach, and its contents, of the body of such deceased person, and to that end may employ the state chemist to make such analysis, and such analysis shall be reported to the judge of probate; and the costs and expenses incurred therein, not exceeding fifteen dollars, must be paid by the county, on the order of the court of county commissioners.

3369 (792) (699) (793). **Decrees paid to judge.**—Decrees for the payment of money, rendered against any executor, administrator, or guardian, on a partial or final settlement, may be paid to the judge of probate, and it is his duty to pay over the same to the person entitled thereto on demand; and for failure to do so, he incurs a penalty in favor of the person entitled to the money, of ten per cent. damages, which, together with the money received, and interest thereon, may be recovered by suit on his bond.

Shackleford v. Cunningham, 41 Ala. 203; Ellis v. Smith, 42 Ala. 349.

3370 (793) (700) (794). **Pay of judge.**—The judge of probate is entitled to one-half of one per cent. for receiving money under the preceding section, to be paid by the party from whom the same is received, out of his own funds, and is not bound to receive this money until such per cent. is paid.

3371 (794) (701) (795) (673). **Regular and adjourned terms; when court always open.**—A court of probate must be held at the court-house of each county on the second Monday in each month, and the judge may hold special or adjourned terms at any time whenever necessary for any special purpose; but such court must at all times be considered as open, except on Sundays, with authority to do all things needful in relation to granting letters testamentary, of administration, or guardianship, and all matters appertaining thereto; binding out apprentices, and making all other necessary orders which are grantable as a matter of course.

Moore v. McGuire, 26 Ala. 461; Harrison v. Meadors, 41 Ala. 274; Arrington v. Roach, 42 Ala. 155; Roach v. Gunter, Ib. 239; Horn v. Bryan, 44 Ala. 88;

Boynton v. Nelson, 46 Ala. 501; Vaughan v. Bibb, 46 Ala. 153; Kelly v. Garrett, 67 Ala. 304; Lanier v. Richardson, 72 Ala. 134; Carlisle v. May, 75 Ala. 502; Blake v. Harlan, Ib. 205.

3372 (795) (702) (796) (674). **Authority.**—The judge of probate has authority—

1. To administer oaths and take and certify the same in all cases in which administering such oath, and taking such affidavit, is not confined expressly to some other officer.

2. To grant writs of habeas corpus in those cases in which the power is conferred by law.

3. To grant writs of certiorari on any civil judgment rendered by a justice, returnable to the next circuit court of the county, and to issue process of garnishment upon decrees for money in the court.

To grant writs of certiorari.—Casey v. Briant, 1 S. & P. 51; Wright v. Gray, 20 Ala. 363; Van Eppes v. Smith, 21 Ala. 317; Washington v. Parker, 60 Ala. 447; Grantham v. Payne, 77 Ala. 584; Wright v. Hurt, 92 Ala. 591; Guscott v. Roden, 112 Ala. 632; Lawler v. Lyness, Ib. 386. **Cannot make writ returnable to city court.**—Wilson v. Scott, 42 Ala. 348. **Nor grant common-law writ.**—Guscott v. Roden, 112 Ala. 632.

4. To cause jurors to be impaneled and sworn in any matter of fact pending before him, in which the right to a jury trial is given by law.

5. To appoint guardians ad litem for minors and persons of unsound mind, when necessary; but he must not appoint as such guardian any clerk, employe, or other person connected with his office, or related to him by consanguinity or affinity.

6. To employ, at his own expense, a clerk, for whose official acts he is responsible, and such clerk has the following powers: (1) To issue letters testamentary, of administration and of guardianship where there is no contest. (2) To administer oaths relating to the business of the court, and take and certify acknowledgments and proofs of instruments authorized to be recorded. (3) To solemnize matrimony, approve bonds and appoint guardians ad litem. (4) To admit wills to probate and record, and to pass and allow accounts of executors, administrators and guardians, where there is no contest. (5) To do all other acts and things, and perform all other duties, ministerial and judicial, where there is no contest, and the judge of probate could do and perform, except to hear and grant writs of habeas corpus and writs of certiorari; and such clerk must, before he enters upon his duties, take the oath directed to be taken by the officers of this state, and give bond with surety payable to the judge of probate in such sum, not exceeding ten thousand dollars, as he may prescribe, upon which bond such clerk shall be liable to such judge in consequence of any act of misfeasance or malfeasance of such clerk in the duties of his office. All of the official acts of such clerk must be performed in the name of the judge of probate, except when there is a vacancy in that office. As amended Feb. 21, 1893, p. 1190.

Clerk a public officer within meaning of statute forbidding officers to deal in county claims.—Scruggs v. State, 111 Ala. 60. **Must certify acknowledgments** and perform other official acts **in name of the judge of probate** (except when he fills that office). See citations to section 993.

7. To complete the minute entries and decrees of the court when

the same are incomplete on account of the failure to make the necessary entries at the time when they should have been made, but the necessary application and proof must first be made; and such entries, orders, or decrees are as valid and binding as if they had been made at the proper time.

Box v. Delk, 47 Ala. 729; Acklen v. Acklen, 45 Ala. 609; Dabney v. Mitchell, 54 Ala. 198; Lilly v. Larkin, 66 Ala. 122.

8. To exercise such other powers as are, or may be conferred on him by law.

3373. Bond of clerk approved by judge of probate and filed and recorded in office of circuit clerk.—The bond of the clerk appointed by the judge of probate must be approved by the judge of probate, and must be filed and recorded in the office of the clerk of the circuit court of the county.

Dec. 13, 1892, p. 143.

3374. Clerk continues to perform duties of office pending vacancy, etc.—Whenever a vacancy shall occur in the office of the judge of probate, the clerk in that office, appointed and qualified as authorized by law, shall, during such vacancy and until the qualification of a lawful successor, perform all the duties of that office which he is authorized by law to perform when there is no vacancy, but must not receive money on decrees or executions, or become the custodian of trust funds pertaining to the court. He may make all necessary orders for the continuance of causes and proceedings pending in the court. All such duties are to be performed, during such vacancy, by such clerk in his own name as clerk of the probate court, and he is entitled to the lawful fees therefor. For his official acts hereunder, such clerk and the sureties on his bond to the judge of probate, shall be liable to persons injured, according to the legal effect of official bonds as declared by statute. If such clerk shall fail or refuse on demand to deliver all the books, papers, property and money belonging or appertaining to such office, to the lawfully qualified successor of the judge of probate, he may be proceeded against under the provisions of this Code to compel the delivery of books, papers, property and money by public officers to successors.

3375 (796) (703) (797) (675). **Letters of administration, process, etc.; how signed, and form.**—All letters testamentary, of administration, and of guardianship, and all process from the court of probate, are to be signed by the judge, or his clerk, bear date on the day of the issue, and conform, as near as may be, to those used in the courts of law in this state; and must be directed, executed and returned in like manner, and under the same penalties.

3376 (797) (708) (802). **Writs of garnishment.**—Courts of probate may issue process of garnishment upon decrees for money, in favor of plaintiffs in such decrees, returnable to their regular terms, upon compliance with the laws respecting garnishments in the circuit courts on judgments; and may render judgments or decrees on the answers of such garnishees, enforce the collection thereof by execution, as may be necessary, and try all collateral issues that may

grow out of the answers of such garnishees, both as to a contest of the answer, or a claim of an alleged transferee.

Smith v. Jackson, 56 Ala. 25.

3377 (798) (709) (803). **Provisions applicable to preceding section.**—The provisions of this Code in reference to garnishments in the circuit court are applicable to garnishments in the courts of probate.

3378 (799) (710) (805) (680). **Return of process.**—All executions and other process issuing from the court of probate, or issued by the judge thereof, may be made returnable, if no other day is provided by law, to any regular term of the court of probate, not less than three, nor more than six months after such issue, or to any special term within the same period.

Carlisle v. May, 75 Ala. 502.

3379 (800) (711) (806) (681). **Failure to execute or return process.**—For a failure to make the money on, or for failing to return any execution issued from, or returnable to the court of probate, or for not paying over money collected on such execution, the sheriff, coroner, or other officer, and his sureties, are liable to the same penalties and judgments, as in like cases in the circuit court; the proceedings to be instituted and conducted in the probate court in the same manner as in the circuit court, either party having the right, on request, to a trial of all questions of fact by a jury; and an appeal from the judgment rendered may be taken to the circuit or supreme court, as in like cases from the circuit to the supreme court.

3380 (801) (712) (807) (682). **Rules of evidence.**—The provisions of this Code in reference to evidence in courts of law, and the mode of obtaining the same by deposition, and of compelling the attendance of witnesses, in the absence of express provision to the contrary, are applicable to proceedings in the court of probate.

3381 (802). **Supplying place of judge of probate when incompetent.**—If, in any matter or proceeding arising in the court, or in reference to which the judge thereof is required to exercise jurisdiction or authority, or to perform duty, the judge is incompetent for any legal cause, he must certify the fact of incompetency to the register in chancery of the county, or if the register is incompetent, to the judge of the circuit, or to the chancellor of the division; and such register, judge, or chancellor must, upon such certificate, appoint a disinterested person practicing in the county, learned in the law, to act as special judge of probate; and such special judge, in relation to such matter or proceeding, shall have the jurisdiction and authority, and discharge the duties of judge of probate. And the orders and decrees made or rendered by him shall be entered on the records of the court, and shall have the force and effect, and shall be subject to revision on appeal, or by other revisory remedy, of orders and decrees of the court of probate, or of the judge thereof.

Ellis v. Smith, 42 Ala. 349; Hayes v. Collier, 47 Ala. 726; Plowman v. Henderson, 59 Ala. 559; Trawick v. Trawick, 67 Ala. 271; Koger v. Franklin, 79 Ala.

505; Medlin v. Taylor, 101 Ala. 239; Epperson v. Rice, 102 Ala. 668. See section 2637 and citations thereto.

3382 (803). **Supplying place of such special judge.**—If the special judge so appointed fails or refuses to act, or having commenced to act, and before finally concluding or determining such matter or proceeding, becomes incompetent, or fails or refuses to continue acting therein, the incompetency of the judge of probate continuing, the register, or the judge, or chancellor, on the fact being certified to him, must appoint another special judge of like qualification.

3383 (804) (716) (809). **Change of venue.**—In all issues in the probate court, where a jury may be called to try contested facts, changes of venue may be had as in cases of contested wills; and all the provisions as to change of venue in cases of contested wills shall apply to changes of venue under this section.

3384 (805) (717) (811) (684). **Stationery of office paid for by county.**—The judge of probate must be allowed reasonable expenses for suitable books, stationery, and a seal of office, to be paid by the county.

CHAPTER 93.

PUBLIC PRINTING. 3385-3416.

Feb. 28, 1889, p. 121, §1.

3385. Public printing and binding to be done under contract. The acts and journals of the general assembly, the revenue laws of each session of the general assembly in separate pamphlets, the reports of the decisions of the supreme court, the annual or biennial reports of the auditor, treasurer, attorney-general, superintendent of education, commissioner of agriculture, railroad commissioners, inspectors of convicts, adjutant-general, state geologist, state board of health, the board of trustees of the University of Alabama, of the Agricultural and Mechanical College, of the Alabama Institute for the Deaf and of the Alabama Academy for the Blind, of the Alabama Bryce Insane Hospital, all handbooks and pamphlets which the commissioner of agriculture is authorized by law to publish, all blanks, bulletins, circulars, notices, messages, and forms used in the office of and ordered by the governor, secretary of state, auditor, treasurer, attorney-general, adjutant-general, superintendent of education, clerk of the supreme court, examiner of public accounts, commissioner of agriculture, railroad commissioners, and inspectors of convicts, and all bills, papers, documents, and reports ordered by and for the use of the general assembly, or either house thereof, while in session, shall be printed, or printed and bound, as the case may be, and the records of the supreme court shall be bound as ordered by the clerk of the court, under contract as provided in this chapter; and no printing or binding for the state shall be done

under contracts made in pursuance of the provisions of this chapter other than such as is covered and provided for by this chapter.

3386. Classification of public printing and binding.—The printing and binding authorized in the preceding section, for the purposes of the contracts provided for in this chapter, shall be divided into four classes, as follows: Dec. 14, 1894, p. 234, §1.

Class 1. The reports of the decisions of the supreme court.

Class 2. The acts and journals of the general assembly, and the revenue laws of each session of the general assemby in separate pamphlets.

Class 3. The annual or biennial reports of the auditor, treasurer, attorney-general, superintendent of education, commissioner of agriculture, railroad commissioners, inspectors of convicts, adjutant-general, state geologist, state board of health, the board of trustees of the University of Alabama, of the Agricultural and Mechanical College, of the Alabama Institute for the Deaf and of the Alabama Academy for the Blind, of the Alabama Bryce Insane Hospital, all handbooks, pamphlets, or bulletins which the commissioner of agriculture is authorized by law to publish, all messages of the governor to the general assembly, all bills, documents and reports ordered by and for the use of the general assembly, or either house thereof, while in session.

Class 4. All blanks, circulars, notices and forms used in the office of and ordered by the governor, secretary of state, auditor, treasurer, attorney-general, adjutant-general, superintendent of education, clerk of the supreme court, examiner of public accounts, commissioner of agriculture, railroad commissioners and inspectors of convicts, and all blanks and forms ordered by and for the use of the secretary of the senate or the clerk of the house of representatives, and binding the records and manuscript opinions of the supreme court.

3387. Secretary of state to advertise for proposals biennially. It shall be the duty of the secretary of state, biennially, from and after the first day of December, 1898, to advertise for ten days in one daily newspaper in each of the cities of Montgomery, Mobile, Selma and Birmingham for proposals to do the printing and binding for the state for the term of two years from the first day of January next thereafter. Feb. 28, 1889, p. 121, §3.

3388. Proposals must be in writing; bonds.—All proposals for the printing and binding of the state must be in writing signed by the person, firm, or corporation making the proposal, and must be accompanied by the bond of such person, firm, or corporation, with two or more sufficient sureties, who shall be resident citizens of this state, in the penalty of twenty-five hundred dollars if the proposal is to do the printing and binding specified in class 1, twenty-five hundred dollars if to do that specified in class 2, five thousand dollars if to do that specified in class 3, and twenty-five hundred dollars if to do that specified in class 4, payable in every instance to the State of Alabama, and conditioned for the faithful performance of Dec. 14, 1894, p. 234.

the contract made on the acceptance of the proposal. The proposals with the bonds must be sealed, indorsed "Proposals for class —— (specifying the class the proposal is for) of public printing," and delivered to the secretary of state by mail or otherwise on or before the twentieth day of the month in which the advertisement is made.

Ib. §5.

3389. Maximum rate for printing and binding.—The following shall be the maximum rates allowed for printing and binding: For every page of the acts and joint resolutions, two dollars; for binding every copy of the acts, twenty cents a copy; for every page of the journals and revenue laws, one dollar; for binding the journals, twenty cents a copy; for every copy of any volume of the supreme court reports, printed and bound as required by this chapter, in editions not exceeding seven hundred and fifteen copies, one dollar and sixty cents; for blanks printed on paper, thirty cents a quire of twenty-four full sheets; for blanks printed on parchment, thirty cents for each twenty-four sheets; for printing done for the officers, commissioners and boards, and for the general assembly, or either house thereof, forty cents a thousand ems for composition of plain matter; for rule and figure work, seventy-five cents a thousand ems; for presswork, including paper, per token, common octavo forms, seventy-five cents; folding reports, pamphlets, bills and other documents, eight cents a hundred copies on each signature, distinct tables to be considered signatures; stitching reports, pamphlets, bills and other documents, ten cents a hundred copies; binding the records of the supreme court and manuscript opinions of the supreme court, one dollar and fifty cents a volume. No proposals for doing printing and binding at greater rates than those fixed in this section shall be considered; but all bids must be at the rates herein fixed or at a certain named less rate, and no bid shall be considered which is at a certain per cent. below them; and in counting blanks, as many as can be printed on a sheet shall be considered as one sheet only, and no more.

Feb. 28, 1889, p. 121, §6.

3390. Proposals opened and accepted or rejected.—The secretary of state must, after the twentieth and before the thirtieth day of the month in which bids are received, open the same in the presence of the governor, auditor, treasurer and commissioner of agriculture, or any two of them if the others are unable to attend; and the secretary of state and other officers named, any three concurring, shall select the lowest responsible bidder, either for the classes separately or for the classes combined, as may be to the interest of the state; but no bid unaccompanied by a bond as required in this chapter shall be considered. If in the judgment of a majority of the officers present, the public interest can be subserved best thereby, all the proposals, or all for either class, may be rejected, whereupon the secretary of state shall advertise again, in all respects as in the first instance, for proposals to do the public printing and binding, or that class of it the bids for which were rejected; and upon the coming in of the new bids, they shall be considered, passed on, and accepted or rejected, and in the last event, advertisement made again, as provided in this section with respect to the proposals first made.

3391. Contract made in pursuance of accepted proposal. Ib. §7. When any proposal has been accepted the secretary of state must indorse the fact and the date of its acceptance thereon and give notice thereof to the person, firm, or corporation whose proposal has been accepted; and thereupon the secretary of state, in the name of the state, and such person, firm, or corporation, shall enter into contract in writing for the printing and binding covered by the accepted proposal for the time and in the manner prescribed by law on the terms expressed in the proposal. If such person, firm or corporation fails for ten days to enter into the contract, the officers named in the preceding section may select the next lowest bidder for the printing and binding as to which the failure has occurred, and the person, firm, or corporation failing and the sureties on his bond shall be jointly and severally liable to the state for all damages that may result from such failure, including the increased cost of the printing and binding, or either, for the term under any contract afterwards made and the expenses incident to the making of any subsequent contract.

3392. Contract must be approved by the governor, auditor and treasurer.—All contracts for public printing and binding, and all bonds to secure the faithful performance of the same, shall be approved by the governor, auditor and treasurer, and a new or additional bond may be required whenever they deem it necessary; but the giving of such new or additional bond shall in nowise affect the liability of the sureties on the original or any existing bond; and all such bonds must be filed and recorded in the office of the secretary of state. Ib.

3393. Contract declared forfeited for cause; new contract. Any contract made under the provisions of this chapter may be declared forfeited by a majority of the officers therein named for the failure or neglect of the contractor to execute the same faithfully, promptly and skillfully, and upon such forfeiture the printing and binding embraced in said contract shall be relet after advertisement in all respects as in the original contract; and any contractor who fails or neglects to execute his contract faithfully, promptly and skillfully, and the sureties on his bond, shall be jointly and severally liable to the state for all damages which result from such failure, and in case the contract is declared forfeited as herein provided, such damages shall include the increased cost of the printing and binding, or either, under any subsequent contract for the term covered by the original contract, and all expenses incident to reletting.

3394. Venue of actions on contract.—Actions against contractors for public printing and binding, and the sureties on their bonds, either or both, may be prosecuted in the courts of Montgomery county without regard to the residence of the defendants. Ib. §9.

3395. Where class 4 must be done.—The printing and binding embraced in class 4 must be done at the seat of government. Dec. 14, 1894, p. 234, §10.

3396. Supreme court reports.—The reports of the decisions of Ib. §11.

the supreme court shall be printed and bound under the direction and control of the supreme court in volumes of not less than six hundred and seventy-two nor more than seven hundred and twenty pages, exclusive of the title-page, table of cases, and other prefatory matter and the index. Every volume shall be printed on new type, set in the same way and by the same class as the type used in printing the sixty-ninth volume of Alabama reports, and shall be bound in sumac-tanned, full law-sheep, and the mechanical and typographical execution, binding and labeling, and all material used in every volume, shall be in all respects at least equal to the sixty-ninth volume of said reports, and every volume shall have on the back two labels which shall be lettered and numbered in the same manner as volume 110 of the Alabama reports; nor shall any volume be accepted or paid for until approved by the judges of the supreme court; and the judges of the supreme court must cause each separate copy of every volume of the reports to be inspected before approval, and must reject every copy which may be found on inspection to be printed, bound, or labeled in any respect otherwise than as herein provided; and all the copies printed shall be bound and delivered to the secretary of state after they have been approved by the judges of the supreme court, and the publishers shall file with the secretary of state an affidavit that they have delivered all the copies of every volume printed by them, before they shall be entitled to receive any payment therefor. The said reports shall be distributed by the secretary of state from his office.*

Feb. 28, 1889, p. 121, §12.

3397. Paper and parchment for blanks.—The parchment for blanks, when it may be necessary to use that material, shall be furnished by the state; and all blanks provided for by this chapter shall be printed on good paper, except where parchment is used, of such size and with such type as the officer ordering the same may direct.

Ib. §13.

3398. Department reports; when to be made; how printed. All reports of departments, officers, commissioners, boards and bureaus, authorized to be printed by this chapter, shall be made to the governor on or before the tenth day of October, annually or biennially as may be required by law, for the annual or biennial period ending on September thirtieth theretofore; and the governor shall have them, or such parts thereof as he may deem necessary, printed in such numbers as the public interest may, in his judgment, require. One-half of the edition in each instance shall be reserved for the use of the general assembly, and the remainder for distribution as prescribed by law. The governor shall have twenty-five copies of each of the reports provided for in this chapter bound in calf for distribution among the several executive officers of the state and the state library.

Ib. §14.

3399. Secretary of state to contract for publication of general and public laws in a newspaper.—The secretary of state, in each October next before the meeting of the general assembly, by circulars

*As amended by joint committee.

addressed to each daily newspaper in this state which publishes also a weekly edition, shall invite bids for publishing in both editions of such paper all the laws of a general and public nature having effect in every county and upon all the people of the state, which may be enacted by the next general assembly, and may accept the proposal of the lowest and best responsible bidder for making such publication and enter into contract with such bidder against the meeting of the general assembly. In determining which bid to accept the secretary of state may take into consideration the circulation of the newspaper published by the bidder; but no bid in excess of seventy-five cents a square shall be considered.

Ib. **3400. Laws to be published and distributed.**—The secretary of state must furnish to the contractor copies of all laws provided for in the preceding section within five days after their approval by the governor, or after their passage over his veto, as the case may be, marked "official" and indorsed with his name and style of office. As soon as practicable after receiving such copies, the contractor shall publish them in both the daily and weekly editions of the newspaper, charging therefor as for one insertion only, at the contract rate, and the contractor shall furnish by mail or otherwise, each paper, either daily or weekly, containing any of such laws, to each executive officer of the state and to the marshal and librarian of the supreme court and to each judge of the supreme, circuit, city and probate courts, and to each chancellor, solicitor, county superintendent of education, register in chancery, sheriff, clerk of court, tax-assessor, tax-collector and county treasurer in the state, and to each member of the general assembly, free of charge.

Ib. **3401. Contract to be approved by the governor, auditor and treasurer; bond.**—The contract for the publication of the general and public laws in a newspaper must be approved by the governor, auditor and treasurer, and the contractor shall give bond in the sum of five thousand dollars payable to the State of Alabama, and conditioned for the faithful performance of his contract, which bond must be approved by the governor, auditor and treasurer, and filed and recorded in the office of the secretary of state.

3402 (214) (118) (110) (74). **Preparation of acts and joint resolutions for printing.**—The secretary of state must, during and after each session of the general assembly, prepare for publication fair copies of the acts and joint resolutions of the general assembly; and the numbers of the bills passed by the two houses of the general assembly, as the same are placed thereon by the secretary and clerk thereof, shall be retained thereon whenever the same are printed, and when published in the volumes of session acts.

Feb. 2, 1891, p. 272. **3403. Acts to be indexed.**—After all the acts and joint resolutions are printed, the secretary of state shall have prepared and printed therewith a full index to the same in two divisions, viz.: The first to be an index to all laws and joint resolutions of a public or general character; the second to be an index to all laws which are private or local.

Feb. 19, 1889, p. 3.

3404. Acts certified; marginal notes.—The title-page of each volume of the acts and joint resolutions shall have printed thereon, in addition to the other matter, the following certificate: "I, ——, secretary of state of the State of Alabama, do hereby certify that this book, containing the acts and joint resolutions passed at the session of the general assembly of Alabama, is published by the authority of the State of Alabama. ——, Secretary of state." Marginal notes shall be printed adjacent to each section stating its substance.

3405 (216) (124) (112) (76). **Journals; how prepared.**—The journals must be prepared with a title-page and index, and must be substantially half-bound and lettered.

Feb. 2, 1891, p. 272.

3406. When acts and journals delivered to printer; how acts prepared.—The secretary of state shall furnish to the printer copies of all acts and joint resolutions of the general assembly within five days after they are deposited in his office with marginal notes as prescribed, and with his certificate that he has compared such copies with the original acts and joint resolutions, and that they are correct copies.

3407 (218) (126) (114). **Penalty for not delivering copies of the acts to printer.**—For each day's delay of the secretary of state in furnishing the public printer the copies of the acts and joint resolutions of the general assembly at the times respectively prescribed for their delivery, he shall forfeit the sum of twenty dollars to be deducted by the auditor from his salary first accruing after the times limited; and the auditor must not pay to the secretary of state any salary accruing next after the period when such acts should by law be delivered to the public printer, without first having received and filed in his office, as a voucher, the certificate of the governor that such copies of the acts and joint resolutions have been delivered by the secretary of state to the public printer as and in the time prescribed by law, or without having first deducted the forfeiture herein required.

3408 (219) (127) (115) (78). **Style of printing and quality of paper.**—The acts, resolutions and journals must be printed on paper weighing at least forty pounds to the ream, double medium, of royal octavo pages, with type of the denomination of small pica, and the marginal notes with minion; each page must contain not less than forty-five nor more than fifty lines; the heads or titles of the index in capitals, the other part in small pica; the whole to correspond in print, paper and execution with the Code of Alabama.

3409 (220) (128) (116) (79). **Revenue laws to be printed separately.**—The revenue laws passed at each session are not only to be printed in the acts and joint resolutions, but must be separately prepared for publication, and five hundred copies printed on the same paper, of the same size, and with the same type as the acts.

3410 (224) (132) (120) (83). **Laws and journals, when to be completed by printer.**—The printer must, within forty days after being furnished with copies of the acts and joint resolutions, print

on paper, type, etc., as herein provided, and deliver within forty days after receiving the last act, to the secretary of state three thousand and five hundred copies of such acts and joint resolutions, marginal notes and index, stitched, half-bound and lettered; and, within thirty-five days thereafter, must deliver to such officer eight hundred copies of the journals of each house with index, stitched, half-bound and lettered.

3411 (225) (133) (121). **Ten copies of bills, etc., to be printed and delivered to secretary of state.**—When any bill, joint resolution, or memorial of a general nature is ordered to be printed by either house of the general assembly, the public printer must print ten additional copies of each and deliver them to the secretary of state.

3412 (227) (135) (130) (91). **Pay for printing; how made.**—For all printing done by the order of either house of the general assembly, or for the executive or state officers, the public printer must procure a certified copy of such order from the secretary of the senate, clerk of the house, or from the officer ordering the work, upon the presentation of which to the auditor and the production of a copy of the work ordered, he must issue his warrant for the payment of the same according to the prices specified in the contract.

3413 (228) (136) (131) (92). **Payment for printing laws and journals.**—Upon the delivery of the requisite number of the laws and journals, within the time prescribed, and executed in all respects as herein provided, the secretary of state must give his receipt for the same, upon which the auditor must issue his warrant for payment.

3414 (229) (137) (132) (93). **Payment for printing revenue laws.** Upon the delivery of the requisite number of the revenue laws, printed as herein provided, to the auditor, he must issue his warrant for payment.

3415. Payments for printing done for the commissioner of agriculture and the railroad commissioners.—Payment for all printing done for or on account of the department of agriculture shall be made out of the funds of that department in the same manner as other expenses of that department are paid. Payment for printing for the railroad commission shall be made out of the funds arising from the license-tax on railroads for the support of that commission, on the certificate of the president of the commission to the secretary of state that the work has been done on his order, or the order of the governor, if it be the annual report, and the certificate of the secretary of state to the auditor setting forth the amount due for the work under the contract; and payment for all other printing authorized by this chapter shall be made out of the general annual appropriation for that purpose. Feb. 28, 1889, p. 121, §15.

3416 (231) (139) (134). **Matters ordered to be printed by both houses.**—When any matter is ordered to be printed by both houses, charge must be made for the same in all respects as though ordered by one house only, except in cases where ten days intervene between the times of the respective orders.

CHAPTER 94.

QUO WARRANTO—ACTIONS IN NATURE OF. 3417-3439.

3417 (3167) (3419) (3079) (2651). **Actions to vacate charters of corporations; by whom instituted, and grounds for.**—An action may be brought in the name of the state, against the offending corporation, on the information of any person for the purpose of vacating the charter, or annulling the existence of any corporation, other than municipal, whenever such corporation—

1. Offends against any of the acts creating, altering, or renewing such corporation.

2. Violates the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers.

3. Has forfeited its privileges or franchises by failure to exercise its powers.

4. Has done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises.

5. Exercises a franchise or privilege not conferred on it by law.

State v. Town Council, 30 Ala. 66; State v. Webb, 97 Ala. 111; State v. Capital City Water Co., 102 Ala. 231; s. c., 105 Ala. 406; State v. Mobile & Girard R. Co., 108 Ala. 29.

3418 (3168) (3420) (3080) (2652). **Judge of circuit court may direct solicitor to commence action; any person may sue on securing costs.**—The judge of the circuit court whenever he believes that any of these acts or omissions can be proved, and it is necessary for the public good, must direct the solicitor of the circuit or county to bring such action; or such action may be brought without the direction of such judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought.

State v. Capital City Water Co., 102 Ala. 231; s. c., 105 Ala. 406; State v. Mobile & Girard R. Co., 108 Ala. 29.

3419 (3169) (3421) (3081) (2653). **In what county action to be brought.**—Such actions must be brought in the circuit court of the county in which the corporation has its principal office, or, if it has no principal office, of any county in which it does business, or, if it has no principal office and is doing no business in the state, such action may be brought in any county.

State v. Mobile & Girard R. Co., 108 Ala. 29.

3420 (3170) (3422) (3082) (2654). **Action in name of state for usurpation of office or franchise.**—An action may be brought in the name of the state against the party offending, in the following cases:

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation created by the authority of this state.

2. When any public officer, civil or military, has done or suffered an act, by which, under the law, he forfeits his office.

3. When any association, or number of persons, acts within this state as a corporation, without being duly incorporated.

State v. Porter, 1 Ala. 688; State v. Burnett, 2 Ala. 140; State v. Town Council, 30 Ala. 66; State v. Gardner, 43 Ala. 234; Lee v. State, 49 Ala. 43; State v. Price, 50 Ala. 568; Ex parte Harris, 52 Ala. 87; Echols v. State, 56 Ala. 131; Davidson v. Woodruff, 68 Ala. 356; Leigh v. O'Bannon, 69 Ala. 261; Parks v. State, 100 Ala. 634; Montgomery v. State, 107 Ala. 372.

As amended Feb. 21, 1893, p. 789. §1.

3421 (3171) (3423, 3424) (3083, 3084) (2655, 2656). **Judge of circuit court may direct action to be brought; any person may sue on securing costs.**—The judge of the circuit court may direct such action to be brought when he believes that any of the acts specified in the preceding section can be proved, and it is necessary for the public good, or it may be brought without the direction of such judge on the information of any person giving security for the costs of the action, to be approved by the clerk of the court in which the action is brought.

Ib.

3422. In what county action to be brought.—Such action must be brought in the circuit court of the county in which the acts are done or suffered, or, if to try the right to a corporate office, in the circuit court of the county in which the corporation has its principal office, or, if it has no principal office, in any county in which it does business.

3423. When alleged corporation may be joined as party defendant without prejudice.—When the action is against persons acting as a corporation without being duly incorporated, the alleged corporation may be joined as a party defendant, and such joinder does not admit its corporate existence, or otherwise prejudice the case of the plaintiff; and judgment and execution may go against it by its alleged corporate name, as in other cases.

Feb. 21, 1893, p. 789, §1.

3424. Court always open for trial of cause which stands for trial after five days' service of summons; postponement.—The court is at all times open for the trial of such cause or the granting of orders therein. The summons shall be returnable ten days from the date of issuance, and if five days' service is not had before such return-day, the summons is returnable to the first day after the expiration of five days after such service; and if such return-day be a day of any regular or special term of the court, the cause stands for trial on the next day after the return-day, unless good cause be shown for further delay; but if such return-day does not fall within a regular or special term, the judge must fix a day for the hearing, of which the clerk must notify the parties or their attorneys; and on such day the case may be tried, or for good cause shown, or by consent of parties and the approval of the court, may be continued to another day.

Ib.

3425. Cause to be tried by the court unless jury demanded. Such cause must be tried by the court without a jury, unless a jury be demanded in writing, either by the relator at the time of filing the information, or by the defendant at the time of filing his

answer; but by the consent of both parties a trial by jury may be had where previously waived, or may be waived where previously demanded by either party. If need be, the court or judge may order the sheriff to summon the requisite number of persons to serve as jurors.

3426 (3172) (3425) (3085) (2657). **Informant joined as plaintiff with the state.**—Whenever an action is brought, under the provisions of this chapter, on the information of any person, his name must be joined as plaintiff with the state.

Montgomery v. State, 107 Ala. 372.

3427 (3173) (3426, 3427) (3086, 3087) (2658, 2659). **In whose name continued on death of informant; when it abates.**—On the death of such person pending the suit, it may be continued in the name of the surviving informant, or of any person who, on application, having first given security for the costs, is substituted in his place; but on the death of all the informants, if no person is substituted in their place, the action abates.

3428 (3174) (3428) (3088) (2660). **Averments of complaint.** The complaint in such action must concisely and clearly set forth the act or omission complained of.

3429 (3175) (3429, 3430) (3089, 3090) (2661, 2662). **In action for usurpation, true officer may be averred; judgment.**—When the action is brought against a person for usurping an office, the name of the person rightly entitled to the office, with a statement of his right thereto, may be added, and, when added, judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled; or only upon the right of the defendant, as justice may require.

3430 (3176) (3431) (3091) (2663). **Rights of such officer, on judgment in his favor.**—If judgment is rendered upon the right of the person so alleged to be entitled, and the same is in favor of such person, he is entitled, after taking the oath of office, and executing such official bond as may be required, to take upon himself the execution of the office; and it is his duty, immediately thereafter, to demand of the defendant all the books, papers and property in his custody, or within his power, belonging to the office; and on refusal or neglect to deliver over the same, he may be proceeded against as is prescribed by the provisions of this Code to compel the delivery of books, papers, property and money by public officers to successors.

3431 (3177) (3432) (3092) (2664). **When validity of election not triable.**—The validity of no election which may be contested under this Code can be tried under the provisions of this chapter.

Davidson v. State, 63 Ala. 432; Leigh v. O'Bannon, 69 Ala. 261; Parks v. State, 100 Ala. 634.

As amended Feb. 21, 1893, p. 789, §2.

3432 (3178) (3433) (3093) (2665). **Judgment of exclusion from office or franchise; costs.**—When a defendant, whether a natural person or a corporation, against whom such action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office or franchise, judgment must be rendered

that such defendant be excluded from the office or franchise, and that the plaintiff recover costs against such defendant; and execution shall be issued on such judgment at the expiration of five days from the date thereof, unless the defendant shall, within such time, take an appeal to the supreme court.

3433 (3179) (3434) (3094) (2666). **On judgment of forfeiture, corporation dissolved; costs.**—If it is adjudged that a corporation, against which an action has been brought under this chapter, has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges and franchises, judgment must be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and be dissolved; and judgment for costs must be rendered against the persons claiming to be such corporation, and the directors or managers thereof, as established by the evidence; and execution shall be issued on such judgment at the expiration of five days from the date thereof, unless the defendant or the persons claiming to be such corporation shall, within such time, take an appeal to the supreme court.

3434 (3180) (3435) (3095) (2667). **When costs against state; when against informant.**—If such action is at the suit of the state alone, and judgment is for the defendant, or the defendant is insolvent, the witnesses are paid as in other state cases; but if any person is joined with the state as informant, judgment must be rendered against him for the costs, if rendered for the defendant.

3435 (3181) (3436) (3096) (2668). **Costs on abatement.**—On an abatement of the action, judgment must be rendered against the sureties of the informant for the costs.

3436 (3182) (3437) (3097) (2669). **Execution against informant's sureties.**—In all cases under this chapter, in which judgment is rendered against the informant for costs, execution may issue therefor against his sureties.

3437 (3183) (3438) (3098) (2670). **Appeal; costs thereof.**—The state, informant, or defendant, may appeal to the supreme court within ten days after judgment, on application to the clerk and giving security for the costs of the appeal; the names of the sureties to be certified, with the record, to the supreme court; and if the appeal is not sustained, judgment for costs may be rendered against such sureties; but in appeals by the state no security shall be required.

3438. When appeal does not supersede execution of judgment unless bond be given.—If the defendant is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any public office, civil or military, or any office in a corporation created by the authority of this state, such appeal does not supersede the execution of the judgment, unless the party appealing shall execute bond, in a sum to be prescribed and with sureties to be approved by the presiding judge, payable to the State of Alabama, with condition that if he fail in the appeal he will pay such judgment as the supreme court may render in the premises, and all such costs and damages as any person may sustain by reason of a wrongful appeal and suspension of the execution of the judgment. Feb. 21, 1893, p. 789, §3.

Ib.

3439. Appeal; when heard.—Such appeal must be heard by the supreme court on the first Thursday after the expiration of ten days from the date of the appeal, if the court be then in session; if not in session at the expiration of such ten days, the appeal shall be heard at the first opportunity thereafter during any term, or may be heard at a special term to be called by the court for such hearing, of which twenty days' notice must be given to the parties; but in no case shall such appeal be heard unless the citation of appeal has been served five days before the hearing.

CHAPTER 95.

RAILROADS.

ARTICLE 1.—REGULATIONS AFFECTING PUBLIC SAFETY. 3440–3450.
2.—REGULATIONS AFFECTING THE CONVENIENCE OF PASSENGERS. 3451–3458.
3.—COMMERCIAL REGULATIONS. 3459–3474.
4.—REGULATIONS AFFECTING LIVE STOCK. 3475–3480.

ARTICLE 1.

REGULATIONS AFFECTING PUBLIC SAFETY.

3440 (1144) (1699) (1399). **Duty of engineer as to ringing bell and blowing whistle.**—The engineer, or other person having control of the running of a locomotive on any railroad, must blow the whistle or ring the bell at least one-fourth of a mile before reaching any public-road crossing, or any regular station or stopping-place on such railroad, and continue to blow the whistle or ring the bell, at short intervals, until it has passed such crossing, or reached such station or stopping-place. He must also blow the whistle or ring the bell immediately before, and at the time of leaving such station or stopping-place; and also immediately before entering any curve crossed by a public road, where he cannot see at least one-fourth of a mile ahead, and must approach and pass such crossing at such speed as to prevent accident in the event of an obstruction at the crossing. He must also blow the whistle or ring the bell, at short intervals, on entering into, or while moving within, or passing through any village, town, or city. He must also, on perceiving any obstruction on the track, use all the means within his power, known to skillful engineers, such as applying brakes and reversing engine, in order to stop the train.

Statute applies to public-road crossing only; duty of engineer at crossing used merely for convenience, and by acquiescence.—A. G. S. R. Co. v. Linn, 103 Ala. 134; L. & N. R. Co. v. Webb, 97 Ala. 308; Stringer v. Ala. Min. R. Co., 99 Ala. 397; S. & W. R Co. v. Meadors, 95 Ala. 137; Pratt Coal & Iron Co. v. Davis, 79 Ala. 308; Tanner v. L. & N. R. Co., 60 Ala. 621. **Statute intended to**

prevent accidents at the crossing; cannot be set up when injuries occur at other points not named in the statute.—L. & N. R. Co. v. Markee, 103 Ala. 160; L. & N. R. Co. v. Hall, 87 Ala. 708; N. C. & St. L. R. Co. v. Hembree, 85 Ala. 481; A. G. S. R. Co. v. Hawk, 72 Ala. 112. **"Regular station or stopping-place" defined.**—Cook v. Central R. Co., 67 Ala. 533. **Duty to reduce speed before "entering any curve," etc.**—Ensley Railway Co. v. Chewning, 93 Ala. 24; N. C. & St. L. R. Co. v. Hembree, 85 Ala. 481; E. T. V. & G. R. Co. v. Deaver, 79 Ala. 216. **Duty to give signals is coextensive with the limits of a "village, town, or city."**—H. A. & B. R. Co. v. Sampson, 112 Ala. 425; S. & W. R. Co. v. Meadors, 95 Ala. 137; Carrington v. L. & N. R. Co., 88 Ala. 472. **Not necessary to blow the whistle "and" ring the bell.**—H. A. & B. R. Co. v. South, 112 Ala. 642. **Duty to apply brakes, reverse engine, etc. "on perceiving any obstruction on the track"**; excused, when, without fault, obstruction not seen until no effort would avert the accident.—L. & N. R. Co. v. Gentry, 103 Ala. 635; L. & N. R. Co. v. Davis, Ib. 661; S. & W. R. Co. v. Jarvis, 95 Ala. 149; K. C. M. & B. R. Co. v. Watson, 91 Ala. 483; s. c., 90 Ala. 41; N. C. & St. L. R. Co. v. Hembree, 85 Ala. 481; M. & G. R. Co. v. Caldwell, 83 Ala. 196; A. G. S. R. Co. v. McAlpine, 80 Ala. 73; E. T. V. & G. R. Co. v. Deaver, 79 Ala. 216; E. T. V. & G. R. Co. v. Bayliss, 77 Ala. 429. **Like duties arise on discovery of live stock in dangerous proximity** to the track.—E. T. V. & G. R. Co. v. Watson, 90 Ala. 41; Western Ry. Co. v. Sistrunk, 85 Ala. 353; Western Ry. Co. v. Lazarus, 88 Ala. 453; A. G. S. R. Co. v. Powers, 73 Ala. 244. **Must keep a diligent lookout for live stock.**—K. C. M. & B. R. Co. v. Watson, 91 Ala. 483; s. c., 90 Ala. 41; L. & N. R. Co. v. Posey, 96 Ala. 262; Western Ry. Co. v. Lazarus, 88 Ala. 453; Western Ry. Co. v. Sistrunk, 85 Ala. 353; M. & G. R. Co. v. Caldwell, 83 Ala. 196; E. T. V. & G. R. Co. v. Bayliss, 77 Ala. 435; s. c., 75 Ala. 466; S. & N. R. Co. v. Jones, 56 Ala. 507; S. & N. R. Co. v. Williams, 65 Ala. 74; L. & N. R. Co. v. Davis, 103 Ala. 661. **When must keep a lookout for persons.**—Bentley v. Ga. Pac. Ry. Co., 86 Ala. 484; Frazier v. S. & N. R. Co., 81 Ala. 185; S. & N. R. Co. v. Donovan, 84 Ala. 241; Tanner v. L. & N. R. Co., 60 Ala. 621; H. A. & B. R. Co. v. Sampson, 112 Ala. 425; S. & M. R. Co. v. Shearer, 58 Ala. 672. **Persons merely crossing railroad, at crossing or elsewhere, not trespassers.**—Montgomery v. A. G. S. R. Co., 97 Ala. 305; Glass v. M. & C. R. Co., 94 Ala. 581; L. & N. R. Co. v. Webb, 90 Ala. 185; Leak v. Ga. Pac. Ry. Co., Ib. 161. **Failure to observe statutory requirements, per se, is simple negligence.**—A. G. S. R. Co. v. Linn, 103 Ala. 134; Montgomery v. A. G. S. R. Co., 97 Ala. 305; S. & W. R. Co. v. Meadors, 95 Ala. 137; E. T. V. & G. R. Co. v. Kornegay, 92 Ala. 228; G. P. Ry. v. Lee, Ib. 262; L. & N. R. Co. v. Webb, 90 Ala. 185; H. A. & B. R. Co. v. Sampson, 91 Ala. 560; A. G. S. R. Co. v. Powers, 73 Ala. 244; Central R. Co. v. Letcher, 69 Ala. 106.

3441 (1145) (1702) (1403). **Duty as to railroad crossing.**—When the tracks of two railroads cross each other, engineers and conductors must cause the trains of which they are in charge to come to a full stop within one hundred feet of such crossing, and not proceed until they know the way to be clear; the train on the railroad having the older right of way being entitled to cross first.

Liability is primarily on the company failing to comply.—Richmond & Danville R. Co. v. Freeman, 97 Ala. 289. **Contributory negligence of company carrying passengers is no defense to the other.**—Ga. Pac. R. Co. v. Hughes, 87 Ala. 610. **Train operated by dummy-engine without city limits, within the statute.**—Ensley Ry. Co. v. Chewning, 93 Ala. 24; Birmingham Min. R. Co. v. Jacobs, 92 Ala. 187; L. & N. R. Co. v. Anchors, Ala. (22 So. 279). **Also electric railways.**—L. & N. R. Co. v. Anchors, Ala. (22 So. 279); Electric Co. v. Baylor, 101 Ala. 488.

3442 (1146) (1722). **Sign-boards.**—Every railroad company must erect, at all points where its road crosses any public road, at a sufficient elevation to admit of the free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars.

3443 (1147) (1722) (1401). **Railroad liable for injuries; burden of proof.**—A railroad company is liable for all damages done to persons, or to stock or other property, resulting from a failure to comply with the requirements of the three preceding sections, or any

negligence on the part of such company or its agents; and when any person or stock is killed or injured, or other property destroyed or damaged by the locomotive or cars of any railroad at any one of the places specified in the three preceding sections, the burden of proof, in any suit brought therefor, is on the railroad company to show a compliance with the requirements of such sections, and that there was no negligence on the part of the company or its agents.

Injury must result from a failure to comply with the requirements named in the statute.—Hilliker v. Birmingham Ry. & Elec. Co., 100 Ala. 424; Ga. Pac. Ry. Co. v. Hughes, 87 Ala. 610; N. C. & St. L. R. Co. v. Hembree, 85 Ala. 481; E. T. V. & G. R. Co. v. King, 81 Ala. 177; Clements v. E. T. V. & G. R. Co., 77 Ala. 533; A. G. S. R. Co. v. McAlpine, 75 Ala. 113; E. T. V. & G. R. Co. v. Bayliss, Ib. 466. **In all cases arising under the statute, the burden of proof is on the defendant to show that "there was no negligence."**—L. & N. R. Co. v. Davis, 103 Ala. 661; Birmingham Min. R. Co. v. Harris, 98 Ala. 326; L. & N. R. Co. v. Posey, 96 Ala. 262; L. & N. R. Co. v. Barker, 96 Ala. 435; S. & W. R. Co. v. Jarvis, 95 Ala. 149; M. & E. R. Co. v. Perryman, 91 Ala. 413; L. & N. R. Co. v. Kelsey, 89 Ala. 287; N. C. & St. L. R. Co. v. Hembree, 85 Ala. 481; M. & G. R. Co. v. Caldwell, 83 Ala. 196; G. P. R. Co. v. Blanton, 84 Ala. 154; E. T. V. & G. R. Co. v. Deaver, 79 Ala. 216; Clements v. E. T. V. & G. R. Co., 77 Ala. 533; A. G. S. R. Co. v. McAlpine, 75 Ala. 113; s. c., 80 Ala. 73; E. T. V. & G. R. Co. v. Bayliss, 74 Ala. 150; N. O. & S. R. Co. v. Jones, 68 Ala. 48; S. & N. R. Co. v. Williams, 65 Ala. 74; S. & N. R. Co. v. Thompson, 62 Ala. 494; M. & O. R. Co. v. Williams, 53 Ala. 595; M. & O. R. Co. v. Malone, 46 Ala. 391; M. & C. R. Co. v. Peacock, 25 Ala. 229; M. & C. R. Co. v. Bibb, 37 Ala. 699. The act of Feb. 28, 1887, amending section 1700 of the Code of 1876 and noted page 300 of the Code of 1886, being here codified into the original section (1147 of the Code of 1886, 3443 of this Code) by inserting the words "person or" before the word "stock," the rule in Ga. Pac. R. Co. v. Hughes, 87 Ala. 610, applies in all cases arising under "the three preceding sections." See also citations to section 3440.

3444 (1148) (1703) (1405). **Superintendent instructs as to law.** The chief superintendent of every railroad shall instruct the engineers and conductors thereof as to the provisions of sections 3440 (1144) and 3441 (1145), and order them to comply therewith.

3445 (1151) (1718). **Signals by steamboat when approaching drawbridge.**—All steamboats approaching, with the intention of passing through, any railroad drawbridge, when about three miles, and again when about two miles, and again when about one mile, and again when about half a mile therefrom, must give, as signals, three loud and distinct sounds of the whistle; and any steamboat attempting to go through such draw without giving such signals shall forfeit five hundred dollars, one half to the informer, and the other half to the county or counties in which the bridge is situated.

3446 (1152) (1719). **Draw to be opened on signal; penalty.** Any railroad company owning, or agent having supervision over, or management or control of, any such drawbridge, shall, upon signal being given as provided in the preceding section, proceed at once to open, or cause to be opened, the draw of such bridge for the passage of such steamboat; and on failing to open such draw immediately upon signal being given, without lawful excuse therefor, such company and agent shall forfeit to the use of the owner of such steamboat the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction; but suit for such forfeiture must be brought within ninety days after the date of the failure to open such draw.

3447 (1153) (1720). **Bridge-signals by railroad.**—Immediately upon the draw being opened sufficiently wide for the passage of such steamboat, the person in charge of the bridge shall ring loudly and continuously a large bell until the boat has passed through the draw; and in foggy weather, and also between sunset and sunrise, the person in charge shall, as soon as the draw is opened sufficiently wide for the passage of the boat, hoist above the draw a blue light, of not less than eight inches in diameter, to an elevation sufficient to prevent the framework of the bridge obstructing the sight of the light up and down the river, and shall keep one white light on each end of the draw; such lights to remain stationary until the boat has passed through the draw, and to be exhibited only when the draw is open for the passage of a boat; and in foggy weather, and also between sunset and sunrise, when the draw is not open, there shall be exhibited on the draw, as a signal thereof, a red light so situated as to be visible up and down the river.

3448. **Employes must be examined.**—It shall be the duty of every person or corporation operating a railroad in this state, before employing any person as train-dispatcher, engineer, conductor, fireman, flagman, brakeman, trackman, or switchman, to subject the applicant for employment to a thorough examination respecting his capacity to fill the position applied for, his moral character and reputation, his sobriety and previous record, his knowledge of the rules and regulations governing the employes of the railroad, the knowledge of which may be necessary or proper for the skillful performance of his duties. Feb. 14, 1893, p. 559, §§1, 4.

3449. **Examination, how conducted; evidence.**—The examination required in the preceding section must be made by the superintendent of the railroad, or other competent officer selected by him for that purpose, and shall be reduced to writing on blank forms provided for that purpose. If the applicant shall be found qualified in all respects for the position, before his employment the examination-papers shall be referred to the general manager or other chief executive officer of the railroad for his approval or disapproval, and by him shall be filed in his office for future reference; and copies thereof shall be filed in the office of the superintendent in this state, or if there be no such superintendent, then in the principal office of such railroad in this state. Such examination-papers, when certified by the officer having custody of them, shall be evidence of their contents and of the fact of such examination without further proof. Ib. §2.

3450. **License to competent employes.**—If the applicant upon examination shall be found competent and his examination-papers are approved by the general manager or other chief executive officer, the superintendent, or other person selected by him to conduct such examination, shall issue without charge a license to the applicant to engage in the occupation about which he has been examined. Ib. §3.

ARTICLE 2.

REGULATIONS AFFECTING THE CONVENIENCE OF PASSENGERS.

Feb. 28, 1887, p. 74, §1.

3451 (1154). **Depot conveniences.**—Every railroad company, for the comfort and accommodation of its passengers, must have, when required by the railroad commissioners, at each of the passenger-stations along the line of railroad operated by such company, sufficient sitting or waiting rooms, to be determined by the commissioners, for passengers waiting for trains, having regard to sex and race, which shall be suitably heated in cold weather, and supplied with sufficient fresh drinking-water, when passengers waiting for trains are present, and with sufficient and comfortable chairs or seats; and connected therewith a sufficient number of comfortable privies, or water-closets, to be at all times kept clean; and, in a conspicuous place at such station, a bulletin-board showing the schedule time of the arrival and departure of all passenger-trains; and, if there is a telegraph-station thereat, when any passenger-train is delayed, a bulletin posted in a conspicuous place at such station, showing how much the train is behind its schedule time, and continue to post such bulletins each hour until the train arrives.*

Ib. §§2, 3, 4.

3452. Service of order of railroad commission; time allowed for compliance.—Whenever the railroad commission shall make an order requiring the performance of any of the duties enumerated in the preceding section, notice thereof may be served on the person or corporation operating the railroad, by delivering a copy of such order, signed by the president of the railroad commission, to the president or other head thereof, secretary, cashier, station-agent, or any other agent thereof; which service may be executed by any member of the railroad commission, or the clerk thereof, or by any sheriff of the state; and a copy of such notice, with the service indorsed thereon, must be returned to the railroad commission and entered of record as a part of its proceedings. If such order be for the erection of sitting or waiting rooms, or privies or closets, the person or corporation operating the railroad is allowed ninety days after such service, or such further time as may be allowed by the railroad commission, in which to comply with such order; if for the erection of bulletin-boards, a period of thirty days after such service shall be allowed.

Ib. §§5, 8.

3453. Commissioners to notify solicitor and attorney-general of

---

*An act approved Feb. 15, 1897 (Pamph. Acts, p. 956), entitled "An act to require railroad companies to establish depots in towns of more than one thousand inhabitants," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That every person, company or corporation owning or operating any railroad through the corporate limits of any incorporated town or city of more than one thousand inhabitants, is required to establish and maintain one or more depots within such corporate limits sufficient for the accommodation of passengers and the storage of freights; *Provided*, that this act shall not prevent the establishment or maintenance of union depots by two or more of such railroad companies or corporations.

"SEC. 2. *Be it further enacted*, That any person, company or corporation who shall fail or refuse to comply with this act within three months after the approval thereof must, on conviction, be fined not less than one, nor more than five hundred dollars."

failure to comply with order; chancery proceeding; jury trial; appeal.—The railroad commission must notify the solicitor of the proper circuit and the attorney-general of the failure of any railroad company or person operating a railroad to comply with any order made by such commission for the erection of sitting or waiting rooms, within sixty days after the expiration of the period within which such sitting or waiting rooms are to be erected; and thereupon, it shall be the duty of the solicitor, under the direction of the attorney-general, to file a bill in the name of the State of Alabama, or take other appropriate steps in the chancery court, or before the chancellor, to compel the erection of such sitting or waiting rooms. For the purpose of entertaining, hearing and deciding such causes, the court of chancery shall be always open, and the chancellor may make all needful orders and issue all writs and process either in term time or vacation. If the person or corporation refusing or failing to obey such order claims that the same is unreasonable or unjust, such person or corporation may, on demand, have the facts tried by a jury, under directions from the chancellor as to the law of the case; and it shall be the duty of the chancellor, on demand for such trial by jury, either in term time or vacation, to cause a jury to be summoned by the sheriff of the county in which such trial is to be had. From any decree made under this section an appeal lies to the supreme court within thirty days from the rendition thereof, and such appeal shall be heard as a preferred case.

3454. Separate coaches for whites and blacks.—All railroads carrying passengers in this state, other than street-railroads, shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger-cars for each passenger-train, or by dividing the passenger-cars by partitions, so as to secure separate accommodations. Feb. 6, 1891, p. 412, §1.

3455. Conductor must assign each passenger a seat in the car designated for his color.—The conductor of each passenger-train is authorized and required to assign each passenger to the car or the division of the car, when it is divided by a partition, designated for the race to which such passenger belongs; and if any passenger refuses to occupy the car, or the division of the car to which he is assigned by the conductor, such conductor may refuse to carry such passenger on the train, and for such refusal neither the conductor nor the railroad company shall be liable in damages. But this section shall not apply to cases of white or colored passengers entering this state upon railroads under contracts for their transportation made in another state where like laws to this do not prevail. Ib. §2.

3456 (1155) (1717) (1416). **Lights and water on trains.**—Every railroad company shall keep good lights on night trains, and on all trains sufficient fresh drinking-water.

3457 (1156). **Police powers of conductors of passenger-trains.** Conductors of passenger-trains, while on duty on their trains, are invested with all the powers, and charged with all the duties and

responsibilities of police officers; and when a passenger is disorderly, or uses profane, vulgar or obscene language, or plays any game of cards, or other game of chance, for money or other thing of value, upon any passenger-train, the conductor of such train may stop the train at the place where such offense is committed, or at the next stopping-place of such train, and eject such passenger from the train, using only such force as may be necessary to accomplish the removal; and he may command the employes of the company and the passengers on the train to assist him in making such removal; and he may cause the passenger so offending to be detained and delivered to the proper authorities for trial, if the act committed is a penal offense.

Feb. 28, 1887, p. 98.

3458 (1157). Trains to stop at advertised stations; at stations nearest county-seat; penalty.—Railroad-trains for the carriage of passengers must stop at all stations advertised by the railroad company as stations, at least half a minute, for receiving passengers thereon; they must also stop at the telegraph-station nearest or most accessible, as determined by the railroad commission, to the county-seat of each county through which the railroad may pass, for the purpose of receiving and discharging passengers, when signaled to stop, or whenever there is any passenger on board who desires to stop at such station; and every railroad company and employe of such company, violating, or causing, or permitting any violation of the provisions of this section, forfeits to the state, for the use of the public schools, not less than twenty-five, nor more than one hundred dollars, which may be recovered before any justice of the peace of the county in which such violation occurs; and the conductor of the train shall be held prima facie to have caused any such violation occurring on the train in his charge; and the company, whose agent shall cause or permit such violation, shall also incur, and be liable for such forfeiture.*

*An act approved Feb. 12, 1897 (Pamph. Acts, p. 844), entitled "An act to require passenger-trains on railways in this state to stop at the station nearest the court-house town of every county in this state, and to prescribe who shall establish such stations, and to fix penalties for the violation of such requirement," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That from and after the passage of this act all trains on railroads in this state, carrying passengers are required to be stopped by the person in charge thereof at the railroad-station now existing or hereafter established nearest or most accessible, to be determined by the railroad commission, to the county-seat of each county through which the railroad or any part thereof may pass for the purpose of receiving and discharging passengers, when signaled to stop, or whenever there is any passenger on board who desires to stop at such station: *Provided*, that the provisions of this act shall not apply to vestibuled or limited trains, being trains which only stop for coal and water or at terminal or register stations, and all trains shall stop at Letohatchie in Lowndes county and Eppes Station, Alabama.

"SEC. 2. *Be it further enacted*, That any railway agent who shall fail or refuse to sell a ticket to pass to or from such station to any person at the request of such person and on tender of the usual cost of a ticket in such case whereby such person may take passage on said train, shall be liable to said person in the sum of not less than twenty-five nor more than five hundred dollars as damages for such failure or refusal, and any conductor of any passenger-train who fails or refuses to stop the train he conducts at such station shall be liable to a fine of not less than twenty-five nor more than five hundred dollars on conviction of such failure or refusal after indictment by the grand jury of the county in which such offense occurs.

"SEC. 3. *Be it further enacted*, That within ten days after the approval of this

ARTICLE 3.

COMMERCIAL REGULATIONS.

3459 (1158). **Railroads public highways.**—The main track of every railroad in this state is a public highway, over which all persons have equal rights of transportation for passengers and freight, on the payment of just compensation therefor to the owner of the railroad.

3460 (1159). **Extortion by railroad; liability therefor.**—Any person or corporation, engaged in the business of transporting passengers or freights over any railroad in this state, who shall exact and receive for such transportation more than just compensation therefor, or demands more than the rates specified in any bill of lading issued for such freights, or who, for his own advantage, or for the advantage of any connecting line, or of any person or locality, shall make any unjust discrimination in such transportation, against any individual, corporation, or locality, such overcharge or discrimination to be determined by the jury, is guilty of extortion, and is liable to the party injured for double the damages sustained, and a reasonable attorney's fee for the recovery thereof, unless it appears that the service as to which the extortion was committed, was performed at rates or upon terms previously approved by the railroad commissioners, and then only to actual damages, without such attorney's fee, to be recovered in a court of competent jurisdiction of any county in which the person or corporation operating such railroad does business, by an action commenced within ninety days after such cause of action accrues. If the plaintiff fails in any such suit, and it appears on the trial that the rates or terms complained of are not higher than those previously approved by the railroad commissioners, he must pay the costs of the suit, and also a reasonable attorney's fee to the defendant for defending the suit, the amount of which fee must be determined by the court or jury trying the cause.

M. & O. R. Co. v. Dismukes, 94 Ala. 131.

3461 (1160). **What evidence that rates are not extortionate.**—In such suit, the fact that the rates or terms, in respect to which the extortion is alleged, had been previously approved by the railroad commissioners, is prima facie evidence that the same were not extortionate; nor shall any rate or charge for the transportation of freight over any railroad be held or considered extortionate or excessive, if, in the absence of any unjust discrimination, it appears from the evidence that the net earnings of such railroad for transporting freights, on the basis of such rate or charge, together with the net earnings thereof from its passengers and other traffic, does not amount to

act the railway commissioners of this state shall select all the railway-stations to be affected by this act and shall within that time notify each railway company or the manager or superintendent thereof who resides in this state, or notify the agent of the railway-station so selected of such selection.

"SEC. 4. *Be it further enacted*, That nothing in this act shall be construed so as to prevent any person from recovering damages against the railroad companies for failure on the part of their employes to comply with the provisions of this act."

more than a fair and just return on the value of such railroad, its appurtenances and equipments.

3462 (1161). **Rates on freight to be posted at depot; discrimination unlawful.**—Every person or corporation, owning or operating a railroad in this state, must publish, by posting at all the freight-depots along the line of such railroad, the tariffs of rates for the transportation of freight thereon, showing the rates for each class, and including general and special rates; and from such tariffs no reduction shall be made in favor of any person which is not also made in favor of all other persons or corporations by change in such published rates. Special rates, if so published, may be given to any person or corporation to aid in the development of any industrial enterprise in this state.

L. & N. R. Co. v. Fulgham, 91 Ala. 555.

3463 (1162). **Freight or passengers may be transported free.** Nothing in this Code shall be so construed as to prevent any person or corporation owning or operating a railroad from transporting freight or passengers free of charge.

3464 (1163). **Agreements for pooling unlawful.**—It shall be unlawful for two or more railroad companies, or persons operating railroads in this state, to enter into any agreement, directly or indirectly, for the division among themselves of the freight-carrying business at any station, town, or city in this state, or into any pool arrangement of like nature or character, the purpose or effect of which shall be to prevent free and fair competition among such companies or persons for such business, or to establish extortionate rates in favor of such companies or persons in doing such business, or to operate in undue restraint of the trade or business at such station, town, or city; and any such agreement, made by any convention or association of freight-agents, or commissioner of freight rates, or rate-making committee, outside of the state, but to be therein performed, in whole or in part, shall, as to such part thereof as is to be performed within the state, be also unlawful. But no agreement, rate, or pool arrangement made for the purpose of cheapening freight rates, or of extending additional facilities to the public generally, or to any station, town, or city in this state, which is not extortionate, or in undue restraint of the trade at any station, town, or city in this state, shall be construed as coming within the meaning of this section; and any agreement, rate, or pool arrangement, having the certified approval of the railroad commissioners, shall be deemed, prima facie, lawful and just in any proceeding before any court or officer of this state.

3465 (1164). **Trains to stop at railroad crossings for passengers or freight.**—Every conductor, or other person in charge of a train, passing by, or within two hundred feet of any station of an intersecting railroad, located within two hundred yards of the intersection, must stop such train at or opposite such station, and take on and let off passengers and their baggage, and receive and deliver the freight of such station; such passengers and the persons forwarding or re-

ceiving such freight, to pay the usual fare and charges on such railroad. If the intersecting railroads have, or run their trains to a common terminus, neither shall charge a less rate per mile for freight or passengers between the place of intersection and such terminus, than is charged per mile over the whole length of its line.

3466 (1165) (1695) (1435). **Intersection of railroads; transportation on such roads, and on connecting lines.**—Railroads may be constructed so as to cross or connect with each other, by the main or branch tracks; and any person or corporation operating a railroad, when required, must transport or draw over such railroad, main line or branches, the passengers, freight, or cars of any intersecting railroad, or any railroad connecting therewith, directly or indirectly, on reasonable terms, and for a reasonable compensation; but such person or corporation is not required to receive or transport the cars of any other railroad, unless such cars are adapted to the gauge of its track, are sufficiently strong, and are otherwise in proper condition for safe transportation.

3467 (1166). **Disagreements between connecting railroads; how settled.**—If persons or corporations, owning or operating railroads connecting with each other, directly or indirectly, cannot agree upon the time when the passengers, freight, or cars of either shall be received by, or drawn over the railroad of the other, or as to the compensation to be paid, or as to the proportion in which the compensation for transportation of passengers or freight shall be divided or shared between them, or as to the depot accommodations or facilities for transferring passengers or freight from one road to the other, at the point of connection, either party may file in the chancery court of any district in which the other does business a petition, addressed to the chancellor, and verified by affidavit, setting forth the matter or matters touching which they cannot agree; and upon the filing thereof, the chancellor may, in term time or vacation, if satisfied that the interests of the petitioner demand it, make an order referring the petition to the railroad commissioners for an adjustment of the matter or matters of disagreement set forth therein; a copy of which petition, and of the order made by the chancellor thereon, the petitioner shall serve upon the opposite party, or upon any officer or agent of such party on whom service of legal process may lawfully be made. Upon the making of such an order, the register shall forthwith transmit to the president of the railroad commission, or deliver to the petitioner for that purpose, a certified copy of such petition and order.

3468 (1167). **Proceedings before commissioners on such petition.** Upon receiving the certified copy of such petition and order, the railroad commissioners must appoint a time and place for hearing the matter in controversy, of which they must give to both parties at least ten days' notice. At the time and place appointed, or at any other time and place to which the matter may be continued, if both parties have had the required notice, the commissioners must proceed to hear the parties interested, and such evidence as they may

adduce, and determine the matter referred to them, having reference to the convenience and interest of the parties or corporations owning or operating such railroads, and the public to be accommodated thereby; and their decision or award, with a statement of the facts as disclosed before them, they shall reduce to writing and certify to the register of the court in which the petition was filed.

3469 (1168). **Proceedings in chancery court on award of commissioners.**—Upon receiving the decision or award of the commissioners, the register must file the same, and either party has thirty days thereafter within which to file exceptions thereto. Upon the hearing of the exceptions, in term time or vacation, the chancellor may, for good cause shown, annul the decision or award of the commissioners, and remand the petition to them for further investigation, when the same proceedings shall be had as in the first instance. If no exceptions are filed within the time allowed for filing the same, or if, upon the hearing of the exceptions filed, the chancellor confirms the award or decision of the commissioners, the same must be entered as the decree of the court, and enforced as such, if necessary, by any appropriate writ; and the same shall remain of force and be binding upon the parties for the period of twelve months after the confirmation thereof.

3470 (1169). **Revival, amendment and change of award.**—Either of the parties to such proceedings may, at any time after the expiration of twelve months from the time the award takes effect, file in such court a petition to revive, modify, or amend the same; and thereupon the same proceedings shall be had as upon the original petition; or the parties may, at any time, by agreement in writing, change or modify such award, and thereafter such award, as changed or modified, shall be of the same force and effect as if originally so made.

3471 (1170). **Penalty for violation of award.**—Any party to such award, who shall knowingly disregard or violate the same, or any of its provisions, shall forfeit two hundred dollars for each day such disregard or violation continues, one half to any person suing for the same, and the other to the state, to be recovered in any court of competent jurisdiction of any county in which such party does business.

3472 (1171). **Costs; against whom taxed.**—The fees to the register for services rendered by him in such proceedings shall be fixed by the chancellor; and the costs may be taxed against either or both parties, in the discretion of the chancellor.

3473 (1172). **When provisions of preceding sections do not apply.** The provisions of the six preceding sections do not apply to railroads intersecting each other, and having a common terminus, as to freight and passengers between the place of intersection and such terminus.

3474 (1173). **Meaning of railroad company.**—Unless clearly otherwise apparent from the context, the term "railroad company," as

used in this chapter, includes any person or corporation owning or operating a railroad.

ARTICLE 4.

REGULATIONS AFFECTING LIVE STOCK.

3475. Owner must be notified of injury to stock.—Whenever any stock is killed or injured by any railroad train or locomotive, it shall be the duty of the section-master on whose section such killing or injury occurs, within twenty-four hours thereafter, to notify the owner of said stock or his agent, if known, of such killing or injury. Feb. 28, 1889, p. 808, §1.

3476. Two persons selected to assess the damages.—Upon the demand of the owner or his agent, it shall be the duty of the section-master to select one disinterested person from the neighborhood, who, together with another of like character, to be selected by the owner or his agent, shall assess the value of the stock killed, or the amount of the injury, if injured only. They shall deliver to the section-master and to the owner, or his agent, a written statement of the value of the stock or amount of injury so ascertained, which statement shall be prima facie evidence of such value or amount in all trials in which they may be in issue. If the two persons so selected are unable to agree, they shall select a third, and the award of any two of them shall have the force and effect provided for in this section. Ib. §§2, 3.

3477. When owner unknown justice of the peace acts for him. If the owner of the stock is unknown, it shall be the duty of the section-master to inform the nearest justice of the peace, and the section-master and the justice of the peace shall each select one person who shall proceed in all respects as provided in the preceding section. Ib. §4.

3478. When section-master fails or refuses to act.—If upon the demand of the owner of the stock or of the justice of the peace, as the case may be, the section-master fails or refuses to act as provided in this article, the owner or the justice of the peace may select two persons to act as appraisers who shall proceed in all respects as provided in this article. Ib. §6.

3479. Fees of appraisers.—Each person appointed under the provisions of this article shall be entitled to receive fifty cents for his services which shall be paid as costs are in civil cases. Ib. §5.

3480. Cattle-guards.—Every person or corporation operating a railroad must put cattle-guards upon such railroad and keep the same in good repair whenever the owner of the land through which the road passes shall make demand upon them or their agents and show that such guards are necessary to prevent the depredation of stock upon his land. Dec. 11, 1886, p. 163.

CHAPTER 96.

RAILROAD COMMISSIONERS. 3481-3504.

3481 (1120). **Appointment and term of office.**—A commission known as the railroad commissioners of Alabama, consisting of a president and two associates, who shall be competent persons, and who shall be appointed by the governor by and with the advice and consent of the senate, is established. Under the appointment first made under the provisions of this chapter, one of such commissioners, to be designated by the governor when he nominates them to the senate, shall hold office for two years, and the others for four years; but thereafter the term of office of each commissioner shall be for four years; and each commissioner appointed hereunder shall also continue in office until his successor is duly appointed and qualifies.

3482 (1121). **Oath of office.**—The commissioners shall be state officers, and, before entering upon the discharge of their duties, they shall take the oath of office prescribed for other state officers.

3483 (1122). **Vacancy, how filled.**—Any vacancy occurring in the office of such commissioners shall be filled by the appointment of the governor by and with the advice and consent of the senate; but if the senate is not in session at the time such vacancy occurs, the vacancy may be filled by the appointment of the governor, subject to the approval of the senate when convened; such appointee to hold the office during the unexpired term, and until his successor is appointed and qualifies.

3484 (1123). **Disqualification for office.**—No person owning any stock in any railroad corporation, or in the employment of any railroad corporation, or of any person owning or operating a railroad in this state, shall be nominated by the governor, or confirmed by the senate as a member of such commission.

3485 (1124). **Impeachment; before what court, and grounds of.** Such commissioners may be impeached and removed from office by the supreme court for the same causes, and in the same manner as other state officers; and any commissioner, who shall accept any gift, gratuity, emolument, or employment from any person or corporation owning or operating a railroad in this state, during his continuance in office, except a permit for himself to pass over the railroad of such person or corporation, shall forfeit his office, and may be impeached and removed from office therefor, as for any other cause of impeachment.

3486 (1125). **Salaries; clerk and his salary; expenses.**—The president of such commission shall receive a salary of thirty-five hundred dollars per annum, and the associate commissioners shall each receive a salary of three thousand dollars per annum; and they may employ a clerk at a salary not exceeding fifteen hundred dollars per annum; such salaries to be paid as the salaries of state officers

are paid. All money paid out under the provisions of this chapter, including such sum as may be necessary to procure office furniture and stationery, and to pay other office expenses, shall be paid on warrants drawn by the auditor on the treasurer; but such office expenses shall not exceed five hundred dollars per annum.

3487 (1126). **Office; meetings, and record of proceedings.**—Such commissioners shall have an office at the capitol, and shall there meet on the first Monday in every month, September excepted, and shall remain in session until all business before them is disposed of; and they shall hold other sessions at such times and places as may be necessary for the proper discharge of their duties, or as the convenience of parties, in the judgment of the commissioners, may require; and they shall keep a record of all their proceedings, which shall be open at all times to the inspection of the public.

3488 (1127). **Commissioners and clerk not to contract with railroads.**—No railroad commissioner, or clerk of the commission, shall, during his continuance in office, personally, or through any partner or agent, render any professional services, or make or perform any business contracts for or with any corporation or person owning or operating a railroad in this state, except contracts made in the capacity of such corporation or person as common carrier.

3489 (1128). **License-tax against railroads; how amount ascertained; penalty for operating without license.**—Every person or corporation operating a railroad in this state must annually, at the time of returning its property for taxation, make return of the gross earnings of such railroad during the preceding year; and if such railroad is partly in another state, the gross earnings shall be apportioned to each mile of main track on the entire line, and the sum thus apportioned to each mile, multiplied by the number of miles in this state, shall be considered the gross earnings of such railroad in this state; and should any such person or corporation fail to make such return of the gross earnings of such railroad, the auditor shall ascertain and assess the same from information. The auditor must then ascertain what percentage of the aggregate of gross earnings thus returned or assessed will be sufficient to pay the expenses of the railroad commission authorized by law, and assess a license-tax against every such railroad for the amount of such percentage of its gross earnings; and the person or corporation operating any such railroad shall pay the tax so assessed against it to the treasurer on or before the first day of June of each year. Upon the production of the treasurer's receipt for such tax, and satisfactory evidence that the person or corporation paying the same is prepared to transport freight and passengers with reasonable safety over such railroad, the auditor shall issue to such person or corporation a license to operate such railroad for one year; and any person or corporation, operating a railroad in this state without such license, shall forfeit one hundred dollars for each day while so engaged, one half to any person suing for the same and the other half to the state.

Charlotte, etc., R. Co. v. Gibbes, 142 U. S. 386.

3490 (1129). **Supervision of railroads; recommendations as to management; right of free passage.**—Such railroad commissioners shall have general supervision over all the railroads in this state; shall, from time to time, as they may deem necessary, examine the same, and keep themselves informed as to their condition and the manner in which they are operated with reference to the security and accommodation of the public, and their compliance with their charters and the laws of this state; and shall, in writing, recommend to the persons or corporations operating such railroads, or any of them, from time to time, the adoption of such measures and regulations as the commissioners may deem conducive to the public safety and interest; and the commissioners, in the performance of their duties, shall have the right to pass free of charge on all the railroads in the state, and to take with them any person in their official employment.

3491 (1130). **Revision of railroad tariffs.**—It is the duty of the railroad commissioners to consider and carefully revise all tariffs of charges for transportation made by any person or corporation owning or operating a railroad in this state; and if, in their judgment, any such charge is more than just compensation for the service for which it is proposed to be made, or amounts to unjust discrimination against any person, locality, or corporation, they shall notify the party making the same of the changes necessary to reduce the rate to just compensation, or to avoid unjust discrimination; and when such changes are made, or when none are deemed proper and expedient, they shall append to the tariff of charges a certificate of their approval; and they shall exercise a watchful and careful supervision over all tariffs and their operation, and revise the same, from time to time, as justice to the public and the railroads may require, and increase or reduce any of the rates, as experience and business operations may show to be just; but in revising any tariff, the commissioners shall take into consideration the nature of the service to be performed, the entire business of the railroad, and its earnings from passengers and other traffic, and so revise the same as to allow a fair and just return on the value of the railroad, its appurtenances and equipments.

3492 (1131). **Complaints against approved tariffs, and proceedings thereon.**—The commissioners must hear and consider all complaints made to them in writing by any person against any railroad tariff of rates approved by them, on the ground that the same affords more than just compensation, or amounts to unjust discrimination, and specifying the item or items against which complaint is made; and if it appear to them that the matter should be investigated, they shall forthwith fix the time and place for hearing the complaint, and furnish the person or corporation operating the railroad against which the complaint is made, with a copy of such complaint, and notice of the time and place fixed by them for hearing the same; and, at such time and place, they shall hear the parties, in person or by counsel, and such evidence, oral or written, as may be offered, allowing the examination of witnesses under oath, and giving such time

and latitude to each side, and so regulating the opening and concluding of argument, as to them may seem best adapted to attaining the truth; and conforming, as nearly as may be convenient, to the mode of proceedings required of arbitrators. When the hearing is concluded, the commissioners shall give to the person or corporation operating such railroad written notice of any changes deemed proper by them to be made.

3493 (1132). **When must make recommendations of joint local rates.**—When any line of railroad consists of two or more railroads under one general management, or when there are connecting lines of railroad, such commissioners shall recommend joint local rates of freight, so as to avoid, as far as possible, the injustice of combined local rates in the transportation of freight over such line or lines; but in making any such recommendation, they shall have due regard for the value of the services to be performed, and the rules and principles governing such transportation, and shall not, in any instance, make any recommendation which does not allow the persons or corporations operating such lines a fair and reasonable compensation for the services to be performed.

3494 (1133). **Authority to notify railroads of desired changes or repairs.**—Whenever, in the judgment of the railroad commissioners, repairs are necessary upon any railroad in this state, or any addition to the rolling-stock, or any addition to, or change of stations, or station-houses, of any such railroad, or any change in its rates of fares for transporting freight or passengers, or any change in the mode of operating its road, or conducting its business, is reasonable and expedient, in order to promote the security, convenience, or accommodation of the public, they shall, in writing, notify the person or corporation operating such railroad of the repairs, improvements, or changes which they adjudge to be proper; and a report of such notice, and the proceedings thereon, shall be included in the annual report of the commissioners to the governor.

3495 (1134). **Fencing railroads.**—When such commissioners deem it necessary that any railroad in this state, or any portion thereof, should be fenced, they shall notify the person or corporation operating such railroad of their conclusion; and upon failure, after reasonable notice, to fence such railroad, or the portion thereof designated, the person or corporation operating such railroad shall be liable in damages for the value of any stock injured or killed upon the portion of the line so designated to be fenced, whether with or without negligence; but if the fence is erected in conformity to the notice, no liability shall attach for stock injured or killed upon the portion of the line so fenced, unless such injury or killing was committed willfully.

3496 (1135). **Effect of determination of commissioners.**—When any matter relating to the regulation or supervision of any railroad in this state, or of any person or corporation operating any such railroad, and coming within the jurisdiction of the railroad commissioners, has been determined by them in the course of any proceeding

before them, proof of such determination, to be made by a copy thereof certified by the president or their clerk, shall be received in any suit, or other legal proceeding in any court, or before any officer, as prima facie evidence that the determination made by them of such matter was right and proper.

3497 (1136). **Railroads must furnish commissioners with information requested, and list of stockholders.**—The managers of railroads, operated in this state, shall furnish such commissioners with all information required by them relative to the management of their respective lines, and with copies of all leases, contracts and agreements made by them with express, sleeping-car, or other companies, to which they are parties, or affecting such lines, and such commissioners shall have, at all times, access to the list of stockholders of every corporation operating a railroad in this state, and they may, at any time, cause the same to be copied, or any part thereof, for their own information, or for the information of persons owning stock in such corporation.

3498 (1137). **Annual reports to commissioners.**—Every person or corporation operating a railroad in this state must, on or before the first day of September of each year, make to the commissioners in duplicate, in the manner prescribed, and upon blanks to be furnished by them, annual returns of the business of such railroad up to the close of its business on the thirtieth day of June next preceding; and any such person or corporation, failing to make such returns, shall forfeit to the state fifty dollars for each day of such failure.

3499 (1138). **When accident to be reported to commissioners; proceedings thereon.**—Every person or corporation operating a railroad shall give notice to the commissioners of any accident happening on any portion of its line within this state, which is attended with serious injury to the person of any one, within twenty-four hours thereafter; and upon receiving such notice, or upon public rumor of such accident, one or more of the commissioners may repair to the scene of the accident, and inquire into the facts and circumstances thereof; and the result of such inquiry, with such details as may be deemed necessary, shall be entered upon the record of the proceedings of the commissioners, and embraced in their annual report.

3500 (1139). **When books of railroad may be examined by commissioners.**—Upon the application in writing of a director, or of persons owning one fiftieth part of the entire paid-in capital stock of any corporation operating a railroad, or of the bonds or other evidences of indebtedness of such corporation, equal in amount to one fiftieth part of its paid-in capital stock, the commissioners shall make an examination into the books and financial condition of such corporation, and may, in their discretion, cause the result of their examination to be published in one or more newspapers in this state.

3501 (1140). **Witnesses before commissioners, and their compensation.**—Such commissioners may summon and examine, under oath, such witnesses as they may think proper in relation to the affairs of any railroad in this state, or of any person or corporation

operating such railroad; and any witness summoned before such commissioners may be sworn by any one of them. Witnesses summoned to appear before the commissioners shall be entitled to the same per diem and mileage as in the circuit court; and, when summoned on behalf of the commissioners, they shall be paid by warrant of the auditor on the treasurer, drawn on the certificate of the president, stating the amount to which they are entitled; when summoned on behalf of any party, they shall be paid by such party.

3502 (1141). **Duty to attend sessions of state boards of assessment.**—Such commissioners, on notice by the governor, shall attend the meetings of the state board of assessment, and, if required, give such board all information they can that will assist them in the assessment of taxes against persons or corporations operating railroads.

3503 (1142). **Reports of commissioners to the governor.**—On or before the tenth day of October, of each year, the railroad commissioners, through their president, shall make to the governor, for transmission to the general assembly, a report of their acts and doings for the year ending on the thirtieth day of June next preceding, setting forth such facts as will disclose the actual workings of the railroad system in this state, and making such suggestions as to the general railroad policy of the state as may to them seem appropriate; and they shall also therein submit such recommendations for further legislation upon the subject of railroads as they may deem necessary or advisable for the interests of the state. As amended Feb. 21, 1893, p. 854.

3504 (1143). **Provisions of chapter not to affect duties, etc., of railroads; effect of adoption of recommendations.**—The provisions of this chapter shall not be construed so as to affect, in any manner or degree, the legal duties, rights and obligations of any person or corporation owning or operating any railroad in this state, or the legal liability of such person or corporation for the consequences of its neglect or mismanagement, whether adjudged by such commissioners to be reasonable, expedient and proper, or not; but when such person or corporation has adopted the recommendation or advice of the commissioners, in a matter in which they had authority to recommend or advise, proof of such fact shall be received in any suit or other legal proceeding in any court, or before any officer, as prima facie evidence that the thing done, or omitted to be done, upon such recommendation or advice, was right and proper.

CHAPTER 97.

REDEMPTION OF REAL ESTATE. 3505-3519.

Feb. 27, 1889, p. 764.

3505 (1879) (2877) (2509) (2116). **Redemption by debtor.** Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in chancery, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, his vendee, junior mortgagee or assignee of the equity of redemption from the purchaser, or his vendee, within two years thereafter, in manner following.

Right neither property nor right of property; a personal privilege to be exercised by the persons, and in the mode prescribed by statute.—Lehman v. Moore, 93 Ala. 186; Walden v. Speigner, 87 Ala. 379; Powers v. Andrews, 84 Ala. 289; Aiken v. Bridgeford, Ib. 295; Commercial Asso. v. Parker, Ib. 298; Otis v. McMillan, 70 Ala. 46; Posey v. Pressley, 60 Ala. 243; Childress v. Monette, 54 Ala. 317; Owen v. Kilpatrick, 96 Ala. 421; Cramer v. Watson, 73 Ala. 127; Parmer v. Parmer, 74 Ala. 285; Camp v. Simon, 34 Ala. 126; Spoor v. Phillips, 27 Ala. 193. **Right cannot be assigned.**—McCall v. Mash, 89 Ala. 487; Powers v. Andrews, 84 Ala. 289; Commercial Asso. v. Parker, 84 Ala. 298; Seals v. Pheiffer, 77 Ala. 278. **And is not subject to levy and sale under execution or attachment.**—Bailey v. Timberlake, 74 Ala. 221; Junkins v. Lovelace, 72 Ala. 303; Childress v. Monette, 54 Ala. 317; Central Mining Co. v. Stoven, 45 Ala. 594. **Cannot be waived by mortgagor by contemporaneous agreement.**—Parmer v. Parmer, 74 Ala. 285. **Right governed by the law in force at the execution of the mortgage.**—Lehman v. Moore, 93 Ala. 186. **Extends only to those having an interest in the property** at the time of the sale. Commercial Asso. v. Parker, 84 Ala. 298. **When property of tenants in common sold,** either may redeem.—Lehman v. Moore, 93 Ala. 186. **"Deed of trust" defined;** does not include a general assignment.—Comer v. Constantine, 86 Ala. 492. **Limitation of two years applies to all persons,** including minors. Mewburn v. Bass, 82 Ala. 622. **Statutory right distinguished from the equitable right to disaffirm and redeem** from a mortgagee purchasing at his own sale.—American Mort. Co. v. Turner, 95 Ala. 272; Amer. Mort. Co. v. Sewell, 92 Ala. 163; McCall v. Mash, 89 Ala. 487; Craddock v. Amer. Fre. Co., 88 Ala. 281; Pryor v. Hollinger, Ib. 405; Alexander v. Hill, Ib. 487; Knox v. Armistead, 87 Ala. 511; Thomas v. Jones, 84 Ala. 302; Ezzell v. Watson, 83 Ala. 120; Garland v. Watson, 74 Ala. 323; Harris v. Miller, 71 Ala. 26, 32; Cramer v. Watson, 73 Ala. 127.

Ib.

3506 (1880) (2878) (2510) (2117). **Possession delivered on demand; notice to tenant dispenses with attornment.**—The possession of the land must be delivered to the purchaser, within ten days after the sale thereof, by the debtor, if in his possession, or of any one holding under him by privity of title, if in his possession, on demand of the purchaser or his vendee. If the land is in the possession of a tenant, notice to him by the purchaser, or his vendee, of the purchase, after the lapse of ten days from the time of the sale, and that it has not been redeemed, vests the right to the possession in him, in the same manner as if such tenant had attorned to him.

Delivery of possession a condition precedent; averment and proof of, in bill to redeem.—Nelms v. Kennon, 88 Ala. 329; Pryor v. Hollinger, Ib. 405; Aycock v. Adler, 87 Ala. 190; Hanna v. Steele, 84 Ala. 305; Stocks v. Young, 67 Ala. 341; Bondurant v. Sibley, 29 Ala. 570; Paulling v. Meade, 23 Ala. 505; Sanford v. Ochtalomi, Ib. 669. **Effect of notice to tenant.**—Comer v. Sheehan, 74 Ala. 452; Amer. Mort. Co. v. Turner, 95 Ala. 272; Nelms v. Kennon, 88 Ala. 329; Richardson v. Dunn, 79 Ala. 167; Drakford v. Turk, 75 Ala. 339. **Purchaser entitled to rents and profits as owner, without liability to account** (except by way of off-set against permanent improvements) **until put in default by tender of redemption-money.**—Amer. Mort. Co. v. Turner, 95 Ala. 272;

Parmer v. Parmer, 74 Ala. 285; Cramer v. Watson, 73 Ala. 127; Carlin v. Jones, 55 Ala. 624; Spoor v. Phillips, 27 Ala. 193; Weathers v. Spears, Ib. 455. **A tenant by the year of the purchaser is entitled to emblements** on redemption. Gardner v. Lanford, 86 Ala. 508.

3507 (1881) (2879) (2511) (2118). **Purchase-money and ten per cent. also, to be tendered.**—The debtor, or his vendee, must also pay or tender to the purchaser or his vendee the purchase-money, with ten per cent. per annum thereon, and all other lawful charges; and such payment or tender has the effect to reinvest him with the title; and if a conveyance has been made to the purchaser, he must, at the costs of the debtor, or his vendee, convey to him such title as he acquired by the purchase. Ib.

Tender a condition precedent in every case.—Vick v. Beverly, 112 Ala. 458; Beatty v. Brown, 101 Ala. 695; Lehman v. Moore, 93 Ala. 186; Beebe v. Buxton, 99 Ala. 117; Pryor v. Hollinger, 88 Ala. 405; Lehman v. Collins, 69 Ala. 127; Cramer v. Watson, 73 Ala. 127; Stocks v. Young, 67 Ala. 341; Carlin v. Jones, 55 Ala. 624; Spoor v. Phillips, 27 Ala. 193; Paulling v. Meade, 23 Ala. 505. **Bill to redeem must show tender made before bill filed, or sufficient excuse for not making.**—Vick v. Beverly, 112 Ala. 458; Butler v. Hannah, 103 Ala. 481; Beatty v. Brown, 101 Ala. 695; Beebe v. Buxton, 99 Ala. 186; Lehman v. Collins, 69 Ala. 127; Carlin v. Jones, 55 Ala. 624; Spoor v. Phillips, 27 Ala. 193; Paulling v. Meade, 23 Ala. 505. **If, for good cause, such as absence from the state, etc., such previous tender is not made, a tender must be made in the bill accompanied by the payment of the money into court.**—Beatty v. Brown, 101 Ala. 695; Beebe v. Buxton, 99 Ala. 117; Caldwell v. Smith, 77 Ala. 157; Lehman v. Collins, 69 Ala. 127; Stocks v. Young, 67 Ala. 341; Alexander v. Caldwell, 61 Ala. 543; Trimble v. Williamson, 49 Ala. 525; Spoor v. Phillips, 27 Ala. 193. **To whom tender should be made.**—Lehman v. Collins, 69 Ala. 127; Camp v. Simon, 34 Ala. 126; Couthway v. Berghaus, 25 Ala. 393; Barringer v. Burke, 21 Ala. 765. **When tender insufficient.**—Cramer v. Watson, 73 Ala. 127; Harris v. Miller, 71 Ala. 26; Camp v. Simon, 34 Ala. 126; Couthway v. Berghaus, 25 Ala. 393; Lampley v. Weed, 27 Ala. 621. **Response to tender once made, is final.**—Walker v. Ball, 39 Ala. 298. Purchaser entitled to ten per cent. only to date of tender.—Steele v. Hanna, 91 Ala. 190. **Lawful charges defined; tender must include.**—Butler v. Hannah, 103 Ala. 481; Beatty v. Brown, 101 Ala. 695; Richardson v. Dunn, 79 Ala. 167; Parmer v. Parmer, 74 Ala. 285; Cramer v. Watson, 73 Ala. 127; Harris v. Miller, 71 Ala. 26; Holden v. Rison, 77 Ala. 515; Lehman v. Collins, 69 Ala. 127; Posey v. Pressley, 60 Ala. 243; Grigg v. Banks, 59 Ala. 311; Couthway v. Berghaus, 25 Ala. 393.

3508 (1882) (2880) (2512) (2119). **Writ of unlawful detainer lies on refusal to deliver possession.**—If the possession of the land has been delivered to the purchaser by the debtor, or his vendee, and upon payment or tender as aforesaid, it is not restored to him, he may recover possession by a suit for unlawful detainer before a justice of the peace. Ib.

Walden v. Speigner, 87 Ala. 390; Mack v. Owen, 83 Ala. 177; Posey v. Pressley, 60 Ala. 243; Jonsen v. Nabring, 50 Ala. 392.

3509. Redemption-money to be paid into court on trial of unlawful detainer suit.—Upon the trial of an unlawful detainer suit brought under the preceding section, it is the duty of the justice of the peace or jury trying the same, if the verdict be for the plaintiff, to ascertain and determine by the verdict the amount tendered for the redemption of the property sued for, and if the same has not been paid it is the duty of the justice or judge trying the case to make an order in the judgment-entry, ordering the issuance of a writ of restitution, only upon the payment, within ninety days, to the party to whom such tender was made, or to the justice or clerk of the court trying the case, for the use of such party, the amount so ascertained and de- Dec. 12, 1888, p. 15.

termined; but in the ascertainment of the amount tendered, the amount, if any, found to be due from the party to whom the tender was made to the plaintiff for rent during the detention, shall be deducted therefrom and such ascertainment shall be for the residue only.

3510 (1883) (2881) (2513) (2120). **Judgment creditors allowed to redeem.**—All judgment creditors of the debtor, who, without fraud or collusion, had obtained such judgment before the sale of the land, or within two years thereafter, except by confession of the debtor, may in like manner redeem the land from such purchaser, or any one claiming under him, by paying or tendering the amount bid for such land at the sale thereof, and ten per cent. per annum thereon, together with all lawful charges; and by further offering to credit the debtor upon a subsisting judgment with a sum at least equal to ten per cent. of the amount originally bid for the land; and upon such payment or tender being made, and credit actually given to the debtor, the title to such land vests in the creditor, and the purchaser must convey to him such title as he has, at the costs of the creditor.

Who are judgment creditors.—Garner v. Foster, 49 Ala. 167; Branch Bank v. Furness, 12 Ala. 367. **Creditor in judgment by foreign justice not within statute.**—Freeman v. Jordan, 17 Ala. 500. **Creditor in execution under which land was sold, within statute.**—Freeman v. Jordan, 17 Ala. 500; Posey v. Pressley, 60 Ala. 243. **The "debtor" must have had such an interest in the lands sought to be redeemed as, but for the sale, would have been subject to execution** on the judgment of the redemptioner.—Powers v. Robinson, 90 Ala. 225; Florence Land Co. v. Warren, 91 Ala. 533. **No redemption allowed on judgment against a partnership in firm name alone.**—Powers v. Robinson, 90 Ala. 225. **What is a subsisting judgment.**—Mooney v. Parker, 18 Ala. 708. **Judgment against a debtor, since deceased, barred by the statute of non-claim, is not.** Walden v. Speigner, 87 Ala. 390. **Rights acquired by redemption.**—Lehman v. Shook, 69 Ala. 486. **Right not affected by bankruptcy of debtor.**—Trimble v. Williamson, 49 Ala. 525, 527. **Statutory and common-law rights of mortgagor distinguished.**—Cramer v. Watson, 73 Ala. 127. **Chancery cannot extend right to general creditors,** though debt ascertained by the decree.—Seals v. Pheiffer, 77 Ala. 278. **Right as between several mortgagees.**—Wiley v. Ewing, 47 Ala. 418. **Sufficient if creditor offers to give credit.**—Moore v. Gore, 35 Ala. 701; Walker v. Ball, 39 Ala. 298. **Use of confessed judgment in resisting redemption, also prohibited.**—Mobile Ins. Co. v. Steele, 61 Ala. 253. **Applies to judgment by confession either before or after sale.**—Mack v. Owen, 83 Ala. 177.

3511 (1884) (2882) (2514) (2121). **When purchaser, etc., may refuse to allow redemption.**—But if the purchaser, or person claiming under him, agrees to credit, and actually does credit the debtor, upon a subsisting judgment, with the sum offered to be credited by the creditor, he may retain the land, unless the creditor make a further offer to credit the debtor, upon a subsisting judgment, with an additional sum, not less than ten per cent. on the original purchase-money, to which the purchaser, as hereinbefore provided for, is required to respond by offering to give the debtor a similar credit; and upon his failure to do so, and upon the credit being actually given by the creditor to the debtor, and the payment or tender of the purchase-money, with ten per cent. per annum thereon, as aforesaid, to the purchaser, the title vests in such creditor.

3512 (1885) (2883) (2515) (2122). **Redemption by one creditor from another.**—One creditor may in like manner, within two years

from the sale of the land, redeem it from another creditor; and in that case, the creditor offering to redeem must pay or tender to the creditor in possession the amount he had to pay to obtain the land, with ten per cent. per annum thereon, and must offer to credit the debtor as provided in the preceding section.

Owen v. Kilpatrick, 96 Ala. 421.

3513 (1886) (2884) (2516) (2123). **Creditor entitled to writ of unlawful detainer.**—A creditor has also the right to recover the possession of the land before a justice of the peace, as for an unlawful detainer.

3514 (1887) (2885) (2517) (2124). **Certain parties deemed creditors.**—When the plaintiff in execution, mortgagee, or beneficiary in a deed of trust is the purchaser, he is considered a creditor within this chapter, to the extent to which his judgment, mortgage, or deed of trust remains unsatisfied.

3515 (1888) (2886) (2518) (2125). **If parent has conveyed to child, he may redeem.**—When land has been conveyed by a parent to a child, and sold as the property of the parent, the child has the right to redeem within the time, and upon the terms as provided in this chapter.

3516. The debtor, his vendee, etc., may redeem from a redeeming judgment creditor.—No redemption by a judgment creditor from the purchaser or his vendee, or by one judgment creditor from another, shall operate to defeat the right of redemption in this chapter secured to the debtor, his vendee, junior mortgagee or assignee of the equity of redemption, or of a child to whom the debtor had conveyed the land; but any one of such persons who would be entitled to redeem as against the purchaser or his vendee, may, within two years from the date of sale under execution, decree in chancery, deed of trust or power of sale in a mortgage, redeem from the last redeeming judgment creditor, or his vendee, by paying or tendering the amount such creditor had to pay to obtain the land, with ten per cent. per annum thereon, and all other lawful charges, including in such charges the amount of the credit entered by such creditor upon his judgment against the debtor for the purpose of redeeming, with interest thereon; but if such creditor or his vendee shall respond by offering to credit and actually crediting the debtor upon a subsisting judgment in a sum less than the whole amount due upon such judgment, or by offering to enter and actually entering satisfaction thereof, he may retain the land unless the party offering to redeem shall also pay, within the time allowed him to redeem, the amount of the credit so entered, or the amount due upon such judgment at the time such satisfaction was entered, as the case may be, with interest thereon, if any. If, upon such application to redeem, the creditor shall limit his credit to a sum less than the whole amount due upon the judgment, he cannot, by the entry of further credits or of satisfaction, add to the amount to be paid on redemption.

The right to redeem from one who has acquired the property by redemption, extends only to those specially named.—Owen v. Kilpatrick, 96 Ala. 421.

3517 (1889) (2887) (2519) (2126). **Value of permanent improvements to be paid; value ascertained by referees.**—Any person offering to redeem must pay to the person in possession the value of all permanent improvements made by him after he acquired title. If the parties cannot agree upon the value of improvements, each must appoint a referee to ascertain the value thereof, who, if they cannot agree, must appoint an umpire, and they must make their award within three days, which is final between the parties.

Pritchard v. Sweeney, 109 Ala. 651; Beatty v. Brown, 101 Ala. 695; Steele v. Hanna, 91 Ala. 190; Parmer v. Parmer, 74 Ala. 285; Cramer v. Watson, 73 Ala. 127; Posey v. Pressley, 60 Ala. 243; Weathers v. Spears, 27 Ala. 455.

3518 (1890) (2888) (2520) (2127). **On refusal to appoint a referee, penalty.**—If the person offering to redeem declines to nominate a referee, he must pay the value put upon the improvements by the person in possession. If the latter, after an appointment by the former, refuses to make such appointment, he forfeits his claim to compensation for such improvements.

Cramer v. Watson, 73 Ala. 127; Steele v. Hanna, 91 Ala. 190; Pritchard v. Sweeney, 109 Ala. 651.

3519 (1891) (2889) (2521) (2128). **Redemption by and from representatives of estates.**—The right of redemption secured hereby may be asserted, within the time limited, by the executor or administrator of the debtor, by his heirs or devisees, or by the executor or administrator of any judgment creditor of the debtor, and against the executor or administrator of the purchaser of the land, or of his vendee.

Walden v. Speigner, 87 Ala. 379; s. c., Ib. 390; Owen v. Kilpatrick, 96 Ala. 421.

CHAPTER 98.

RETAILERS. 3520-3524.

3520 (1319) (1544). **Mode of obtaining license to retail.**—A license to retail spirituous or vinous liquors must not be granted until the applicant produces to the judge of probate a recommendation in writing, signed by twenty respectable householders and freeholders residing within the corporate limits of the town, or city, or precinct, in which he proposes to engage in the business of retailing, stating that they are acquainted with him, that he is of good moral character, and is in all respects a proper person to be licensed. But if there be not within the precinct twenty resident householders and freeholders, the recommendation must be signed by a majority of the householders and freeholders residing therein.

Russell v. State, 77 Ala. 89; Grider v. Tally, 77 Ala. 422; Dunbar v. Frazer, 78 Ala. 538; Ramagnano v. Crook, 85 Ala. 226; s. c., 88 Ala. 450; Glenn v. Lyon, 89 Ala. 608; State v. Fleming, 112 Ala. 179.

3521 (1320) (1545). **Affidavit required before grant of license.** Before the grant of license the applicant must, before an officer authorized to administer and certify affidavits, take and subscribe the following affidavit: "I, —— ——, do solemnly swear that I will not knowingly sell or give away any spirituous or vinous liquors to any minor, or person of unsound mind, without the permission of his or her guardian or parent, or to any person of known intemperate habits; that I will not keep open store on Sunday, for the purpose of carrying on business for which license is sought, or violate the statute prohibiting the disposition of agricultural products between the hours of sunset and sunrise; nor will I suffer the same to be done knowingly by any partner, clerk, agent, or any other person, in or about my premises, if in my power to prevent the same; and that I will not allow any gaming of any kind on or about my premises." And such affidavit must be filed in the office of the judge of probate.

Long v. State, 27 Ala. 32; Russell v. State, 77 Ala. 89.

3522 (1321) (1546) (1240) (1060). **License to be produced to recover judgment for liquors retailed in quantities less than a quart.**—No person must obtain a judgment in any court of this state, upon any account, any item of which is for vinous or spirituous liquors in less quantity than one quart, without producing to the court a license showing his authority to retail at the date of such item.

Rasberry v. Pulliam, 78 Ala. 191.

3523 (1322) (1547) (1241) (1061). **Justice to apprehend and bind over offenders.**—All magistrates, whenever they have good reason to believe, or whenever informed on oath, that any person has violated any of the provisions of this chapter, must forthwith issue a warrant against such person, and bind him over to answer therefor, to the next term of the circuit court.

3524 (1323) (1548). **Sale or exchange void.**—All sales, or contracts or agreements to sell or exchange spirituous, vinous, or malt liquors, are void, if the seller or party making the exchange has not a license authorizing him to engage in business as a retailer or wholesale dealer; and all sales or exchanges of such liquors, with or without such license, to or with a minor, or a person of unsound mind, without the consent of the parent or guardian of such minor or person of unsound mind, or to or with a person of known intemperate habits, not made upon the requisition in writing of a physician for medicinal purposes, are void.

Moog v. Hannon, 93 Ala. 503.

CHAPTER 99.

SALVAGE. 3525-3538.

3525 (3282) (2863) (2467) (2075). **Property adrift.**—All property adrift may be taken up by any person and secured.

3526 (3283) (2864) (2468) (2076). **Appraisement of such property.**—Such person must, within two days after the same is taken up, exhibit the property to a justice, and if, in his opinion, it is worth over thirty dollars, he must issue an order of appraisement to three disinterested freeholders or householders, who, after being duly sworn to estimate the value of such property fairly, must appraise and certify the same to the justice of the peace, with a description of the property; if not exceeding the value of thirty dollars, the justice must make the appraisement and description of the property.

Statute strictly construed and everything necessary to confer jurisdiction must affirmatively appear.—Crowder v. Fletcher, 80 Ala. 219.

3527 (3284) (2865) (2469) (2077). **Copy of appraisement to taker; original retained.**—The justice must give to the taker a copy of the appraisement and description of the property, retaining the original.

3528 (3285) (2866) (2470) (2078). **Notice when value over thirty dollars.**—If the appraised value is over thirty dollars, the taker must, within ten days thereafter, give notice thereof, once a week for three successive weeks, in the newspaper published nearest to the place where the property was taken up.

3529 (3286) (2867) (2471) (2079). **Contents of notice.**—Such advertisement must state the name of the taker, the time and place, a description of the property, with its marks, and the name of the owner, if known, its appraised value, and where the same is secured or deposited.

3530 (3287) (2868) (2472) (2080). **Notice when not worth more than thirty dollars.**—If the property is not worth exceeding thirty dollars, the same must be advertised at the next steamboat-landing, if the property was taken up on a navigable stream, otherwise, at the nearest public place, within five days after the taking up.

3531 (3288) (2869) (2473) (2081). **On proof of title, property restored.**—The owner may, on notifying the taker, or the person in possession, and proving the property by his own oath, or the oath of another, satisfactorily to a justice of the peace, obtain from such justice an order to restore such property on the payment of the legal costs and charges thereon.

3532 (3289) (2870) (2474) (2082). **Compensation of taker.**—The taker is entitled to ten per cent. on the appraised value of each bale of cotton, and on other property as follows: Twenty-five per cent. on all under thirty dollars; between thirty and one hundred dollars,

twenty per cent.; between one hundred and five hundred dollars, fifteen per cent.; between five hundred and one thousand dollars, ten per cent.; and on all over one thousand dollars, five per cent.

3533 (3290) (2871) (2475) (2083). **Also to be paid his charges.** The taker is also entitled to the justice's fees paid by him, the expenses of the advertisement, if published in a newspaper, and reasonable compensation for the keeping, if necessary to preserve the property from loss or injury, to be ascertained as in the case of estrays.

3534 (3291) (2872) (2476) (2084). **Fees of appraisers.**—The appraisers, other than the justice, are entitled to two dollars each, to be paid by the taker.

3535 (3292) (2873) (2477) (2085). **Time allowed to make claim; if no claim made, property vests in taker.**—The owner may prove his property, if appraised at not more than thirty dollars, within three months; between thirty and one hundred dollars, in six months; at more than one hundred dollars, within one year after the appraisement; and on failure to do so, the right to the same is vested in the taker, under the provisions of this chapter.

3536 (3293) (2874) (2478) (2086). **Remedy of owner when taker refuses to deliver property.**—If the taker, or the person in possession of the property, fails to deliver the same to the owner on the order of the justice, and the payment of, or offering to pay all legal costs, charges and expenses for keeping, such owner may recover the same; and the person failing also forfeits, to any person suing for the same, double the appraised value of the property.

3537 (3294) (2875) (2479) (2087). **Penalty for concealing, destroying, etc., the property so taken up.**—If any person conceals, destroys, injures, obliterates, or defaces any mark, or disposes of, or carries beyond the state any property taken up adrift, before the expiration of the time allowed by this chapter for the owner to prove his property, he is liable to such owner to the extent of the injury he may sustain thereby.

3538 (3295) (2876) (2480) (2088). **On death of salvor, his representative acts.**—If the taker dies before the expiration of the time allowed to the owner to prove his property, all the provisions of this chapter, in relation to the giving up of the property, apply to his personal representatives.

CHAPTER 100.

SCHOOLS.

ARTICLE 1.—PUBLIC-SCHOOL FUND. 3539–3540.
2.—GENERAL DESIGNATION OF OFFICERS. 3541.
3.—SUPERINTENDENT OF EDUCATION. 3542–3549.
4.—COUNTY SUPERINTENDENTS. 3550–3559.
5.—TOWNSHIP TRUSTEES. 3560–3575.
6.—TEACHERS. 3576–3582.
7.—BOARDS OF EDUCATION; TEACHERS' INSTITUTES. 3583–3593.
8.—DISTRICTS; SCHOOLS; SCHOLASTIC PERIODS. 3594–3600.
9.—APPORTIONMENT OF SCHOOL FUND; DISBURSEMENT. 3601–3623.
10.—TOWNSHIP CORPORATIONS. 3624.
11.—SCHOOL LANDS; LEASE AND SALE. 3625–3660.
12.—LEASE AND SALE OF SCHOOL INDEMNITY LANDS. 3661–3666.
13.—UNIVERSITY OF ALABAMA. 3667–3685.
14.—AGRICULTURAL AND MECHANICAL COLLEGE OF ALABAMA. 3686–3697.
15.—ALABAMA INSTITUTE FOR THE DEAF. 3698–3711.
16.—ALABAMA ACADEMY FOR THE BLIND. 3712–3719.
17.—ALABAMA SCHOOL FOR NEGRO DEAF MUTES AND BLIND. 3720–3726.

ARTICLE 1.

PUBLIC-SCHOOL FUND.

3539 (943). **Appropriations for public schools.**—For the maintenance of a system of public schools throughout the state, the following sums of money are hereby appropriated for each scholastic year, to wit:

1. The annual interest at six per cent. on all sums of money which have heretofore been, or which may hereafter be received by the state, as the proceeds of sales of lands granted or intrusted by the United States to the state, or to the several townships thereof, for school purposes.

2. The annual interest at four per cent. on that part of the surplus revenue of the United States, deposited with the state under the act of congress approved June 23, 1836.

3. All the annual rents, incomes and profits, or interests, arising from the proceeds of sales of all such lands as may hereafter be given by the United States, or by this state, or by individuals, for the support of the public schools of the state.

4. All such sums as may accrue to the state as escheats; the same to be applied to the support of the public schools during the scholastic year next succeeding their receipt in the state treasury.

5. The further sum of three hundred and fifty thousand dollars, from any money in the treasury not otherwise appropriated.

6. The net amount of poll-tax that may be collected in the state; the poll-tax collected in each county to be retained therein for the

support of the public schools thereof, and distributed and disbursed as provided in this chapter.

7. All rents, incomes and profits received into the state treasury during the scholastic year from all lands heretofore donated by the congress of the United States for the support of the public schools, and remaining unsold, which shall be applied to the support of the public schools during the scholastic year next succeeding their receipt into the treasury.

8. Licenses which are by law required to be paid into the school fund of any county; to be promptly paid by the judge of probate, or other person collecting the same, to the county superintendent of education, and to be expended for the benefit of the public schools of such county.

3540 (944). **When appropriations accrue, and placed to credit of educational fund.**—All such appropriations, except the poll-tax, shall accrue to the educational fund on the first day of October, in each year; and on that day the state auditor shall place to the credit of that fund, on the books in his office, all such amounts as accrue thereto from the sources in this article mentioned, except the poll-tax, for the scholastic year beginning on that day.

ARTICLE 2.

GENERAL DESIGNATION OF OFFICERS.

3541 (945). **Officers for administration of public schools.**—For the administration and government of public schools in this state, there are the following officers: Feb. 10, 1891, p. 554.

1. The superintendent of education.
2. A county superintendent of education in each county.
3. Three township trustees in each township.

ARTICLE 3.

SUPERINTENDENT OF EDUCATION.

3542 (946). **Term of office; salary.**—The superintendent of education holds office for the term of two years from the time of his installation in office, and until his successor is elected and qualified, and shall receive a salary of two thousand two hundred and fifty dollars per annum, payable in monthly installments, on the last day of each month.

3543 (947). **Oath of office and bond.**—Before entering upon the duties of his office, he shall take the oath of office prescribed by the constitution, and shall also give bond, with sureties to be approved by the governor, in the sum of fifteen thousand dollars, conditioned faithfully to discharge the duties of his office so long as he shall remain therein, or perform any of the duties thereof; and such bond shall be filed in the office of the secretary of state.

3544 (948). **Office and books, papers and records.**—He shall have an office at the capitol of the state, where the bonds, papers and records of his office shall be kept, and where he shall give attendance when not absent on official business; and it shall be the privilege of all persons interested to have access, at all proper hours, to the books, papers and records of the office.

3545 (949). **Clerks and their salaries.**—He is authorized to employ two suitable clerks for service in his office; and such clerks shall be allowed together two thousand two hundred and fifty dollars annually, to be paid as the salaries of other department clerks are paid.

3546 (950). **Duties of superintendent of education.**—The duties of the superintendent of education shall be as follows:

1. He shall devote his time to the care and improvement of the common schools, and the promotion of public education, and shall exercise a general supervision over all the educational interests of the state; and to this end, he shall have power to require from the county superintendents of education, township trustees of public schools, and all other school officers, all such reports and information relating to the educational fund, or the condition of the schools and the management thereof, as he may deem important, or as may be prescribed by law; and he may remove from office any such officer for failure to make such report, give such information, or discharge any other official duty.

2. He shall annually, as far as practicable, visit every county in the state for the purpose of inspecting the schools and their management, the accounts of county superintendents of education and other school officers, and for diffusing as widely as possible, by personal address and personal communication, information as to the importance of public schools and the best method for their management; and he shall encourage and assist at organizing and conducting teachers' and superintendents' institutes.

3. He shall make provision for instructing all pupils in all schools and colleges supported, in whole or in part, by public money, or under state control, in hygiene and physiology, with special reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system.

4. He shall make provision for instructing all pupils in all schools and colleges supported, in whole or in part, by public money, or under state control, in the constitution of the United States and the constitution of the State of Alabama.

Feb. 10, 1891, p. 554, §1.

5. He shall annually apportion the public-school fund to the various townships and school districts according to the entire number of children of school age and shall see to the proper disbursement of the same; and to this end, he shall keep an accurate account with all officers who may be custodians or disbursers of the school fund, or any part thereof.

6. He shall prepare all forms, and have printed and distributed

all such blanks as may be necessary, or as may be required by law, in the administration of the public-school system.

7. He shall furnish the county superintendents and other school officers all necessary books for keeping their accounts and records, to be and remain public property; and he shall prescribe a uniform system of keeping such accounts and records.

8. He shall take receipts for all such books so furnished by him to school officers, and such officers shall take good care thereof, and turn them over to their successors in office.

9. He shall keep a debtor and creditor account with each township, or other school district, in the state, of all funds accruing thereto for educational purposes.

10. He shall keep an accurate account of the capital of all sixteenth-section or other trust funds, to which each township or school district may be entitled, showing whence and when such funds were derived.

11. He shall preserve in his office all bonds of school officers and others required to be filed therein.

12. He shall cause suits to be instituted and prosecuted against all defaulters to the educational fund, and for this purpose may employ attorneys; but he shall not have power to contract to pay such attorneys out of the educational fund more than ten per centum of the amount recovered by them in such suits; and out of such fund he may pay such lawful costs as may be taxed against him as superintendent of education, in case he is cast in any of such suits.

13. He shall require and supervise the collection of all poll-taxes.

14. He shall, by correspondence, exchange of official reports, and other proper means, elicit information relative to the system of public education in other states and countries, and disseminate all useful knowledge regarding the same among the county superintendents and other school officers in the state.

15. He shall collect in his office such school-books, apparatus, maps, charts and specimens of improved school furniture as can be obtained without expense to the state.

16. He shall prepare and have printed, in pamphlet form by the public printer, all laws, rules and regulations pertaining to the public-school system of the state, including therein the constitution of the United States and the constitution of the State of Alabama, and cause the same to be distributed among the county superintendents of education, and other officers connected with the school system, for the information of those interested in the educational interests of the state.

17. He shall hold, or cause to be held, within each congressional district, one or more teachers' institutes, to be conducted by a teacher experienced in and familiar with the most improved methods of instruction, for a term of one week or more during the summer months of each year; and for such purpose may, from time to time, certify to the auditor the amount, not exceeding five hundred dollars in any one year, necessary to defray the expenses of employing

Feb. 28, 1887, p. 58.

teachers to conduct such institutes and instruct the teachers who attend them, and upon such certificate it shall be the duty of the auditor to draw his warrant upon the treasurer for such sum or sums in favor of the superintendent of education as may remain unapportioned in the treasury at the time; but the sum so expended in any one year shall not exceed the amount apportioned and paid for such purpose by the trustees of the Peabody Educational Fund in any one year. And such sums must be disbursed so as to secure the greatest good to the largest number of teachers in the common schools, and it shall be the duty of the superintendent of education to take vouchers therefor to be kept on file in his office, and to make an itemized statement in his biennial report as to how and to whom said money has been disbursed.

18. He shall perform such other duties as are, or may be prescribed by law.

As amended Feb. 21, 1893, p. 1174.

3547 (951). **Report to governor; contents.**—He shall also, biennially, on or before the tenth day of October, report to the governor in writing—

1. A brief history of his labors.

2. An abstract of the reports received by him from the county superintendents of education, exhibiting the condition of the public schools.

3. Estimates and accounts of expenditures of school money.

4. An itemized statement, showing how the contingent fund of his department, and all other special funds or appropriations under his control have been disposed of.

5. Such recommendations as he may desire to make for the improvement of the school system, and the care and increase of the educational fund.

6. All such other matters relating to his office and to the public schools, as he shall deem expedient to communicate.

3548 (952). **Report to be printed and distributed.**—The governor shall, when such report is laid before him, direct the superintendent of education to have printed in the same manner, and upon the same conditions as other printing is done, during the recess of the general assembly, a sufficient number of copies of the report to supply the county superintendents and township trustees of public schools, and other school officers, and for the usual exchange with other states, and with the leading cities of the United States; and it shall be the duty of the superintendent of education to distribute the same as indicated in this section.

3549 (953). **Vacancy filled by governor; term, etc., of appointee.**—If the office of superintendent of education should, at any time, become vacant, by death, resignation, or otherwise, the governor shall appoint a suitable person to fill such office for the unexpired term; and such appointee shall give bond and qualify in the same manner as if he had been elected for a full term.

ARTICLE 4.

COUNTY SUPERINTENDENTS.

3550 (954). **One elected for each county.**—Unless by special act it is otherwise provided, a county superintendent for each county is elected at each general election as provided in this Code. Feb. 13, 1889, p. 396.

3551 (955). **Term of office; removal.**—The term of office of county superintendents who are elected shall commence on the first day of October next after their election, and the term of those appointed shall commence on the first day of October of each odd year; and in either case, shall be for two years and until their successors shall qualify; but the superintendent of education may, at any time, for good cause shown, remove from office any county superintendent of education, whether elected or appointed.

3552 (956). **Oath of office and bond.**—Every county superintendent of education, before entering upon the duties of his office, must take the oath of office prescribed by the constitution, and give bond in an amount to be fixed by the superintendent of education, but in no case to be less than double the probable amount of money that may be in his hands at any one time, with good and sufficient sureties, and payable and conditioned as official bonds of other public officers.

3553 (957). **Approval and record of bond.**—Such bond must be approved by, and, with the oath of office, must be filed and recorded in the office of the judge of probate of the county; and a certified copy of the bond must also be filed in the office of the superintendent of education for his approval.

Failure to file copy with superintendent of education no defense to county superintendent or his sureties, in an action for his default.—Reed v. Summers, 79 Ala. 522.

3554 (958). **New or additional bond; effect of notice to give.** The superintendent of education shall require of any county superintendent of education a new or additional bond, in the same, or a different amount, as that of the original bond, whenever he shall find it necessary for the protection of the educational fund of the county; and no county superintendent of education, after receiving notice to give such new or additional bond, shall continue in the discharge of the duties of his office until such new or additional bond is given.

3555 (959). **Compensation.**—Each county superintendent of education shall receive for his services four per centum on the amount of all the educational fund legally disbursed by him; but such per centum must not be taken or used by him until after the disbursements have been made, and the credits allowed by the superintendent of education. As amended Feb. 21, 1893, p. 833.

3556 (960). **His duties.**—The duties of each county superintendent of education shall be as follows:

1. He shall have an office at the county-site of his county, where he must, on the first Saturday of each month from the beginning of

the scholastic year until the close of the public schools for that year, be present to transact business with the officers and teachers of public schools.

2. He must receive and take charge of any money, funds, property, or proceeds of any character, raised in his county by county taxation, or which may accrue to him or to the county from any gift, grant, bequest, devise, endowment, or otherwise, to be used in aid of, or in connection with money apportioned to his county from the educational fund, and shall faithfully keep the same, separate and apart from any other funds or property whatsoever; and he shall apportion, distribute and pay out all money raised in accordance with this subdivision; but all money, raised by local taxation in any school district or incorporated city or town, shall be expended for the benefit of the district, city, or town in which the money is raised, and by such persons, and in such manner as are authorized by the laws of force for the control and government of public schools in such district, city, or town.

3. He shall examine into the condition of all school funds of his county, including the sixteenth-section fund, and sixteenth-section lands unsold in his county; and he is authorized and required in the name of the state for the use of the township, to bring all necessary suits for the recovery of the possession of such lands, or against trespassers thereon.

Gaston v. State, 88 Ala. 459.

As amended Feb. 10, 1891, p. 554, §4.

4. He shall, as soon as he receives the annual apportionment of the educational fund to his county, forthwith notify the township trustees of each township of the amount apportioned to each township or separate school district.

5. He shall enter in a book or books, kept for that purpose, the exact amount and date of all moneys received and paid out by him on account of the educational fund of his county, showing by whom or to whom paid, and for what purpose, and also the amount of the educational fund apportioned to, and distributed in each township for each race; and such books shall be open to the inspection of all persons interested.

6. He shall, on or before the thirtieth day of September of each year, forward to the superintendent of education, on blanks to be furnished him by the latter, an annual report of the public schools of his county for the preceding year, which shall set forth (1) the amount of school money received by him from all sources to the end of the year, specifying how much was received from each source; (2) how much has been disbursed by him during such year, for what purpose, and the names of teachers to whom money has been paid, the time they taught, and the total amount paid to each teacher; (3) the amount of funds then in hand for each township or school district in his county; and (4) the manner in which, and the extent to which he has discharged the duties required by law to be performed by him.

7. He shall remove from office any township trustee when the in-

terest of public education demands such removal, and he shall fill all vacancies occasioned by removal from office or otherwise.

8. He must quarterly, on the first Saturdays in January, April, July and October of each year, or as soon thereafter as practicable, pay the teachers of the public schools, upon the certificate of the trustees of the township in which the school was taught; and in counties in which separate districts have been established by special laws, he shall pay over to the officers authorized to receive the same their proportionate shares of the school revenues at the times above designated.

3557 (963). **Forfeiture for failure to make annual reports.**—If any county superintendent shall willfully fail to make out and forward to the superintendent of education any annual report required by this article, within ten days after the time it should be made, he shall be liable to a forfeiture of his commissions, to be declared by the superintendent of education, and to removal from office by the superintendent of education.

3558 (962). **Books and accounts liable to examination.**—The books, accounts and vouchers of the county superintendent of education may be examined at any time by the superintendent of education in person or by duly authorized agent.

3559 (965). **Vacancies, how filled; term, etc., of appointees.** The superintendent of education shall fill all vacancies in the office of county superintendent of education, by appointment; and such appointee shall hold during the unexpired term, and until his successor qualifies, and shall give bond and qualify as is required of an appointee for a full term.

ARTICLE 5.

TOWNSHIP TRUSTEES.

3560 (966). **Township trustees appointed; term of office.**—Three township trustees for each township or other school district in each county, who shall be freeholders and householders resident in such township or school district, shall be appointed by the county superintendent of education; and the term of office of all township trustees shall commence on the first day of October of each odd year and continue two years and until their successors shall qualify. Feb. 10, 1891, p. 554, §2.

3561 (967). **Establishment and supervision of schools.**—The township trustees shall have the immediate supervision of the public schools in their township or school district, and shall have power to establish, subject to the approval of the county superintendent of education, one or more schools for either race in such township or school district, as the public necessity may require.

3562 (968). **Meetings with parents and guardians; business transacted.**—The trustees in each township shall annually, on the last Monday in October, or within seven days thereafter, call a meeting of the parents and guardians of the children of their township

within the educational age, and at such meeting they shall, in consultation with such parents and guardians, and with a view to subserve their wishes, interests and convenience, transact the following business:

1. They shall determine the number of schools which shall be established in their township for the current scholastic year, and shall designate the same by number.

2. They shall fix the location of each school, the time of its opening, and the length of the session, which shall not be, except as hereinafter provided, less than twelve weeks.

Feb. 10, 1891, p. 554, §4.

3. They shall, when they establish the schools in their township, apportion to each school so established, such an amount of the public-school revenue apportioned to the township for the current scholastic year as they may deem just and equitable and for the equal benefit of the children thereof of school age.

Gay v. Bankston, 100 Ala. 280.

4. They shall determine the number and what children shall be transferred from their districts to the schools of other districts, and to what districts transferred, during the scholastic year, and shall set apart such an amount of the money apportioned to their district to pay for such transferred children as they may deem just and equitable; and if it should be deemed impracticable to establish in any district a public school for the children of either race, on account of the want of a sufficient number of such race living within a reasonable distance, they shall determine whether any of such children can be transferred conveniently to a public school in another district, and those that cannot be so transferred, and that have actually attended some school in this state for the time during which the public schools were kept open for the current scholastic year, shall be entitled to the benefits of the amounts apportioned to their district; and they shall determine the amount to which each of such children shall be entitled, and the same shall be paid by the county superintendent of education to the parent or guardian of such child, for which a receipt shall be taken as in case of payments to teachers.

Feb. 21, 1893, p. 1176.

5. In those townships in which less than the requisite number of children of school age reside, it shall be the duty of the township trustees to arrange for the teaching of such children in such manner as they may deem proper and just, subject to the approval of the county superintendent of education, and to pay for the tuition of such children in the manner prescribed by law out of the school funds apportioned to such township.

6. Such other business as may be necessary to carry out the provisions of the law.

3563 (969). **Report after meeting.**—They shall, within ten days after such meeting, report to the county superintendent of education the number and location of the schools, the names of the teachers employed, and the amount of money apportioned to each school.

3564 (970). **Notice and duration of meeting; effect of failure to**

attend.—Such meeting shall be called by posting, ten days previously thereto, written notices of the time and place of meeting, and of the business to be transacted thereat, in not less than three public places in the district; and the township trustees shall have power to continue the meeting from day to day until all the business has been transacted, and they may adjourn the same to a future day, not exceeding one week; and if the parents and guardians fail to attend such meeting, the township trustees shall, in their absence, proceed to perform the duties required of them.

3565 (971). **Appeal to county superintendent.**—An appeal may be taken from the decision and action of the township trustees had and done at such meeting, to the county superintendent of education, who shall notifiy the township trustees of the appeal, and shall appoint a day on which to hear and determine the same, and whose decision shall be final.

3566 (972). **When but one school in township, how located; change of location.**—When but one school is established in a township, it shall be so located as to accommodate the largest number of pupils, and to encourage the building of a permanent schoolhouse as near the center of the township as possible, whenever it can be done without material injury or inconvenience to the children within the educational age; but such location may be changed by the township trustees from year to year, in order to provide for those who were not in reach of the school in previous years; and in the location of public schools, township trustees must have reference to the population and neighborhood, paying due regard to any schoolhouse already built, or site procured, as well as to all other circumstances proper to be considered, so as to promote the interest of free public education.

3567 (973). **To what regard must be had in locating schools and employing teachers.**—In locating public schools, and employing teachers, township trustees shall have due regard to such communities as will supplement the district fund, and to such teachers as will procure and teach the greatest number of pupils within the educational age; the object of this section being to encourage the building up and maintaining of large schools, which shall continue the longest term practicable; but in no case shall such communities and citizens, as are unable or unwilling to supplement the district fund, be deprived of the benefit of the public schools.

3568 (974). **Employing teachers and opening schools.**—The township trustees shall in no case contract with teachers, or open schools until they have definitely determined the number and location of the schools in their district, and the amount of money each school shall receive from the amount apportioned to the district; nor shall they contract for a school of less than three scholastic months, nor less than ten pupils of school age, if there are more than that number of each race within such age, nor more than fifty pupils to each teacher.

3569 (975). **Execution of contracts with teachers; contract for**

transferred pupils.—All contracts with teachers shall be in writing, and shall specify the amount to be paid per month from the district fund, and shall be executed in duplicate, one of which shall be filed with the county superintendent of education for his approval within ten days after it has been signed; and no such contract shall be valid without his approval; and the township trustees shall also, in like manner, contract with teachers for transferred pupils.

Gay v. Bankston, 100 Ala. 280.

3570 (976). **Visits to schools.** The township trustees shall visit the schools in their district at least once during each scholastic year.

3571 (977). **Removal of teachers; payment for time.**—The township trustees may, for any cause sufficient in their judgment, terminate the contract of, and remove, any teacher; but such teacher shall be allowed pay for the time he taught according to the terms of his contract.

3572 (978). **Register of daily attendance.**—The township trustees shall require the teachers of public schools to keep a register of the daily attendance of the pupils in the schools taught by them, and to submit such register to them for their inspection.

3573 (979). **Enumeration of children.**—The township trustees must, during the month of July of each odd year, make an enumeration of all the children, white and black, male and female, within the educational age, in their township or district and report the same in duplicate to the county superintendent of education by the first day of August following; and the county superintendent of education shall make to the superintendent of education a written report of the several enumerations made to him by the township trustees by the fifteenth day of August of such year.

3574. New enumeration in certain cases.—If the township trustees in any county or township should fail in any year to make the enumeration provided for in the preceding section, or if the superintendent of education of the state should have reason to believe that the enumeration made and returned to his office is fraudulent or greatly erroneous in any county or township, and shall determine that it is for the best interest of the public-school system that another enumeration be made in any county or township, he shall have power to procure the making of a new enumeration of the children of school age in any county or township, and shall pay the expense of making the same out of the fund first available and apportioned to the county or township in which such new enumeration is made, as the case may be.

3575 (982). **Exemption from road and jury duty and poll-tax.** Township trustees are exempt from road duty, jury duty and poll-tax, so long as they shall continue in office and perform the duties thereof; and the certificate of the county superintendent of education shall be evidence of the fact.

ARTICLE 6.

TEACHERS.

3576 (983). **Certificate of qualification.**—There shall be three grades of teachers' certificates, to be known as certificates of the first, second, and third grades, each of which must show the branches in which the holder has been examined, and his relative attainments therein; and every teacher in the public schools must obtain a certificate in one of such grades; but in no case shall an applicant for the position of teacher receive a certificate who fails to answer correctly seventy per cent. of the questions propounded by the board of examiners.

3577 (984). **Examination of teachers.**—Every applicant for a teacher's certificate must be examined on the following subjects: For the third grade, in orthography, reading, penmanship, the elements of English grammar, practical arithmetic through fractions, primary geography and the elementary principles of physiology and hygiene; and no certificate must be granted unless the applicant shall pass a satisfactory examination by the board and shall answer seventy per cent. of the questions propounded to him in each of these branches; for the second grade, on all the foregoing subjects, and also in practical arithmetic, history of the United States, English grammar, intermediate geography and elementary algebra; for the first grade, on all the foregoing subjects, and also in higher algebra, natural philosophy, geometry and the theory and practice of teaching; but no certificate shall be granted to any person who has not passed a satisfactory examination in the study of the nature of alcoholic drinks and narcotics, and of their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene. Every such applicant shall also pass a satisfactory examination upon the constitution of the United States and the constitution of the State of Alabama, before receiving a first-grade certificate. Feb. 26, 1887, p. 129. Feb. 4, 1891, p. 350, §2.

3578. Instruction as to the nature of alcoholic drinks and narcotics.—Every teacher shall give instruction as to the nature of alcoholic drinks and narcotics and their effects upon the human system, and such subject shall be taught as regularly as any other in the public schools, and in every grade thereof. Feb. 4, 1891, p. 350.

3579 (985). **How long certificates are valid.**—A third-grade certificate shall be valid for one year; a second-grade certificate, for two years; and a first-grade certificate, for three years, in the county in which the same is issued.

3580 (986). **Register kept by teacher and submitted.**—Every teacher of a public school must keep a register of the actual daily attendance of the pupils in his school, and must submit such register to the township trustees for their inspection.

3581 (987). **Quarterly report; not entitled to compensation until forwarded.**—Every teacher of a public school must, within five days after the end of each scholastic quarter, forward to the county

superintendent of education a complete report, setting forth the enrollment, attendance, number of transferred pupils, and from what township transferred, the branches taught, and the number of pupils in each, distinguishing between male and female, and stating whether a white or colored school; also the monthly pay from school revenue from the township in which the school is located, and from transferred pupils, stating the township and range from which they are transferred; also the number of days taught, the amount due for services from school revenues of the township, the number of visits by township trustees, and the name and post-office of the teacher; and such report must be sworn to by the teacher before some one of the township trustees, and approved by them; and no teacher can draw any pay for services rendered by him until he has forwarded his report in accordance with the requirements of this section.

3582 (988). **To be paid quarterly.**—The teachers of public schools shall be paid quarterly, on the first Saturdays in January, April, July and October, or as soon thereafter as practicable.

Schoolmaster stands in loco parentis and may, in a proper case, inflict corporal punishment; but is criminally liable for an abuse of his authority.—Boyd v. State, 88 Ala. 169; McCormack v. State, 102 Ala. 156.

ARTICLE 7.

BOARDS OF EDUCATION; TEACHERS' INSTITUTES.

3583 (989). **Board of education; how constituted; vacancies.** There shall be established in each county of the state a board of education composed of the county superintendent of education, who shall be the president thereof, and of two teachers, either in private or public schools of the county, who shall be appointed by such superintendent at the beginning of each scholastic year, or as soon thereafter as practicable, and who shall hold office during the current scholastic year, and one of whom shall be appointed secretary; and a majority of the board shall be necessary for the transaction of any business. The county superintendent of education shall have power to fill all vacancies that may occur in such board.

3584 (990). **Meetings of board.**—Such board shall meet quarterly at such times and places as they may designate; but may meet oftener when deemed advisable by them.

3585 (991). **Examination of applicants; effect of diploma.**—Applicants for license to teach in the public schools of the county must be examined by such board, and the questions and answers in such examination must be in writing, and must be preserved by the board for one year, open to inspection; and when an applicant is found duly qualified, and is of good moral character, he must, on the payment of a fee of one dollar, which shall be divided between the two members of the board appointed by, and acting with the county superintendent of education, receive a license to teach in the public schools of the county, which must be signed by the president and

secretary of the board; but a diploma from any chartered institution of learning in this state will entitle the applicant to such a license without examination, on proof of good moral character, and payment of the license fee.

3586. Normal-school diplomas.—Graduates of any of the normal schools of this state, holding state certificates, signed by the superintendent of education, shall be exempt from examination and payment of the fee of one dollar, and shall be entitled to teach in any of the public schools of the state.

3587 (992). **Register of license kept; cancellation noted thereon.**—A register of all licenses issued by the board shall be kept by them; and whenever any license shall be canceled, that fact shall be noted on such register, together with the cause of such cancellation.

3588 (993). **Cause for cancellation of license.**—Whenever it shall appear to the board that any teacher to whom a license has been issued has been guilty of intemperance, or of unworthy or disgraceful conduct, his license shall be canceled, and his name stricken from the registered list of teachers by the board.

3589 (994). **Examination, license and register necessary.**—No teacher shall be employed in any of the public schools of any county in this state, or receive any of the school funds, unless he has been so examined, has received such license, and the same has been so registered in the county.

3590 (995). **Teachers' institutes to be organized.**—It shall be the duty of the board of education in each county to organize and maintain therein teachers' institutes, one for teachers who are white persons, and one for teachers who are colored persons, to be held at such times and places as the board may prescribe; but there shall not be less than ten licensed teachers in the county of the race for whom such institutes shall be organized.

3591 (996). **Officers and members of institutes; no fee imposed without consent.**—The county superintendent of education shall be the president of such institutes, and the members of the board of education shall be the vice-presidents thereof, one of whom shall preside over its meetings in the absence of the president; the other officers thereof may be elected. Every teacher of the county holding a license shall be a member of the institutes organized for his race. But no fee or assessment shall be imposed on a member without his consent.

3592 (997). **Meetings of institutes.**—There shall not be less than three meetings in each year of such institutes, one of which shall be held in the month of September, and at this meeting an address to the teachers shall be made by some person selected by the educational board; and teachers holding licenses shall attend at least one of such meetings.

3593 (998). **Business of the institutes.**—The meetings of the institutes shall be devoted mainly to discussions and instructions in regard to the methods of teaching and disciplining schools, and to

the text-books used, and other matters connected with the schools and school laws.

ARTICLE 8.

DISTRICTS; SCHOOLS; SCHOLASTIC PERIODS.

3594 (999). **School districts; establishment and supervision; capacity to hold property.**—Every township, and fraction of a township, which is divided by a state or county line, or any river, creek, or mountain, or other barrier rendering intercourse between the different portions of the township difficult, and every incorporated city or town having three thousand inhabitants, or more, shall constitute a separate school district; and each of them shall be under a township superintendent as to all matters connected with public schools. Each township, or other school district, in its corporate capacity, may hold real and personal property; and the business of such corporations, in relation to public schools and school lands, shall be managed by the township or district trustees.

3595 (1000). **Pupils entitled to instruction in public schools.** Every minor over the age of seven years shall be entitled to admission into, and instruction in any public school of his or her own race or color in this state.

Feb. 21, 1893, p. 1038.

3596. Child may not attend more than one school.—No child who has attended a public school the number of days to which it is entitled as a pupil in that school, shall attend another during the same scholastic year, unless by consent of a majority of the trustees of the township in which such other is situated.

Feb. 14, 1893, p. 584.

3597. When non-residents entitled to school privileges.—Any parent or guardian residing in the state who shall pay a local or special school tax on real estate valued at five hundred dollars or more, in any city, township, or separate school district, shall be entitled to the privileges and benefits of the public schools in such city, township, or separate school district, for their children, the same as parents and guardians resident therein.

3598 (1001). **Scholastic periods.**—The scholastic year shall begin on the first day of October of each year, and end on the thirtieth day of September of the following year; twenty days shall constitute a school month, and a school day shall be not less than six hours.

Gay v. Bankston, 100 Ala. 280.

3599 (1002). **Public examinations, and certificates to pupils.** Public examinations must be held in the public schools at least once in every year; and when the board of education shall be satisfied that any pupil has become thoroughly educated in all the branches of free instruction in any one of such schools, they shall give to him or her a certificate to that effect.

3600 (1003). **Separate schools for the two races.**—In no case

shall it be lawful to unite in one school children of the white and colored races.

ARTICLE 9.

APPORTIONMENT OF SCHOOL FUND; DISBURSEMENT.

3601 (1004). **Auditor certifies amount of educational fund; superintendent apportions.**—On the first day of October of each year, or as soon thereafter as practicable, the auditor shall certify to the superintendent of education the amount of money which has accrued and been placed by him to the credit of the educational fund for the scholastic year commencing on that day, stating specifically the amount derived from each source, and any unexpended balance there may be from the appropriation of the previous year to be carried forward; and the amount so certified shall be apportioned by the superintendent of education, and be drawn and disbursed as provided by law.

Gay v. Bankston, 100 Ala. 280.

3602 (1005). **Contingent expenses and amount for normal schools set apart; residue apportioned.**—As soon as such certificate is received by the superintendent of education, he shall set apart out of the general fund a sufficient amount to pay such expenses of the department of education as are by law payable out of such fund, and the amount necessary to cover the expenses of normal schools; and he shall then apportion all the balance of such fund, as nearly as practicable, among the several townships and school districts in the state, as hereinafter provided.

Gay v. Bankston, 100 Ala. 280.

3603 (1006). **Amounts apportioned certified to auditor; no warrants drawn in excess; balance unapportioned certified to treasurer.**—As soon as such amounts have been set apart, and such apportionment has been made, the superintendent of education shall certify to the auditor the amount set apart for each particular purpose or appropriation, and the total amount of the apportionment to the several school districts in each county, and the auditor shall see that no warrants are drawn against the educational fund, for any purpose, for any amount in excess of the amounts so certified as set apart and apportioned; and he shall certify to the treasurer the amount of the school revenue, exclusive of poll-tax, unapportioned by the superintendent of education; and the treasurer shall set apart the amount out of any money received from the taxes of the current year, and he shall keep the same separate and apart from all other revenues, and shall not pay out any of such money except upon warrants for school purposes.

3604 (1007). **Interest on sixteenth-section or other trust fund first set apart; effect of apportionment.**—In making the apportionment of school money to the several districts, the superintendent of

education shall first set apart to each township, or other school district, the amount due from the state thereto as interest on its sixteenth-section fund, or other trust fund held by the state; and all townships or school districts, having an income from such source, or from the lease or sale of sixteenth-section lands, shall not receive anything out of the balance of the educational fund to be apportioned, until all other townships or school districts, having no trust fund, shall have received from the general fund such amount as will give them an equal per capita apportionment with the townships or districts having such income.

3605 (1008). **Apportionment; basis of, and how made.**—The superintendent of education shall apportion the educational fund to the respective townships or school districts, subject to the provisions of the preceding section, according to the latest official returns of the enumeration of school population of the townships or other districts, which have been made to his office, and according to the entire number of children of school age in each township or school district; but when the township trustees of any township or district have failed to make and return the census enumeration of their township or district as required by law, and when the superintendent of education has not caused a new enumeration to be made, the superintendent of education shall make the apportionment to such township or district, according to the best information he can obtain as to the school population of such township or district; but in no event shall he, in case of such failure, estimate the school population of any such district or township at more than the number shown by the last official report to his office.

3606 (1009). **Apportionment recorded, and certified to county superintendents; when contracts for schools invalid.**—As soon as such apportionment is completed, the superintendent of education shall have the same recorded in his office, in books kept for that purpose, showing the amount which has been apportioned to each school district, and the source or sources from which the same was derived, the amount to each district, and the number of children in the district upon which the apportionment was based; and he shall then furnish to each county superintendent of education a certified copy from such books, showing the dividends of the educational fund to each township or district under the latter's supervision; and the amount so divided and certified shall be the total amount which each of such school districts shall be entitled to receive from the state, except the poll-tax, during the current scholastic year; and no contract to pay for any school or schools, for any district, more than the amount thus apportioned to it, together with such poll-tax as it may receive, and such funds as may be in hand from any previous year, shall be valid against the state or township.

Gay v. Bankston, 100 Ala. 280.

3607 (1010). **Poll-tax received by each county.**—Each county shall receive as school money all the poll-tax collected therein; and

the same shall be its full distributive share of the aggregate poll-tax collected in the state.

3608 (1011). **Each township and race entitled to its poll-tax.** Each township or other school district is entitled to receive, for the support of the public schools therein, all the poll-tax raised in and for such township or district; and the county superintendent of education of each county and the township trustees of each township shall see that the amount of poll-tax paid by white persons shall be applied exclusively to the maintenance of schools for white pupils, and that paid by colored persons exclusively for the maintenance of schools for colored pupils.

Gay v. Bankston, 100 Ala. 280.

3609 (1012). **Amount due each county apportioned and certified to auditor.**—The superintendent of education shall by the tenth day of October in each year, or as soon thereafter as practicable, apportion to every county the amount of school money such county will be entitled to receive for the scholastic year from all sources except such special tax, if any, levied for school purposes in any county; and he shall certify the same to the auditor.

3610. County superintendents shall make pay-rolls.—On the fifteenth days of March, June, September and December of each year, the county superintendents of education shall make in duplicate, for each race separately, a pay-roll, showing the names of all teachers engaged in teaching public schools in their counties, with their post-office address, and the estimated amount that will be due to each teacher at the end of the current quarter from the funds of each township and range in its regular numerical order; and shall append thereto an affidavit that the same is correct. One of such duplicate pay-rolls shall be retained by the county superintendent, and the other he shall forthwith forward to the superintendent of education, who shall examine the same, and if found correct, it shall be approved by him and filed with the auditor. Feb. 28, 1889, p. 106.

3611. Auditor shall draw warrant in favor of county superintendent.—The auditor shall, immediately upon the receipt of such pay-roll, draw a warrant on the state treasurer in favor of the county superintendent of each county for a sum which will be equivalent to the amount estimated to be due on said pay-roll, and four per centum thereon, and shall file said warrant, together with the pay-roll upon which it is based, with the treasurer, whereupon it shall be the duty of the treasurer to forward by express or exchange, at the expense of the state, the amount of such warrant, and the pay-roll and duplicate receipts for said sum, including the express charge or exchange premium, if any. The county superintendent of education must immediately upon receipt of said sum, sign the duplicate receipts and return one to the treasurer, who shall attach it to the appropriate warrant, and the other shall be returned to the auditor. Feb. 28, 1887, p. 117, §2.

3612. Teachers paid and receipts taken.—Immediately upon the receipt by the county superintendent of the amount of the quarterly or monthly pay-roll, he shall pay the teachers, taking their receipts Feb. 28, 1889, p. 106.

therefor on both copies of said pay-roll, and must by the fifteenth day of January, April, July and October, return one copy of such receipted pay-roll to the superintendent of education.

Feb. 28, 1887, p. 117, §4.

3613. Auditor must prepare blanks.—The auditor must prepare the necessary blank pay-rolls, receipts and warrants to be used in carrying out the provisions of this article.

Feb. 28, 1889, p. 106.

3614. Where teachers are paid monthly.—In those counties and separate school districts where teachers are required by law to be paid monthly, it shall be the duty of the county superintendent, or the superintendent of the separate school district, as the case may be, to make out and forward to the superintendent of education on the twentieth day of every month, a pay-roll as provided in this article, and the superintendent of education, the auditor and the treasurer shall each, severally, perform all the acts and duties required of them in this article as in other cases.

Feb. 28, 1887, p. 117, §10.

3615. Balance in hands of county superintendent charged to him.—Upon the return of the receipted pay-roll to the superintendent of education, if it should appear that there is a balance in the hands of the county superintendent, the amount of such balance shall be charged to him and shall be deducted from the amount of the next quarterly or monthly pay-roll.

Ib. §11.

3616. County superintendent failing must be removed.—Any county superintendent, or superintendent of any separate school district, who fails to make and return any pay-roll required by this article, or who fails to sign and return the receipts herein provided for, or who fails to pay the teachers within fifteen days after the receipt by him of the money, or who fails to return the receipted pay-roll, must be removed from office by the superintendent of education.

3617 (1016). **Apportionment and expenditure of local school money.**—All local school funds, raised for the support of public schools, by taxation or otherwise, shall be apportioned and expended in the district or districts in and for which the same were raised, under such rules and regulations as the township trustees, or other local authority provided by law, may prescribe; but this section shall not be construed to repeal any provision for the apportionment and disbursement of the moneys mentioned in this chapter, or provided for in special or local laws; and all funds contributed by private parties, or otherwise, to such district shall be applied as indicated in the grant from such contributors; and no school moneys, distributed to the various counties from the state school revenue shall, either directly or indirectly, be paid for the erection of schoolhouses, for the use of schoolroom furniture, or any other contingent expenses of schools.

3618 (1017). **Apportionment of income from trust fund when township divided.**—Whenever a township, which has an income from a trust fund, is divided by a state or county line, or otherwise, into separate districts, or includes a city which is a separate school district, such income must be divided between, and apportioned to each

school district in such township according to the school population of each.

3619 (1018). **Funds unused for two years apportioned by county superintendent.**—The county superintendent of education shall, in the same manner as the superintendent of education is required to apportion the general school fund, apportion among the school districts under his supervision all funds received by him for any particular school district or race, which have remained unused by such district or race for two years; and he shall make report of such apportionment to the superintendent of education as soon thereafter as practicable.

3620 (1019). **Fund once apportioned, not used for other purposes until reapportioned.**—Funds which have accrued and have been apportioned to any district or race, shall not be used for the benefit of any other district or race, until the same shall have reverted to the general fund, and been reapportioned under the provisions of the last preceding section.

3621 (1020). **What part of income new districts are entitled to.** Whenever any separate school district is created, which shall embrace parts of two or more townships, such district shall receive its proportionate share of the income from any trust fund belonging to either or both of such townships, according to its school population.

3622 (1021). **Contingent fund for department of education.** The state treasurer shall annually set apart, out of any money in the treasury not otherwise appropriated, the sum of one thousand dollars, as a contingent fund for the department of education; and whenever it shall become necessary to draw on such fund, the superintendent of education shall certify the amount necessary, and for what purpose, to the auditor, who shall draw his warrant on the treasurer for such amount. The superintendent of education shall keep an accurate account of all sums which he shall certify to be paid out of such contingent fund, and shall furnish an itemized statement thereof to the governor each year, with his annual report.

3623 (1022). **Unexpended part of such fund credited to next year.**—At the close of each scholastic year, any part of the appropriation for the educational contingent fund, which may not be then expended, shall be carried forward by the auditor and superintendent of education, and placed to the credit of, and become a part of the one thousand dollars appropriated for the educational contingent fund of the next succeeding year.

ARTICLE 10.

TOWNSHIP CORPORATIONS.

3624 (1024) (963) (576) (502). **Incorporation of townships.** The inhabitants of each township in the state are incorporated by the name of "Township ———, in range ———," according to the number of the surveys of the United States.

ARTICLE 11.

SCHOOL LANDS; LEASE AND SALE.

3625 (1023) (962) (575) (501). **What are school lands, and in whom vested.**—School lands, within the meaning of this Code, are sections numbered sixteen, in every township, granted by the United States for the use of schools in the township, and such other lands as may have been granted to any township for the use of schools; and all school lands are vested in the state, in trust to execute the objects of the grant.

Long v. Brown, 4 Ala. 622; Miller v. State, 38 Ala. 600; Yerby v. Sexton, 48 Ala. 311; Gaston v. State, 88 Ala. 459.

3626 (1025) (967) (588) (519). **Timber lots reserved.**—The township trustees, after the surveys and plats provided for in this article, may select such lots as they think proper, to reserve from cultivation for the benefit of the timber thereon, and must mark the same "reserved" on the plat thereof.

3627 (1026) (968) (589) (520). **Other lands leased; terms of lease.**—The township trustees may lease for not exceeding five years, the lots so laid out and not reserved, and may stipulate for such improvements as they may deem expedient, and may require, if they think proper, security for rents and improvements; the rent is to be paid annually, but in case of improvements, they may stipulate for the rent to commence after the commencement of the lease.

3628 (1027) (969) (590) (521). **Rent payable to the township.** All notes, bonds and contracts for the lease of school lands are to be made payable to the township by its corporate name.

3629 (1028) (970) (591) (522). **Lands rented at public auction; notice.**—All school lands must be leased, at some place in the township, at public auction; and at least six weeks' previous notice must be given by advertisement at three public places in the township, designating the time and place; and such other notice may be given as the township trustees may deem expedient.

3630 (1029) (971) (592) (523). **Duties of lessee.**—The lessee is bound to treat the land, houses and improvements in a careful and husbandmanlike manner; to commit no waste; and he must comply with such further restrictions as the township trustees may deem expedient to insert in the lease; and if such lessee, or any person claiming under him, commits waste, or fails to pay the rent, or to comply with any other stipulation in the lease, the township trustees have the right to declare the lease forfeited.

3631 (1030) (972) (593) (524). **Timber lots; how used.**—The lots reserved for timber are for the common benefit of the lessees of the other lots; but no timber must be cut down, injured, or destroyed, as long as there is sufficient on the other lots, which the township trustees are to determine; and the lessees must, in no case, cut down, injure, or destroy such timber without permission from the township trustees, which may be given on such terms as they

may think proper, having due regard to the interests of the township.

3632 (1031) (973) (594) (525). **Penalty for injuries to timber.** Any person who, without authority, cuts down, injures, or destroys any tree on school lands, shall forfeit and pay for every such tree ten dollars, to be recovered before any court having jurisdiction, in the corporate name of the township.

3633 (1032) (974) (595) (526). **Fines paid into treasury for school fund.**—All fines and forfeitures under the preceding section shall be paid into the state treasury, and added to the principal of the school fund of the township.

3634 (981). **Report of income from school lands.**—When any part of the sixteenth-section or other school lands in any township has been rented or leased, it shall be the duty of the township trustees to report at once to the county superintendent in writing a description of the lands, to whom rented or leased, the time when due and how the payment is secured. It shall be the duty of the county superintendent, as soon as this report is received by him, to file the same in his office, and to report to the superintendent of education all the facts contained in the report of the township trustees. It shall be the duty of the township trustees when money is paid to them on such rentings or leases to report at once the amount, and on what account paid, to the county superintendent, whose duty it shall be to report the same to the superintendent of education, being careful to give the number of the township and range and for what year the rental or lease money was paid. As amended Feb. 28, 1889, p. 69.

3635 (1033) (975) (596) (527). **Election as to sale of school lands.**—The township trustees of any township may, on giving twenty days' notice by advertisement at three of the most public places therein, hold an election to ascertain the sense of the township respecting the sale of school lands belonging thereto, and may appoint the place where such election is to be held; and three inspectors to manage the same.

Tankersly v. State Bank, 6 Ala. 277.

3636 (1034) (976) (597) (528). **Oath of inspectors of election.** The inspectors, before holding such election, must take an oath to conduct the same fairly, which may be administered by one to the other; and they may appoint clerks.

3637 (1035) (977) (598) (529). **Absence of inspectors.**—If any inspectors are absent, those present may supply their places, and if none attend, any three freeholders or householders of the township may act.

3638 (1036) (978). **Polls.**—The polls are to be opened at eleven in the morning and closed at five in the afternoon.

3639 (1037) (979) (600) (531). **Manner of voting.**—Voters may prepare their own ballots, notwithstanding any general law to the contrary, and must write thereon "Sale" or "No sale," and deposit them in the ballot-box; and the inspectors, after ascertaining the

result, must certify the same to the township trustees, who must declare the result.

3640 (1038) (980) (601) (532). **If majority for sale, survey made, and minimum price fixed.**—If, on such election, a majority of the legally qualified voters of the township, voting thereat, are in favor of a sale, the township trustees must have the lands surveyed and divided into lots so as to command the highest price, have a plat of such survey made, and, being sworn to fairly value such lots, fix a minimum price upon each.

3641 (1039) (981) (602) (533). **Plat to be kept open to inspection.**—Such plat, with the minimum price marked upon each lot, is to be kept by the township trustees open to the inspection of all persons desiring to examine the same.

3642 (1040) (982) (603) (534). **Notice of sale.**—As soon as the lands are surveyed, the township trustees must give thirty days' notice of the time and place of sale by advertisement at three public places in the township and in such other mode as they may think proper.

3643 (1041) (983) (604) (535). **Sale at public auction; terms of sale.**—On the day appointed for the sale, between the hours of eleven in the morning and two in the afternoon, each lot must be offered separately, and sold at public auction to the highest bidder at or above the minimum price. If such minimum price is fifty dollars, or under, the sale must be for cash; if the minimum price is over fifty dollars, but not more than one hundred and fifty dollars, the sale must be on a credit of one year, unless the amount bid for the lands should exceed one hundred and fifty dollars, in which event the sale must be on a credit of one and two years, in equal annual installments; if the minimum price, or the amount bid for the lands, is one hundred and fifty dollars, or over, but less than three hundred dollars, the sale must be on a credit of one and two years, in equal annual installments; if the minimum price, or the amount bid for the lands, is over three hundred dollars, but less than five hundred dollars, the sale must be on a credit of one, two, and three years, in equal annual installments; and if the minimum price, or the amount bid for the lands, is five hundred dollars, or more, the sale must be on a credit of one, two, three, and four years, in equal annual installments; when the sale is on a credit, the purchaser must give his notes, with two or more sureties, approved by the township trustees, payable to the State of Alabama, for the use of the township, designating it by its number and range, and specifying, by the legal subdivisions, the particular portion or portions of the section for which the notes are given. All notes for purchase of school lands, sold under the provisions of this article, must bear interest at the rate of eight per cent. per annum from date.

3644 (1042) (984) (605) (536). **Provisions directory.**—The provisions of this article, in relation to the sale of school lands, must be construed as directory only.

3645 (1043) (985) (606). **Report of sale, disposition of purchase-**

money and notes.—The township trustees, within twenty days after such sale, must make return thereof to the superintendent of education, specifying the date of the sale, the names of the purchasers, the quantity and a particular description of the land sold to each, the price paid, or to be paid, by each purchaser, and the amount of the purchase-money retained to defray the expenses of the survey and sale; and they must, at the same time, pay over to the superintendent of education all the money which may have been received by them as purchase-money for such lands, after deducting such amount as they may be allowed by law to retain to defray the expenses of the survey and sale; and also, at the same time, turn over to the superintendent of education all notes which may have been taken by them for such lands; and the superintendent of education must give them a receipt for such money and notes, and file the return and notes in his office, and make proper record of the notes.

3646 (1044) (986) (607) (537). **Resale of lands.**—If any purchaser fails to make the payment, or give his notes with approved sureties, as required, the land bid off by him must be immediately resold, if practicable, but if it is not practicable to make the resale at once, it must be advertised and resold at a future day, as if no sale had been made; and the first purchaser shall be responsible for the difference between his bid and the amount for which the land is subsequently sold, if such amount is less than the bid of such first purchaser.

Commissioners v. Allen, 5 Port. 169.

3647 (1045) (987) (608) (538). **Certificate of purchase.**—The township trustees on receiving from the purchaser the cash payment, and his notes for the deferred payments, must give to him a certificate of purchase, describing the land purchased, and showing the number of acres, and the amount of the purchase-money.

Tankersly v. State Bank, 6 Ala. 277; Watson v. Prestwood, 79 Ala. 416; s. c., 111 Ala. 604.

3648 (1046) (988) (609) (539). **Effect of certificate of purchase.** Such certificate conveys to the purchaser, his heirs, or assigns, a conditional estate in fee, to become absolute on the payment of the purchase-money and interest, and to revert to the state for the uses originally granted in the following cases:

1. When all the notes have become due, and the makers have left the state, or died insolvent.

2. When a recovery on such notes is defeated by any defense avoiding the contract of sale.

3. When a recovery is had against all the makers, and execution has been returned "no property" by the proper officers of the county in which the township lies; or when judgment is had, and execution returned against any one or more of such makers "no property," and the others have left the state, or died insolvent.

See citations to preceding section.

3649 (1047) (989) (610) (540). **Revesting of title; clerk to certify facts; penalty for failure; costs.**—No proceeding is necessary

to revest the title in the state on the happening of the events specified in the preceding section, but such lands may be recovered in the name of the state, for the use of the township, against any person in possession of the same, upon proof of the facts; and it is the duty of the clerk of the court in which the suit was pending, or the judgment recovered, to certify the facts to the superintendent of education, on the happening of the events specified in the second and third subdivisions of the preceding section, and failing to do so within a reasonable time, he forfeits the sum of one hundred dollars; one half to the persons suing for the same, and the other to the state for the use of the township. When no money is recovered in suits on notes for purchase-money of school lands, no costs must be taxed against the township for such suits.

3650 (1048) (990) (612) (542). **Compensation to township trustees; penalty for certain defaults.**—For holding the election and making the sale as provided in this article, the township trustees shall be entitled to two dollars each, which, together with the amount which may be allowed by law to the county surveyor for making the surveys and plats herein provided for, shall be retained by them out of the purchase-money for the lands; and purchasers shall, in all cases, pay enough cash to defray such expenses; and if the township trustees fail to return the sale, or purchase-money notes, or to pay over the money received on account of purchase-money, to the superintendent of education, as required by law, he shall forfeit one hundred dollars, one half to the person suing for the same, and the other to the state for the use of the township; and on the trial, the certificate of the superintendent as to such failure is presumptive evidence thereof.

3651 (1049) (991) (613) (543). **Fines go to school fund.**—The amount received by the state upon recoveries, had under the last two preceding sections, is to be added to the principal of the school fund of the township.

3652 (1050) (992) (614) (544). **Patent.**—A patent issues, on the payment of the purchase-money, to the purchaser, his heirs, or assigns; and when the patent is to the heirs, it vests a title in all persons entitled to claim in that capacity under the provisions of this Code.

Payne v. Mathis, 92 Ala. 585; Tarver v. Smith, 38 Ala. 135.

3653 (1051) (993, 996) (615, 616). **Issue of patent by secretary of state; correction of mistake.**—The secretary of state must issue patents, upon satisfactory evidence furnished him of full payment of purchase-money, to any person, agent, or officer, legally authorized to receive such payment; and upon proof of a mistake in the issue of any patent, he must correct the same, or issue a new patent on the return of the original to his office.

3654. (1052) (995) (617) (545). **Issue of patents in other cases.** Except under the provisions of the preceding section, no patent must issue without the certificate of the superintendent of education,

that the whole amount of the purchase-money specified in the certificate, with all interest thereon, has been paid.

3655 (1053) (998). **Collection of past-due notes.**—All notes for school lands deposited with the superintendent of education, if not paid within six months after maturity, must be placed with the attorney-general for collection; but this section shall not be so construed as to prevent the superintendent of education from ordering suit on notes at any time after maturity, when so ordered by the township trustees, or the sureties on the notes.

3656 (1054) (999). **Appointment of agents for collection of notes.**—The attorney-general may appoint agents for the collection of such notes, being responsible for any neglect on the part of such agents.

3657 (1055) (1000). **Township credited with collections on notes.** All collections on notes given for the sale of school lands must be paid into the treasury of the state, to the credit of the proper township.

3658. Proceeds of school lands covered into treasury; faith and credit of state pledged for payment of interest.—All funds now in the state treasury derived from the sale of sixteenth-section or other school lands, or which may hereafter accrue from sales of such lands, together with the redemption-money of other lands in which former accumulations have been invested under an act approved March 1, 1881, entitled "An act to authorize the compromise and settlement of claims for school lands in this state," are covered into the state treasury and made available for general purposes; and the faith and credit of the state is pledged for the payment of the interest on such fund to the public schools of the state, at the rate of six per cent. per annum. Feb. 28, 1889, p. 104.

3659 (980). **Bonds when lands about to be sold or leased.**—When any township trustees are about to sell or lease any school lands, they must give bond with sufficient sureties, payable to the state, in a sum to be fixed by the county superintendent of education, equal to the value of the school lands or the amount of the school funds of their township, and with condition to discharge their duties faithfully so long as they may continue in office or discharge the duties thereof, which bond must be approved by the county superintendent of education and by him filed in his office.

3660 (1057). **By whom duties as to lands performed when township divided.**—When a township is divided into two or more school districts the county superintendent of education, in appointing township trustees in such township, shall designate which of them shall discharge the duties and exercise the powers conferred upon township trustees touching the leasing, selling and control of school lands in each school district.

ARTICLE 12.

LEASE AND SALE OF SCHOOL INDEMNITY LANDS.

Dec. 10, 1890, p. 88, §1.

3661. Sale of school indemnity lands authorized.—The superintendent of education is authorized and empowered to sell and dispose of all the lands which have been heretofore or may hereafter be certified to the state for the use and benefit of the several townships in which there was a deficiency in the amount of land originally certified to the state for their benefit, subject to the approval of the governor.

Ib. §2.

3662. Proceeds of sale; how disposed of.—The proceeds arising from such sales, after the payment of all proper costs and expenses thereof, shall be, by the superintendent of education paid into the state treasury to the credit of the townships to which the same may belong, in the proportion of their interest therein.

Ib.

3663. Notes taken by superintendent of education held until paid; when placed with the attorney-general.—All notes taken by the superintendent of education for the purchase of such lands must be held by him until the same are due, and if not then paid, may be placed with the attorney-general for collection.

Ib.

3664. Manner and terms of sale.—Such sales may be made from time to time, at public or private sale, as in the judgment of the superintendent of education shall best promote the interest of the school fund of the state, and shall be for cash, or part cash and part on time, as the superintendent of education and the governor may deem best; but in no case shall there be less than one-fourth of the purchase-money paid in cash, and the remainder shall be payable in yearly installments to extend over a period of not more than three years, and shall be secured by notes with sureties to be approved by the superintendent of education and shall bear interest from the date of the sale.

Ib. §4.

3665. Lease of school indemnity lands.—The superintendent of education may, with the approval of the governor, lease out any of such lands for a term not exceeding five years, or may enter into contracts permitting persons to mine iron ore, coal or other minerals therefrom, upon a royalty, for a term not exceeding twenty years; and the net proceeds of all moneys received from the lease of such lands, or as a royalty for the minerals mined therefrom, shall at the end of each fiscal year be paid into the state treasury to the credit of the townships to which such lands belong, in the proportion of their interest therein.

Ib. §8.

3666. Provisions applicable.—The provisions of the preceding article relating to trespasses upon school lands, resale, certificate of purchase, revesting title, patent, and the collection and application of proceeds of sales, apply to sales under this article so far as applicable.

ARTICLE 13.

UNIVERSITY OF ALABAMA.

3667 (1058) (1295). **Incorporation of university.**—The governor and the superintendent of education, by virtue of their respective offices, and the trustees appointed from the different congressional districts of the state under the provisions of section 9, of article thirteen of the constitution, and such other members as may be from time to time added to the board of trustees, and their successors in office, are constituted a body corporate under the name of the Board of Trustees of the University of Alabama, to carry into effect the purpose and intent of the congress of the United States in the grant of lands by the act of March 2, 1819, to this state, to be by it held and administered for the benefit of a seminary of learning.

3668 (1059) (1296). **General powers, duties and liabilities of such corporation.**—Such corporation shall have all the rights, powers and franchises necessary to, or promotive of the end of its creation, and shall be charged with all the corresponding duties, liabilities and responsibilities.

3669 (1060) (1297). **Power of holding and disposing of property.** Such corporation may hold, and may lease, sell, or in any other manner not inconsistent with the objects or terms of the grant or grants under which it holds, dispose of any property, real or personal, or any estate or interest therein, remaining of the original or any subsequent grant by congress, or by this state, or by any person, or accruing to the corporation from any other source, including also the proceeds of the "University fund," as to it may seem best for the purposes of its institution.

3670 (1061) (1298). **University fund defined; credit of state pledged for payment of interest.**—The fund designated in the preceding section as the "University fund" consists of three hundred thousand dollars, the proceeds of the original grant of congress, deposited with this state; and for the payment of the interest thereon, at the rate of eight per cent. per annum, the faith and credit of the state are forever pledged; but such rate of interest shall continue only so long as it may be the policy of the state to continue the military department as a branch of the university.

3671 (1062) (1299). **When gift or grant not affected; what not a forfeiture.**—No grant or gift, by will or otherwise, shall fail on account of any misnomer or informality, when the intention of the grantor or donor can be ascertained; nor shall any default, malfeasance, misfeasance, or nonfeasance, or non-user, on the part of the trustees, or other officers, or agents of such corporation, work a forfeiture of any of its rights, powers, privileges, or franchises.

3672 (1063) (1300). **Rights, etc., of university continued in corporation.**—In addition to the rights, properties, privileges and franchises herein granted, all rights, properties, privileges and franchises heretofore, by any act of the general assembly, granted to, or vested

in the University of Alabama, shall vest and continue in such corporation.

3673 (1064) (1301). **Powers of board of trustees; no exclusion from benefit of "University fund," etc.**—The board of trustees have the power to organize the university by appointing a corps of instructors, who shall be styled the faculty of the university, and such other officers as the interest of the university may require; to remove any such instructors or officers, and to fix their salaries or compensation, and increase or reduce the same at their discretion; to institute, regulate, alter, or modify the government of the university, as they may deem advisable; to prescribe courses of instruction, rates of tuition, price of board, and regulate the necessary expenses of students; and to confer such academic and honorary degrees as are usually conferred by literary institutions. They may delegate to the faculty of the university, or other officer or officers, such powers and functions in the government of the students, and in the administration of the affairs of the university as they may deem proper; but in no cases shall any person be authorized to receive, hold, or disburse any funds of the university without having first given bond, conditioned for the faithful discharge of his duties; and no person shall be excluded from the full benefit of the university fund, or placed at any disadvantage in the pursuit of his studies, who possesses the requisite literary and other qualifications, and is willing to submit to the discipline prescribed for students.

As amended Dec. 10, 1892, p. 22.

3674 (1065) (1302). **Classification of trustees; term and oath of office.**—The trustees are divided into three classes, as follows: The trustees from the first and fourth, and the one heretofore determined by lot from the sixth, congressional districts constitute the first class; those from the second, fifth, ninth and seventh congressional districts constitute the second class; and those from the third, eighth, and the one heretofore determined by lot from the sixth, congressional districts constitute the third class; and they shall hold office, and their seats be vacated as prescribed by the constitution. Before entering upon the discharge of their duties, they shall each take an oath to faithfully perform their official duties, which oath may be administered by any officer authorized to administer oaths in this state.

3675 (1066) (1303). **Vacancy in office of trustee, how filled; term of appointee.**—Any vacancy in the office of trustee, occurring during the recess of the legislature, shall be filled by appointment of the governor, such appointee to hold until, at the session of the legislature thereafter, such vacancy shall be filled by the governor, by and with the consent of the senate; and any vacancy occurring during the session of the legislature shall be filled by appointment of the governor by and with the consent of the senate; and any trustee appointed to fill a vacancy by the governor, by and with the consent of the senate, shall hold during the unexpired term.

3676 (1067) (1304). **Quorum of board of trustees; president pro tempore.**—Five members of the board of trustees, exclusive of the

ex officio members, shall constitute a quorum, and every member present shall be required to vote, and a majority of those present shall govern. At their first meeting, the board shall elect one of their number president pro tempore, who shall preside in the absence of the governor, and shall hold the position until the next annual or special meeting, when another president pro tempore shall be elected.

3677 (1068) (1303, 1304). **Time and place of meetings of trustees.**—The board of trustees shall meet at least once in each year, and on the last Wednesday in June, unless some other day is selected by them; and the board may, at any session, appoint a special meeting, and upon the written application of any four members, or of any three members with his concurrence, the president pro tempore shall appoint a special meeting, and issue notices thereof to the several members; but such meeting shall not be appointed for a day less than twenty days subsequent to the date of the notice. All meetings of the board must be held at the university.

3678 (1069) (1305). **Proceedings of board recorded; employment of secretary; payment of expenses, etc.**—The proceedings of the board of trustees must be recorded in a substantially bound book, which must be kept in the archives of the university; and the board may at any meeting employ a secretary. The certificate of the president, or in his absence, of the president pro tempore, countersigned by the secretary, if there be one, shall entitle the several trustees to their constitutional pay out of the treasury of the university; and the compensation of the secretary and the necessary incidental expenses of the board at each session shall be paid on the order of the board, and the certificate of the president, or president pro tempore, as the case may be, out of such treasury.

3679 (1070) (1306). **Report by board to the general assembly.** It shall be the duty of the board of trustees to make to the general assembly, at each session thereof, a full report of their transactions, and of the condition of the university, embracing an itemized account of all receipts and disbursements on account of the university, by those charged with the administration of its finances.

3680 (1071) (1302, 1310) (1017). **Pupils appointed free of charge.** Three pupils from each county in the state, to be selected by the trustee from the congressional district in which such county is situate, shall be educated at the university, free of charge for tuition.

3681 (1072) (1309) (430) (384). **Interest on "University fund"; how payable.**—The state treasurer must semi-annually, on the last days of December and June, pay the interest on the university fund at the rate of eight per cent. per annum, to the treasurer, or any authorized agent of the university; and on the application of such treasurer or agent, the auditor shall draw his warrant on the treasurer for the amount due from the state for interest on such fund.

3682 (1073) (1308). **Right reserved to the legislature to revise and amend.**—The right is reserved to the general assembly to revise or amend the provisions of this article, and in virtue of the character of the trust conferred by the act of congress, to intervene and,

by special enactment, to direct and control the board of trustees in the discharge of their duties and functions.

Dec. 6, 1886, p. 121. **3683. Law department to receive second-hand text-books from state library.**—The justices of the supreme court are authorized from time to time to set apart and turn over to the law department of the university, copies of such second-hand or superseded law-books, known as text-books, as they may deem expedient, the marshal and librarian taking proper receipts therefor.

Ib. **3684. Law department must be supplied with Codes.**—The secretary of state shall supply to such law department three copies of the Code of Alabama as the same may, from time to time, be published.

Feb. 28, 1889, p. 71. **3685. Police of grounds; appointment, powers and duties.**—The president of the university has authority to appoint or employ one or more suitable persons to act as police officers to keep off intruders and prevent trespasses upon and damage to the property of the university. Such persons shall be charged with all the duties and invested with all the powers of police officers, and may eject trespassers from the university buildings and grounds and may, without warrant, arrest persons guilty of disorderly conduct, or of trespass on the property of the institution, and carry them before the nearest justice of the peace or other officer charged with the trial of such offenders, before whom, upon proper affidavit charging the offense, such person so arrested may be tried and convicted as in case of persons brought before him on a warrant; and such officer or officers shall have authority to summon a posse comitatus.

ARTICLE 14.

AGRICULTURAL AND MECHANICAL COLLEGE OF ALABAMA.

3686 (1074). **Incorporation of college.**—The governor and the superintendent of education, by virtue of their respective offices, and the trustees appointed from the different congressional districts of the state, under the provisions of section 9 of article thirteen of the constitution, and their successors in office, are constituted a body corporate under the name of the Agricultural and Mechanical College of Alabama, to carry into effect the purpose and intent of the congress of the United States in the grant of lands by the act of July 2, 1862.

3687 (1075). **General powers, duties and liabilities of college.** Such corporation shall have all the rights, privileges and franchises necessary to a promotion of the end of its creation, and shall be charged with all corresponding duties, liabilities and responsibilities.

3688 (1076). **Credit of state pledged to payment of interest.** For the payment of the interest, at the rate of eight per cent. per annum, on the fund of two hundred and fifty-three thousand and five hundred dollars, arising from the sale of the scrip for the land

donated in trust to this state by the act of congress of July 2, 1862, the faith and credit of the state are forever pledged.

3689 (1077). **Powers of board of trustees.**—The board of trustees have the power to organize the college by appointing a corps of instructors, who shall be styled the faculty of the college, and such other instructors and officers as the interest of the college may require; and to remove any such instructors or officers, and to fix their salaries or compensation, and increase or reduce the same at their discretion; to regulate, alter, or modify the government of the college as they may deem advisable; to prescribe courses of instruction, rates of tuition and fees; to confer such academic and honorary degrees as are usually conferred by institutions of similar character; and to do whatever else they may deem best for promoting the interest of the college. They shall also establish and maintain a military department in the college, and elect a commandant and such other officers as may be necessary for the department.

3690 (1078). **Classification of trustees.**—The trustees of the college are divided into three classes, as follows: The trustees from the fourth, fifth, seventh and ninth districts shall constitute the first class; those from the eighth, sixth and second districts shall constitute the second class; and those from the third and first districts shall constitute the third class; and they shall hold office, and their seats be vacated as prescribed by the constitution.

3691 (1079). **Vacancy in office of trustee, how filled; term of appointee.**—Any vacancy in the office of trustee, occurring during the recess of the legislature, shall be filled by appointment of the governor, such appointee to hold until, at the next session of the legislature thereafter, such vacancy shall be filled by the governor, by and with the consent of the senate; and any trustee appointed to fill a vacancy by the governor, by and with the consent of the senate, shall hold during the unexpired term.

3692 (1080). **Time and place of meetings of trustees.**—The board of trustees shall hold their meetings at the seat of the college on the last Monday in June of each year, unless the board shall, in regular session, determine to hold its meetings at some other time or place; and upon the application in writing of any four members of the board, the governor shall appoint a special meeting, naming the time and place thereof, and cause notices thereof to be issued to the several members of the board, but such meeting shall not be appointed for a day less than twenty days subsequent to the date of the notice.

3693 (1081). **Quorum of board of trustees.**—Six members of the board of trustees shall constitute a quorum, but a smaller number may adjourn from day to day until a quorum is present.

3694 (1082). **Payment of expenses to trustees.**—The certificate of the president of the board, or in his absence, of the president pro tempore, countersigned by the secretary, shall entitle the several trustees to the payment of their actual expenses incurred in the discharge of their duties as such trustees.

3695 (1083). **When gift or grant not affected; what will not operate a forfeiture.**—No grant or gift, by will or otherwise, shall fail on account of any misnomer or informality, when the intent of the grantor or donor can be arrived at; nor shall any default, malfeasance, or misfeasance, or non-user, on the part of the trustees, or other officers or agents of such corporation, work a forfeiture of any of its rights, privileges, powers, or franchises.

3696 (1084). **Report of trustees to general assembly.**—It shall be the duty of the board of trustees to make, or cause to be made, to the general assembly, at each session thereof, a full report of their transactions, and of the condition of the college, embracing an itemized account of all receipts and disbursements on account of the college by those charged with the administration of its finances.

As amended Feb. 26, 1889, p. 65.

3697 (1085). **Interest paid by treasurer; when bond required of officers or agents.**—The state treasurer must pay the interest on the fund of two hundred and fifty-three thousand and five hundred dollars arising from the sale of land-scrip, quarterly, as the same may accrue, to the treasurer or other authorized agent or officer of the college; and on the application of such treasurer, agent, or officer, the auditor shall draw his warrant on the state treasurer for such interest; but in no case shall any person be authorized to receive, hold, or disburse any fund of the college, without having first given bond conditioned for the faithful performance of his duties.

ARTICLE 15.

ALABAMA INSTITUTE FOR THE DEAF.

Feb. 28, 1887, p. 70.

3698 (1086) (1311) (1025). **Educational institution for the deaf, dumb and blind established.**—There is established in this state and located at Talladega, an institution for the education of the deaf and dumb, called the Alabama Institute for the Deaf.

Ib.

3699 (1087) (1312) (1026). **Incorporation of such institution.** The governor, the superintendent of education and nine other persons, appointed as hereinafter provided, are made a body corporate, with the rights of succession forever, by the name of the Alabama Institute for the Deaf; and such corporation may acquire and hold property, real and personal, by gift, devise, or in any other manner, for the purposes of its creation; may sue and be sued, contract and be contracted with; may have and use a common seal, and break or alter the same at pleasure; and may have all the powers necessary and proper to accomplish the purposes of this article.

Ib.

3700 (1088) (1313) (1027). **Nine trustees appointed by the governor; board of trustees.**—Such nine persons are appointed by the governor. They are divided into two classes, each class holding office for the term of six years, but expiring at different times. Vacancies are filled by the governor for the unexpired term. Each trustee holds until a successor is duly appointed. These nine persons and the governor and the superintendent of education consti-

tute a board of trustees, who have the entire management and control of such institution.

3701 (1089) (1314) (1028). **Quorum and meetings of board; secretary and treasurer.**—A majority of such board may act, and may meet and adjourn from time to time, as, in their judgment, the interests of the institution may require. They must appoint a secretary and keep a complete record of all their proceedings in a well-bound book; and they shall also appoint a treasurer, who shall give bond in such amount as the board may determine, and with such sureties as they may deem sufficient, for the faithful discharge of his duties as such treasurer; and he and his sureties shall be responsible for all funds which may come into his hands by virtue of his office.

3702 (1090) (1315) (1029). **Duties of treasurer.**—The treasurer must pay over such funds as may come to his hands as such, on the written order of the board of trustees, or a majority of them, which must be countersigned by the secretary and recorded in the minutes or records of the proceedings of the board, kept by such secretary; and the treasurer shall make a full report once a year, and oftener, if required by the governor.

3703 (1091) (1316) (1030). **President of board; teachers; compensation of officers.**—The board must appoint from their number a president, and they must also appoint a principal teacher for such institution, who may nominate to the board such other assistants in the institution as he may think necessary for its successful management, such board having the power of confirmation or rejection. The board must fix the amount of compensation for each of the officers and teachers, and the time of payment.

3704 (1094) (1319) (1032). **Object of institution; application and admission.**—The main object of such institution shall be to afford the means of education to the indigent deaf and dumb of the state. Application for admission must be made to the board of trustees, in writing, and must state the name, age, place of birth and present residence of applicant, how long he has been a resident of this state, that he is deaf and dumb and that he and his family are unable to pay his board and tuition. The application must be sworn to by the applicant, or by some one cognizant of the facts, and filed with the board; and thereupon the board shall, if they deem the proof sufficient, cause an order to be made on the record of their proceedings, admitting such applicant, a certified copy of which shall be delivered to the applicant, his parent or guardian; and thereupon such applicant shall be admitted as a pupil of such institution for the period of time specified in the certificate.

3705 (1095) (1320). **Clothing for indigent pupils.**—In all cases where the parents of pupils sent to the institution are too poor to furnish them with good and sufficient clothing, or when the pupils are without parents and are unable to furnish themselves with clothing, the judge of probate of the county from which they are sent shall certify the same to the principal of the institution, who shall pro-

As amended Feb. 21, 1893, p. 943.

cure the necessary clothing and charge the same to the county, and at the end of each scholastic year of such institution present a verified, itemized account for such clothing to the court of county commissioners of the county from which such pupil is sent; and it shall be the duty of the court of county commissioners, at the first term after the presentation of such account, to audit and allow the same and direct the issuance of a warrant on the county treasurer for the payment of such allowance, which warrant shall be a preferred claim against the general fund of the county; but in the auditing and allowing of such account, thirty dollars per capita for each scholastic year shall be the maximum of such allowance.

3706 (1096) (1321) (1033). **Application for those not indigent.** If other persons, who are not indigent, desire to avail themselves of the advantages of such institution, they or their friends may make application to the board in writing, stating age, name, residence, and that they are able to pay the expenses of such applicant while in the institution; and if on examination the board shall deem the applicant a suitable person to enter such institution, they shall make an order on their records admitting him into the institution, a certified copy of which shall be delivered to the applicant, or his parent, guardian or next friend; but such applicant shall pay or secure the payment of all his expenses for the time for which he is allowed to enter such institution.

Feb. 4, 1889, p. 29.

3707 (1097) (1322) (1034). **Mechanical and industrial department.**—There is established a mechanical and industrial department in such institution for the instruction of pupils; the nature of the department is to be determined by the board, and is to be under the management of the principal of the institution.

3708 (1098) (1323). **Selection and powers of executive committee.**—The board may select from their number an executive committee of three, subject to change and removal by the majority of the board at any time; and such committee is authorized to meet and transact any business that may be transacted by a majority of the board; and whatever acts such committee may do shall be considered as done by the whole board.

3709 (1099). **Teacher of articulation employed, and necessary appliances provided.**—The board of trustees shall employ a competent teacher of articulation in the institution, whose duty it shall be to teach orally such pupils as may be beneficially taught by this method, and who may be placed under his or her instruction, and the trustees shall provide all suitable apparatus and appliances necessary to successfully carry out the provisions of this section.

Feb. 28, 1887, p. 70, §2.

3710. Appropriation for each pupil.—For the maintenance and support of the Alabama Institute for the Deaf the sum of two hundred and seventeen and one-half dollars per pupil is hereby annually appropriated out of any money in the treasury not otherwise appropriated, such appropriation to be based on the number of pupils in actual attendance on the first day of each quarter of each year and

drawn by the treasurer of the board of trustees and disbursed as directed by them.

3711. Property to be insured and kept in repair; appropriation therefor.—The board of trustees must provide good and sufficient insurance, payable to the State of Alabama, upon the property of the state and under their control, and keep and maintain such property in good repair; and for these purposes there is annually appropriated the sum of one thousand dollars to be drawn as appropriations for the support of the institution are drawn. Such appropriation shall be expended only for the purposes herein specified. Dec. 10, 1888, p. 16.

ARTICLE 16.

ALABAMA ACADEMY FOR THE BLIND.

3712. Separate institution for the blind established.—There is established in this state and located at Talladega, a separate institution for the blind, called the Alabama Academy for the Blind. Feb. 19, 1887, p. 56, §§1, 2.

3713. Control and management.—Such institution is under the control and management of the board of trustees of the Alabama Institute for the Deaf, who may prescribe rules and regulations for the conduct of the same. The principal of the Alabama Institute for the Deaf is the chief executive officer. Ib. §§3, 11.

3714. Who entitled to admission.—All blind persons between the ages of eight and twenty-five years, who are bona fide residents of this state, of good moral character, of sound mind and free from offensive or contagious disease, are entitled to admission into such institution, free of charge for board, schoolroom expenses and medical attention. Ib. §4.

3715. Application and admission; extension of time of pupilage. Application for the admission of any person as a pupil must be made in writing, under oath, by the parent or guardian of such person, or by some one cognizant of the facts of the case, stating name, age, place of residence, and that such person is blind, or that the sight is so defective as to prevent such person from being successfully taught in the common schools of the state; and thereupon it is the duty of such secretary, if he deems the proof sufficient and the person on whose behalf the application is made a suitable person to be admitted as a pupil, to issue a certificate entitling such person to admission into the institution for a period of not less than five years, which time of pupilage may be extended for an additional period of three years by the board of trustees, if in their judgment it ought to be done. Ib. §5

3716. Appropriation for each pupil.—For the management and support of the Academy for the Blind, the sum of two hundred and thirty dollars per pupil is hereby annually appropriated out of any money in the treasury not otherwise appropriated, such appropriation to be based on the number of pupils in actual attendance on the first day of each quarter, and drawn by order of the board of Ib. §§7, 9.

trustees in the same manner as the annual appropriation for the Alabama Institute for the Deaf is drawn. Accurate accounts and vouchers shall be kept of all expenditures and report thereof made to the governor once a year, and oftener if required by the governor.

Ib. §12. **3717. Officers and teachers.**—All officers and teachers of such institution must be appointed and their salaries fixed and paid in like manner as the officers and teachers of the Alabama Institute for the Deaf are appointed and their salaries fixed and paid.

3718 (1100). **Oculist to visit institution to be employed.**—The board shall appoint an oculist, whose duty it shall be to visit the institution as often as the trustees may deem necessary, and to examine and operate upon the eyes of such of the pupils of the institution as, in his judgment, may be thereby benefited.

3719. Clothing for indigent pupils.—The section in the preceding article, providing for the purchase of clothing for indigent pupils, is applicable to the indigent blind.

ARTICLE 17.

ALABAMA SCHOOL FOR NEGRO DEAF MUTES AND BLIND.

Feb. 7, 1891, p. 458, §§1, 2. **3720. Separate institution for negro deaf mutes and blind established.**—There is established in this state and located at Talladega, an institution for the education of the deaf, mute and blind children of the negro race, the corporate name of which is the Alabama School for Negro Deaf Mutes and Blind.

Ib. §2. **3721. Control and management.**—Such institution is under the control and management of the board of trustees of the Alabama Institute for the Deaf, who may prescribe rules and regulations for the conduct of the same.

Ib. §3. **3722. Chief executive officer.**—The principal of the Alabama Institute for the Deaf is the chief executive officer of the school in this article established, and shall nominate to the board of trustees such assistants in the literary, musical and domestic departments as in his judgment may be necessary for the proper conduct and working of the school; such nominations to be confirmed or rejected by the board of trustees.

Ib. §4. **3723. Who entitled to admission.**—All negro deaf, mute and blind children, bona fide residents of this state, between the ages of ten and twenty years, if they are deemed by the board of trustees suitable persons to be admitted as pupils, are entitled to board, tuition, schoolroom expenses and medical attendance free of charge for the term of six years.

Ib. §5. **3724. Application and admission.**—Application for admission into such school must be made in writing to the principal, stating name, age and place of residence of such applicant; and if the applicant is deemed a suitable person to be admitted as a pupil, a certificate of admission shall be granted, which shall entitle the applicant to all the benefits of the school for the term of six years.

3725. Appropriation for each pupil.—For the management and support of the Alabama School for Negro Deaf Mutes and Blind the sum of two hundred and thirty dollars per pupil is hereby annually appropriated out of any money in the treasury not otherwise appropriated, such appropriation to be based on the number of pupils in actual attendance on the first day of each quarter of each year, and drawn by order of the board of trustees in the same manner as the annual appropriation for the Alabama Institute for the Deaf is drawn. Accurate accounts and vouchers shall be kept of all expenditures and report thereof made to the governor once a year, or oftener if required by the governor. Ib. §6. Feb. 19, 1887, p. 56, §§7, 9.

3726. Laws relating to the Alabama Institute for the Deaf applicable.—All laws now in force or hereafter enacted relating to the admission of pupils and the management and control of the Alabama Institute for the Deaf are applicable to the institution in this article established, except so far as such laws may be inconsistent with the provisions of this article. Ib. §7.

CHAPTER 101.

SEAL OF THE STATE.

3727 (18) (18). **Great seal of state.**—The seal shall be circular, and the diameter thereof two and a quarter inches; near the edge of the circle shall be the word "Alabama," and opposite this word, at the same distance from the edge, shall be the words "Great Seal." In the center of the seal there shall be a representation of an eagle and a shield, and upon such part of the seal as the governor may direct, there shall be the words "Here we rest." The seal shall be called the "Great Seal of the State of Alabama."

CHAPTER 102.

SET-OFF AND RECOUPMENT. 3728-3734.

3728 (2678) (2991) (2642) (2240). **Set-offs; when allowed.** Mutual debts, liquidated or unliquidated demands not sounding in damages merely, subsisting between the parties at the commencement of the suit, may be set off one against the other by the defendant or his personal representative, whether the legal title be in the defendant or not; and such set-off, if found for the defendant, extinguishes, either in whole or in part, as the case may be, the plaintiff's demand; but the wages or hire of any head of a family in

this state, not having property liable to levy and sale under execution, cannot be defeated or abated by any set-off of a money demand acquired by the person contracting to pay such wages by assignment or transfer, unless the parties otherwise agree in writing.

Mutuality essential.—Scott v. Rivers, 1 S. & P. 19; White v. Word, 22 Ala. 442; Hembree v. Glover, 93 Ala. 622. **Subsisting at the commencement of the suit.**—Franklin v. McGuire, 10 Ala. 557; Crayton v. Clark, 11 Ala. 787; Johnson v. King, 20 Ala. 270; Russell v. Redding, 50 Ala. 448; Jones v. Blair, 57 Ala. 457; Wood v. Steele, 65 Ala. 436; Tyree v. Parham, 66 Ala. 424; Collins v. Greene, 67 Ala. 211; Goldthwaite v. Nat. Bank, 67 Ala. 549; Washington v. Timberlake, 74 Ala. 259; Hembree v. Glover, 93 Ala. 622. **Demands allowed as set-off.**—Brazier v. Fortune, 10 Ala. 516; Hall v. Chenault, 13 Ala. 710; Smith v. Huie, 14 Ala. 201; Briggs v. Moore, 14 Ala. 433; Gildersleeve v. Caraway, 19 Ala. 246; Martin v. Wharton, 38 Ala. 637; Russell v. Redding, 50 Ala. 448; Sledge v. Swift, 53 Ala. 110; Gafford v. Proskauer, 59 Ala. 264; Collins v. Greene, 67 Ala. 211; Campbell v. Conner, 78 Ala. 211; Farris v. Houston, 78 Ala. 250; Mooney v. Hough, 84 Ala. 80; Weaver v. Brown, 87 Ala. 533; Conner v. Smith, 88 Ala. 300; Foster v. Bush, 104 Ala. 662. **Demands not allowed.** Scott v. Rivers, 1 S. & P., 19; Franklin v. MGuire, 10 Ala. 557; Johnson v. King, 20 Ala. 270; White v. Word, 22 Ala. 442; Pulliam v. Owen, 25 Ala. 492; Walker v. McCoy, 34 Ala. 659; City Council of Montgomery v. Montgomery Water-works, 79 Ala. 233; Taylor Mfg. Co. v. Key, 86 Ala. 212; Gunter v. Beard, 93 Ala. 227; Cotton v. Scott, 97 Ala. 447; Lee v. Wimberly, 102 Ala. 539; Jasper Mercantile Co. v. O'Rear, 112 Ala. 247. **"Sounding in damages merely"; what demands are.**—Walker v. McCoy, 34 Ala. 659; Martin v. Wharton, 38 Ala. 637; Collins v. Greene, 67 Ala. 211; Johnson v. Smith, 70 Ala. 108; Nelms v. Hill, 85 Ala. 583; Hunt v. Johnson, 96 Ala. 130; Cotton v. Scott, 97 Ala. 447. **What demands are not.**—Holley v. Younge, 27 Ala. 203; Gibson v. Marquis, 29 Ala. 668; Wood v. Fowler, 37 Ala. 55; Nelms v. Prewitt, 37 Ala. 389; Cage v. Phillips, 38 Ala. 382; Lang v. Waters, 47 Ala. 624; Eads v. Murphy, 52 Ala. 520; Sledge v. Swift, 53 Ala. 110; M. & M. R. Co. v. Clanton, 59 Ala. 392; Rosser v. Bunn, 66 Ala. 89; Hooper v. Armstrong, 69 Ala. 343; Conner v. Smith, 88 Ala. 300; Krou v. Verkentoren, 90 Ala. 113. **Title necessary to sustain.** Bell v. Horton, 1 Ala. 413; Adams v. McGrew, 2 Ala. 675; Taylor v. Bass, 5 Ala. 110; Winston v. Metcalf, 6 Ala. 756; Smith v. Taylor, 9 Ala. 633; Bowen v. Snell, 11 Ala. 379; McDade v. Mead, 18 Ala. 214; Johnson v. King, 20 Ala. 270; Hudson v. Weir, 29 Ala. 294; Skipper v. Stokes, 42 Ala. 255; Jones v. Blair, 57 Ala. 457; McCreary v. Jones, 96 Ala. 592. **Joint or partnership demands.**—Pierce v. Pass, 1 P. 232; Von Pheel v. Connally, 9 P. 452; Carson v. Barnes, 1 Ala. 93; Taylor v. Bass, 5 Ala. 110; Winston v. Metcalf, 6 Ala. 756; Mitchell v. Burt, 9 Ala. 226; Hale v. Brown, 11 Ala. 87; Jones v. Jones, 12 Ala. 244; Hoyt v. Murphy, 18 Ala. 316; McKinley v. Winston, 19 Ala. 301; Ross v. Pearson, 21 Ala. 473; Duramus v. Harrison, 26 Ala. 326; Scott v. Campbell, 30 Ala. 728; Evans v. Sims, 37 Ala. 710; Sledge v. Swift, 53 Ala. 110; Huddleston v. Askey, 56 Ala. 218; Riley v. Stallworth, 56 Ala. 481; Locke v. Locke, 57 Ala. 473; Jones v. Brevard, 59 Ala. 499; Band v. Poelnitz, 61 Ala. 147; Clark v. Taylor, 68 Ala. 453; Watts v. Sayre, 76 Ala. 397; Fancher v. Bibb, 80 Ala. 481; Manning v. Maroney, 87 Ala. 563; Cowen v. Eatherly H. Co., 95 Ala. 324; Boykin v. Persons, 95 Ala. 626; Lee v. Wimberly, 102 Ala. 539; Bradley F. Co. v. Pollock, 104 Ala. 402; Jasper M. Co. v. O'Rear, 112 Ala. 247. **Demands against estates of decedents.**—Jones v. Brevard, 59 Ala. 499; Pitcher v. Patrick, Minor, 321; Perrine v. Warren, 3 S. 151; Hale v. Brown, 11 Ala. 87; Palmer v. Steiner, 68 Ala. 400; Farris v. Houston, 78 Ala. 250; Patrick v. Petty, 83 Ala. 420. **Right of surety as to set-off against his principal.**—Wood v. Steele, 65 Ala. 436; Tyree v. Parham, 66 Ala. 424; Goldthwaite v. Nat. Bank, 67 Ala. 549; Scholze v. Steiner, 100 Ala. 148; s. c., 105 Ala. 607. **Does not apply to suit by state.**—White v. Governor, 18 Ala. 767. **When not affected by statute of nonclaim.**—Palmer v. Steiner, 68 Ala. 400; Patrick v. Petty, 83 Ala. 420; Parker v. Daughtry, 111 Ala. 529. **As ground of jurisdiction in equity.**—T. C. & D. R. Co. v. Rhodes, 8 Ala. 206; Donelson v. Posey, 13 Ala. 752; Cave v. Webb, 22 Ala. 583; Carroll v. Malone, 28 Ala. 521; Ingraham v. Foster, 31 Ala. 123; White v. Wiggins, 32 Ala. 424; Nelms v. Prewitt, 37 Ala. 389; Walker v. Wigginton, 50 Ala. 579; Howell v. Motes, 54 Ala. 1; Tate v. Evans, 54 Ala. 16; Martin v. Mohr, 56 Ala. 221; Gafford v. Proskauer, 59 Ala. 264; Wood v. Steele, 65 Ala. 436; Goldthwaite v. Nat. Bank, 67 Ala. 549; Campbell v. Conner, 78 Ala. 211; Farris v. Houston, 78 Ala. 250; Graham v. Gray, 87 Ala. 446; Brown v. Scott, 87 Ala. 453; Cotton v. Scott, 97 Ala. 447; O'Neill v. Perryman, 102 Ala. 522. **As available in equity as at law.**—Hooper v. Armstrong, 69 Ala. 343; Weaver v. Brown, 87 Ala. 533. **Requisites of plea.**—Cage v. Phillips, 38 Ala. 382; Lang v. Waters, 47 Ala. 624; Castleman v. Jeffries, 60 Ala. 380; s. c., 68 Ala. 432; O'Bryan v. Anniston Pipe Wks., 93 Ala. 582; Lawton v. Rickets, 104

Ala. 430; Powell v. Crawford, 110 Ala. 294. **Not available under general issue.**—Kannady v. Lambert, 37 Ala. 57; Odum v. R. & J. R. Co., 94 Ala. 488; Marlowe v. Rogers, 102 Ala. 510. **Nor under plea of overpayment.**—Stafford v. Sibley, Ala. (21 So. 459). **Nor in an action of tort.**—Marlowe v. Rogers, 102 Ala. 510. **Or case.**—Lowery v. Rowland, 104 Ala. 420. **Garnishee must specially plead.**—Kling v. Tunstall, 109 Ala. 608. **Unless pleaded, judgment not conclusive.**—Robbins v. Harrison, 31 Ala. 160; Weaver v. Brown, 87 Ala. 533; Roach v. Privett, 90 Ala. 391. **Plaintiff cannot apply set-off as payment.** Wharton v. King, 69 Ala. 365; Aultman v. Gamble, 88 Ala. 424; Cotton v. Scott, 97 Ala. 447. **May be pleaded against beneficial owner of debt sued on,** though he is not a party to the record.—Bowen v. Snell, 9 Ala. 481; s. c., 11 Ala. 379; Hooper v. Armstrong, 69 Ala. 343. **Transferred judgment may be used as set-off by owner.**—Skipper v. Stokes, 42 Ala. 255. **Tenant sued for rent may set off or recoup damages for failure of landlord to comply with his contract.**—Culver v. Hill, 68 Ala. 66; Horton v. Miller, 84 Ala. 537; Rowe v. Baber, 93 Ala. 422. **Or for turning stock on his crop** without his consent. Johnson v. Aldridge, 93 Ala. 77.

3729 (2679) (2992) (2643) (2241). **Judgment for defendant for excess so set off and costs.**—If the debt or demand so offered to be set off exceed the amount of the plaintiff's demand, the amount of such excess being found by the jury, judgment must be rendered against the plaintiff for costs, and in favor of the defendant for such excess.

Locke v. Locke, 57 Ala. 473; Jackson v. Tate, 81 Ala. 253.

3730 (2680) (2993) (2644) (2242). **Judgments set off on motion.** Judgments may be set off against each other by a court of record on motion.

Ex parte Lehman, 59 Ala. 631; Ex parte Hunt, 62 Ala. 1.

3731 (2681) (2994) (2645) (2243). **Surety may set off debt due principal.**—A co-maker or surety sued alone may, with the consent of his co-maker or principal, avail himself, by way of set-off, of a debt or liquidated demand due from the plaintiff at the commencement of the suit to such co-maker or principal.

Beard v. Union & American Pub. Co., 71 Ala. 60; McCreary v. Jones, 96 Ala. 592; Scholze v. Steiner, 100 Ala. 148; s. c., 105 Ala. 607.

3732 (2682) (2996) (2647). **When set-off not barred by statute of limitations.**—When the defendant pleads a set-off to the plaintiff's demand, to which the plaintiff replies the statute of limitations, the defendant is nevertheless entitled to his set-off, where it was a legal subsisting claim at the time the right of action accrued to the plaintiff on the claim in suit.

Riley v. Stallworth, 56 Ala. 481; Rosser v. Bunn, 66 Ala. 89; Washington v. Timberlake, 74 Ala. 259; Jeffries v. Castleman, 75 Ala. 262; Patrick v. Petty, 83 Ala. 420; Conner v. Smith, 88 Ala. 300.

3733 (2684) (2995) (2646) (2244). **Negotiable paper not subject to set-off or recoupment.**—Paper governed by the commercial law, negotiated before maturity, is not subject to set-off or recoupment.

Kennedy v. Manship, 1 Ala. 43; Stocking v. Toulmin, 3 S. & P. 35; McKenzie v. Hunt, 32 Ala. 494; Bostick v. Scruggs, 50 Ala. 10; Bank of Mobile v. Poelnitz, 61 Ala. 147; Lewis v. Faber, 65 Ala. 460; Manning v. Maroney, 87 Ala. 563; Johnson v. Hanover Nat. Bk., 88 Ala. 271; First Nat. Bk. v. Slaughter, 98 Ala. 602; s. c., 109 Ala. 157; Brown v. First Nat. Bk., 103 Ala. 123.

3734 (2683). **Plea of recoupment; judgment for defendant for excess and costs.**—On a plea of recoupment, if the claim or demand of the defendant equals the claim or demand of the plaintiff, judgment must be rendered for the defendant; if the claim or demand of the

defendant exceeds the claim or demand of the plaintiff, and the plaintiff be the party liable to its satisfaction, judgment must be rendered against him in favor of the defendant for such excess and all costs.

Recoupment and set-off defined and distinguished.—Washington v. Timberlake, 74 Ala. 259; Conner v. Smith, 88 Ala. 300; Lawton v. Ricketts, 104 Ala. 430; Grisham v. Bodman, 111 Ala. 194. **Statute does not enlarge class of demands which may be the subject of recoupment; only authorizes judgment for excess.**—Martin v. Brown, 75 Ala. 442; Ewing v. Shaw, 83 Ala. 333. **Gist of plea; effect when sustained.**—Grisham v. Bodman, 111 Ala. 194; Moore v. Westinghouse E. & M. Co., 112 Ala. 452. **What damages recoverable under plea.**—Behrman v. Newton, 103 Ala. 525; Ewing v. Shaw, 83 Ala. 333; Martin v. Brown, 75 Ala. 442; Reynolds v. Bell, 84 Ala. 496; Horton v. Miller, 84 Ala. 537; Sheppard v. Dowling, 103 Ala. 563; Wilson v. Smith, 111 Ala. 170; Watson v. Kirby, 112 Ala. 436. **When damages too remote.**—Moulthrop v. Hyett, 105 Ala. 493; Reed L. Co. v. Lewis, 94 Ala. 626. **The breach of an independent contract not the subject of recoupment.**—Mauldin v. Armistead, 14 Ala. 702; Hatchett v. Gibson, 13 Ala. 587.

CHAPTER 103.

SHERIFFS. 3735-3748.

3735 (806) (726) (814) (686). **Bond; penalty, approval.**—The sheriff, before entering on the duties of his office, must give bond with surety in an amount to be fixed by the judge of probate of his county, not less than five thousand dollars, payable and conditioned as provided in section 3070 (257), which bond must be approved by the judge of probate, and recorded and filed in his office.

3736 (807) (727) (815) (687). **Bond, when there is no judge of probate.**—If there is no judge of probate, the amount of such bond must be fixed, and the bond approved by the clerk of the circuit court, and recorded and kept in his office, until the office of judge of probate is filled, when it must be delivered to him and recorded and kept in his office.

3737 (808) (728) (816) (688). **Office at court-house.**—The sheriff must keep his office at the court-house.

3738 (809) (729) (817) (689). **Deputies.**—He must have one deputy, and may have as many as he thinks proper. The coroner must not be appointed as deputy.

Powers of general deputy coextensive with those of sheriff, and cannot be limited by sheriff.—Rogers v. Carroll, 111 Ala. 610. **Parol evidence admissible to prove appointment** of deputy, though it be in writing.—Pentecost v. State, 107 Ala. 81. **Deputy is an officer of the state** within the meaning of the statute against resisting process.—Andrews v. State, 78 Ala. 483.

3739 (810) (730) (818) (690). **Duties of sheriff.**—It is the duty of the sheriff—

1. To execute and return the process and orders of the courts of record of this state, and of officers of competent authority, with due diligence, when delivered to him for that purpose, according to law.

2. To attend upon the chancery and circuit courts held in his county,

when in session, and the courts of probate, and the county court, and the court of county commissioners, when required by the judge of probate, and to obey the lawful orders and directions of such courts.

3. The sheriff of each county must, three days before each term of the circuit court in his county, render to the county treasurer a statement, in writing and on oath, of the moneys received by him for the county, specifying the amount received in each case, from whom, and after deducting from such amount five per cent. for his compensation, pay the balance to the county treasurer.

4. To perform such other duties as are, or may be imposed by law.

3740. Must keep record descriptive of prisoners in jail.—The sheriff must keep, in his office and subject to the inspection of the public during office hours, a well-bound book, to be procured at the expense of the county, in which he must enter a description of each prisoner received into the county jail, showing the name, age, sex, color and any other distinguishing marks, together with the charge for which such prisoner is held, the order and date of commitment and the order and date of release. Feb. 28, 1889, p. 88, §1.

3741 (811) (731). **May perform duties of constables; fees and liability.**—The sheriff is authorized to execute all mesne and final process which is required of constables, and shall receive the same fees and compensation therefor; and he and the sureties on his official bond shall be liable for any abuse of process that he may execute under this section.

Mickle v. Montgomery, 111 Ala. 415; Hood v. Blair, 95 Ala. 629.

3742 (812) (732) (819) (691). **His execution-docket; contents of.**—Each sheriff must, also, enter in well-bound books, whenever any execution or order of sale is received by him, the names of the parties, the character of the process, the time of its receipt, the date of the judgment or decree on which the same issued, if it appears from such process, the amount of the same, principal and costs, the court from which it issued, and the names of the attorneys as indorsed thereon.

3743 (813) (733) (820) (692). **Receipts; what to show.**—He must also enter on the same page, against the entries required by the preceding section, the amount he receives on such execution or order of sale, stating the principal, interest and costs, separately; and also stating separately each item of costs he receives, which is not charged in the bill of costs, the time he receives the same, and his return.

3744 (814) (734) (821) (693). **Sale-book; what to show.**—He must keep a sale-book, in which he must enter all the property sold by him under any process from any court, a brief description of such process, when the property was sold, the purchaser, and at what price.

3745 (815) (735) (822) (694). **These books open to inspection.** These books must, at all times, be open to the inspection of the public, free of charge, and must, within sixty days after he goes out of

office, be deposited and kept in the office of the clerk of the circuit court of the county.

3746 (816) (736) (824) (696). **Coroner; when to act in place of sheriff.**—When the office of sheriff is vacant, or the sheriff is incompetent to act, the coroner of the county must perform all the duties of sheriff of such county, under the penalties and liabilities imposed by law on sheriffs.

3747 (817) (737). **Stationery to be paid for by county.**—The court of county commissioners must furnish books and stationery to sheriffs for official use, in the same manner that books and stationery are furnished to the clerk of the circuit court.

Stationery includes blanks for official use.—Commissioners v. Goldthwaite, 35 Ala. 704.

3748 (818) (738). **Ex-sheriff pays money to successor.**—The sheriff having in his hands, at the expiration of his official term, any money held by him, subject to the further order, decree or judgment of any court, shall, on the demand of his successor in office, pay the same to him; and on such payment shall be discharged from further liability therefor.

CHAPTER 104.

SOVEREIGNTY AND JURISDICTION OF THE STATE. 3749–3752.

3749 (15) (15) (19) (18). **Sovereignty and jurisdiction, extent of.**—The sovereignty and jurisdiction of the state extend to all places within the boundaries thereof; but the extent of such jurisdiction over places that have been or may be ceded to the United States is qualified by the terms of such cession.

3750 (16) (16) (20) (19). **Authority and jurisdiction, how maintained.**—It is the duty of the governor, and all the subordinate officers of the state, to maintain and defend its authority and jurisdiction.

Feb. 16, 1895, p. 719, §1. **3751. Flag of the state.**—The flag of the State of Alabama shall be a crimson cross of St. Andrew on a field of white. The bars forming the cross shall be not less than six inches broad, and must extend diagonally across the flag, from side to side.

Ib. §2. **3752. When displayed.**—The flag of the state shall be hoisted on the dome of the capitol when the two houses of the general assembly are in session and shall be used by the state on all occasions when it may be necessary or customary to display a flag, except when, in the opinion of the governor, the national flag should be displayed.

CHAPTER 105.

SUITS BY THE STATE. 3753-3762.

3753 (70). **Compromise of claims in favor of the state.**—The governor, attorney-general and auditor have authority to adjust, compromise and settle, on such terms as to them may seem just and reasonable, any claim of the state against any person, or any public officer, or his sureties, or because of the negligence or default in the safe-keeping, collection, or disbursement of the public moneys, or funds, or property by any officer having charge or custody of either.*

3754 (71). **Statement of compromise to be filed.**—Such settlement or compromise being made, the governor must file a statement thereof in the office of the treasurer, showing the nature and character of the claim, the terms of the settlement or compromise, and the reasons for the making thereof.

3755 (72). **Suits for the recovery of public moneys.**—The governor has authority to cause suits to be instituted for the recovery of any public moneys or funds lost by the neglect or default of any public officer, or which have been wrongfully expended or disbursed by such officer, or which have been wrongfully used by such officer, or wrongfully received from him.

3756 (73). **Suits for money wrongfully used.**—In the event any public officer, or any agent of the state, or any depositary or custodian of the public funds or moneys, has wrongfully used such funds or moneys, suits for the recovery thereof may be instituted at law or in equity, before any court having jurisdiction of the subject-matter; and it shall not be ground of objection to such suit that either, or any, or all of the parties defendant do not reside within the county, or within the district in which such suit is instituted.

3757 (74). **Suit in equity.**—Such suit may be instituted in a court of equity without the statement or assignment of any special cause for equitable interference; and such officer, or agent, such depositary or custodian, and the sureties on his official bond, or any one or more of them, may be joined as parties defendant; and any person who has wrongfully received such moneys or funds from such officer, agent, depositary, or custodian, may also be joined as a party defendant. No objection to such suit because of multifariousness must be entertained; nor shall the state be put to an election between the prosecution of such suit, and any suit at law instituted for the same purpose, or for the recovery of the same claim or demand.

3758 (75). **Auxiliary writs.**—In aid of such suit, the court of chancery shall, on application, supported by the affidavit of the governor, or of the attorney-general, or solicitor, or of an attorney employed in the prosecution of such suit, showing just and legal

*As amended by joint committee.

cause, direct the issue of writs of attachment, of garnishment, of seizure, ne exeat, or of any other proper writ or process, which may be deemed necessary for the security of the state, or to render effectual the decree in such suit, if it should be rendered in favor of the state. Bond and security shall not be required of the state upon, or for the issue of any such writ or process.

3759 (76). **Levy of writs.**—Such writs may be levied on any and all property, real or personal, rights or credits, in which the party against whom the same may issue, has any estate, or any interest, legal or equitable, subject to the payment of the debt or demand preferred in such suit; and upon any and all property, real or personal, rights or credits, which may have been conveyed, assigned or transferred in fraud of creditors. The levy of such writs creates a lien from the day it is made. All property levied on may be replevied in the mode provided by law for the replevy of property on which an equitable attachment is levied; and if the property, or any part thereof, is not forthcoming to answer the decree of the court, the replevin bond shall have the force and effect of a judgment for such sum as the court may decree on motion, after notice to the obligors, or any one or more of them, or their personal representatives, if any one or more of them should be dead.

3760 (77). **Proceedings; decree.**—The court shall have full power to make any and all such orders in reference to any other suit, at law or in equity, which may be pending on the same claim or demand, against any one or more of the defendants, as justice may require; and the court may render a final decree against all of the defendants jointly, or against them severally, as the ends of justice may seem to require. For the making of all necessary orders or decrees in said suit, the court shall be deemed open at all times.

3761 (78). **Trial by jury.**—If in the progress of such suit, any matter of fact arises, or any issue is presented, which is properly triable by jury, at any time within ten days after such matter of fact or issue is shown by the pleadings, a trial by jury may be claimed, by filing a written demand therefor. Such demand being filed, the court must order a jury to be summoned and impaneled at such time as it may appoint, for the trial and determination of such matter of fact or issue, which trial shall in all respects be conducted as trials by jury are conducted in civil cases in courts of law. The verdict of the jury shall have the force and effect of a verdict in a court of law; and for good cause, the court may set the verdict aside and order a new trial. If within the period of ten days aforesaid, a trial by jury is not claimed, the right thereto is waived, but the court may, in its discretion, order and direct such trial notwithstanding such waiver.

3762 (79). **Suits in foreign jurisdiction.**—The governor may, whenever the interests of the state may require, order and direct suits to be brought in the name of the state in any foreign jurisdiction, for the recovery of any moneys due or owing to the state, or upon any claim or demand on which the state is entitled to sue; and

for the prosecution of such suits may employ counsel, and may, for such sum as is necessary to pay the costs or expenses thereof, order the auditor to draw a warrant on the treasury.

CHAPTER 106.

SUMMARY JUDGMENTS.

ARTICLE 1.—GENERAL RULES. 3763–3767.
2.—PROCEEDINGS AGAINST SHERIFFS, CORONERS, AND OTHER EXECUTIVE OFFICERS. 3768–3781.
3.—PROCEEDINGS IN FAVOR OF SHERIFFS OR CORONERS. 3782, 3783.
4.—PROCEEDINGS AGAINST CLERKS AND REGISTERS. 3784–3799.
5.—PROCEEDINGS AGAINST JUDGES OF PROBATE, TAX-COLLECTORS, TAX-ASSESSORS, COUNTY TREASURERS, AND OTHER PERSONS RECEIVING MONEY FOR COUNTIES. 3800–3803.
6.—PROCEEDINGS FOR AND AGAINST COUNTY SUPERINTENDENTS OF EDUCATION. 3804–3809.
7.—PROCEEDINGS AGAINST ATTORNEYS AT LAW. 3810, 3811.
8.—PROCEEDINGS BEFORE JUSTICES OF THE PEACE. 3812–3824.

ARTICLE 1.

GENERAL RULES.

3763 (3095) (3351) (3025) (2596). Summary judgments against certain officers; notice of motion.—Judgment may be rendered summarily against the persons, and for the defaults hereinafter stated, upon notice in writing by the party aggrieved, that a motion will be made for judgment, succinctly stating in such notice the cause for which such motion will be made, and the term of the court, and the county.

These remedies grantable only in strict conformity to the statute.—Logwood v. Planters' Bank, Minor, 23; Caldwell v. Guinn, 54 Ala. 64; Enloe v. Reike, 56 Ala. 500; Chandler v. Francis, etc., Co., 94 Ala. 233; Leinkauff v. Tuscaloosa, etc., Co., 105 Ala. 328. **Judgment-entry must show every fact necessary to give jurisdiction.**—Yancey v. Hankins, Minor, 171; Curry v. Bank of Mobile, 8 Port. 360; Clements v. Branch Bank, 1 Ala. 50; Bondurant v. Woods, Ib. 543; Brown v. Wheeler, 3 Ala. 287; Arthur v. State, 22 Ala. 61; Connolly v. Ala. R. Co., 29 Ala. 373; Graham v. Reynolds, 45 Ala. 578; Caldwell v. Guinn, 54 Ala. 64; Enloe v. Reike, 56 Ala. 500; Warwick v. Brooks, 70 Ala. 412; Chandler v. Francis, etc., Co., 94 Ala. 233. **Judgment by default must show that every material averment was proved.**—Smith v. Branch Bank, 5 Ala. 26; Andrews v. Branch Bank, 10 Ala. 375; Barclay v. Barclay, 42 Ala. 345; Graham v. Reynolds, 45 Ala. 578; Warwick v. Brooks, 70 Ala. 412; Chandler v. Reid, Ala. (21 So. 475). **What presumptions indulged in favor of judgment.**—Shouse v. Lawrence, 51 Ala. 559; Bondurant v. Woods, 1 Ala. 543. **When jury necessary.**—Garey v. Edwards, 15 Ala. 105; Andrews v. Keep, 38 Ala. 315; O'Connor, etc., Co., v. Dickson, 112 Ala. 304. **Notice may be amended.**—Walker v. Turnipseed, 8 Ala. 679; Jemison v. Planters' Bank, 23 Ala. 168; Palmer v. Fitts, 51 Ala. 489. **Notice not a part of record unless made so by order of court.**—Armstrong v. Robertson, 2 Ala. 164; Allums v. Hawley, 8 Ala. 584; Garey v. Edwards, 15 Ala. 105; Connolly v. Ala. R. Co., 29 Ala. 373; Barclay v. Barclay, 42 Ala. 345; Warwick v. Brooks, 70 Ala. 412. **Motion must be made at term indicated in notice,** or other proceedings had to keep it alive; otherwise it will be discontinued.—Broughton

v. Bank, 6 Port. 48; Armstrong v. Robertson, 2 Ala. 164; Garey v. Edwards, 15 Ala. 105; Gary v. Bank, 11 Ala. 771; Ex parte N. E. R. Co., 37 Ala. 679. **But if parties brought in,** motion may be heard at succeeding term.—Chandler v. Reid, Ala. (21 So. 475). **Reasonable notice must be given** where statute specifies no time.—Brown v. Wheeler, 3 Ala. 287; Kirkmans v. Harkins, 1 Port. 22; Arthur v. State, 22 Ala. 61. **Sufficiency of allegations of notice and motion.**—Hill v. Bank, 5 Port. 537; Walker v. Chapman, 22 Ala. 116; Daniels v. Hamilton, 52 Ala. 105; Lyon v. Bank, 1 Stew. 442; Caskey v. Nitcher, 8 Ala. 622; Branch Bank v. Broughton, 10 Ala. 147; Caskey v. Haviland, 13 Ala. 314; Broughton v. Bank, 6 Port. 48; Price v. Cloud, 6 Ala. 248. **Remedy given execution plaintiff,** whether he was plaintiff in the action or not.—Chandler v. Reid, Ala. (21 So. 475).

3764 (3096) (3352) (3026) (2597). **By and against whom motion may be made; judgment against parties served with notice.**—The motion may be made by the party aggrieved, or his legal representative, against the person in default and the sureties upon his official bond; and judgment must be rendered against such of the parties, whether principal or surety, as may have received notice of the intended motion.

Proceedings are joint; not several.—Orr v. Duvall, 1 Ala. 262; James v. Auld, 9 Ala. 462; Collier v. Powell, 23 Ala. 579; Ware v. Greene, 37 Ala. 494. **But the statute provides differently in some cases** covered by this chapter. Marion Co. v. Brown, 43 Ala. 112; Ex parte Wilson, 54 Ala. 296; Reed v. Summers, 79 Ala. 522; James v. Moseley, 47 Ala. 299. **Right of action does not survive against personal representative.**—Jones v. Brooks, 30 Ala. 588; Reed v. Summers, 79 Ala. 522.

3765 (3097) (3353) (3027) (2598). **Entry on motion-docket as notice.**—A motion entered on the motion-docket, in term time, is sufficient notice to all officers of the court and their sureties.

James v. Moseley, 47 Ala. 299.

3766 (3098) (3354) (3028) (2599). **Trial of motion.**—Unless in cases otherwise directed by this chapter, the court must hear and determine the motion, and render judgment upon the evidence, without a jury, unless an issue is tendered, and a jury trial demanded, when a jury must be immediately impaneled to try the facts, unless good cause be shown for a continuance.

Andrews v. Keep, 38 Ala. 315.

3767 (3099) (3355) (3029) (2600). **Court in which motion must be made.**—The summary remedies here given must be enforced in the manner following, except in cases otherwise specially provided in this chapter: When the motion is against a sheriff, coroner, clerk, or other officer of court, or their sureties, the motion must be made in the circuit court of the county in which such officer was acting officially at the time of the default, or in the court to which the process was returnable, when the default consists in the failure to execute or return process, or to pay over money collected thereon; and in all other cases not specially provided for, the motion must be made in the circuit court of the county in which the person moved against resides; or if he has no permanent residence, then in any county where he may be found.

Andrews v. Keep, 38 Ala. 315.

ARTICLE 2.

PROCEEDINGS AGAINST SHERIFFS, CORONERS, AND OTHER EXECUTIVE OFFICERS.

3768 (3100) (3356) (3031) (2601). **Against sheriff, coroner, or other officer receiving or executing writ; notice.**—Judgment must be rendered for the plaintiff, on three days' notice, in the following cases, against the sheriff, coroner, or other officer receiving or executing the writ:

Judgment may be rendered against sureties though sheriff be dead. Camp v. Watt, 14 Ala. 616.

3769 (3101) (3357) (3032) (2602). **For failure to return execution, or pay over money collected.**—For failing to return an execution, twenty per centum on the judgment. For failing to pay over money collected upon an execution, on demand of the plaintiff, his agent, or attorney, for the amount so collected, and five per centum per month damages from the time such demand was made.

For failing to return execution.—Hill v. Bank, 5 Port. 537; Ayres v. Dobson, 5 Stew. & Port. 441; Bondurant v. Woods, 1 Ala. 543; Harris v. Bradford, 4 Ala. 214; Godbold v. Planters' Bank, Ib. 516; Crawford v. Chandler, 5 Ala. 61; Armstrong v. Robertson, 2 Ala. 164; Caskey v. Nitcher, 8 Ala. 622; Johnson v. McLaughlin, 9 Ala. 551; Shute v. McRae, Ib. 931; Caskey v. Haviland, 13 Ala. 314; Marcum v. Burgess, 67 Ala. 556. **Defendant cannot attack regularity of judgment by way of defense.**—Anderson v. Cunningham, Minor, 48; Bondurant v. Woods, 1 Ala. 543. **Nor regularity of execution.**—McRae v. Colclough, 2 Ala. 74; Samples v. Walker, 9 Ala. 726; Shute v. McRae, Ib. 931. **But may show that judgment was void,** or that there was no judgment.—Godbold v. Planters' Bank, 4 Ala. 516; Shute v. McRae, 9 Ala. 931. **Or that he was defendant in execution.**—Johnson v. McLaughlin, 9 Ala. 551. **No defense that defendant in execution was insolvent.**—Harris v. Bradford, 4 Ala. 214; Noble v. Whetstone, 45 Ala. 361. **For failing to pay over money collected.** Barton v. Bank, 1 Stew. & Port. 471; Barton v. Lockhart, 2 Stew. & Port. 109; Broughton v. Bank, 6 Port. 48; Jameson v. Harper, 1 Port. 431; Reid v. Bank, 3 Ala. 712; Brazeal v. Smith, 5 Ala. 206; Riley v. Marshall, Ib. 682; Farmers' Bank v. Reid, 3 Ala. 299; Price v. Cloud, 6 Ala. 248; Dumas v. Patterson, 9 Ala. 484; Hodges v. Laird, 10 Ala. 678; Evans v. Bank, 13 Ala. 787; Fitzpatrick v. Bank, 14 Ala. 533; McArthur, v. Dane, 61 Ala. 539; Leinkauff v. Tuscaloosa, etc., Co., 105 Ala. 328. **Proof.**—Brazeal v. Smith, 5 Ala. 206; Price v. Cloud, 6 Ala. 248; Dumas v. Patterson, 9 Ala. 484; Evans v. Bank, 13 Ala. 787; Anderson v. Cunningham, Minor, 48; O'Connor, etc., Co. v. Dickson, 112 Ala. 304; Chandler v. Reid, Ala. (21 So. 475).

3770 (3102) (3358) (3033) (2603). **For failure to make money on execution.**—For failing to make the money on an execution, which, by due diligence, could have been made, for the amount of the execution, interest, and ten per centum damages thereon.

Of the statute generally.—Leavitt v. Smith, 7 Ala. 175; Mason v. Watts, Ib. 703; Crenshaw v. Harrison, 8 Ala. 342; Leach v. Williams, Ib. 759; Pharr v. Hale, 9 Ala. 312; Easley v. Walker, 10 Ala. 671; Anderson v. Bright, 12 Ala. 478; Whitsett v. Slater, 23 Ala. 626; Couch v. Atkinson, 32 Ala. 633; Harris v. Murfree, 54 Ala. 161; Wilson v. Strobach, 59 Ala. 488; Andrews v. Keep, 38 Ala. 315; Freeman v. Womack, 4 Ala. 539; McCall v. McRae, 10 Ala. 313. **Irregularities in judgment and execution not available in defense.**—Couch v. Atkinson, 32 Ala. 633. **Sheriff may amend his return pending motion.** Hodges v. Laird, 10 Ala. 678; Governor v. Bancroft, 16 Ala. 605; Niolin v. Hamner, 22 Ala. 578; Wilson v. Strobach, 59 Ala. 488. **Effect of return as evidence.** Leavitt v. Smith, 14 Ala. 279. **Remedy not limited to return-term of the execution.**—Kirkmans v. Harkins, 1 Port. 22. **Sheriff may show in defense that defendant had no interest in property liable to levy and sale.**—Mason v. Watts, 7 Ala. 703; Leavitt v. Smith, Ib. 175; Wilson v. Strobach, 59 Ala. 488; Mathis v. Carpenter, 95 Ala. 156. **Measure of damages.**—Bondurant v. Lane, 9 Port. 484; Harris v. Murfree, 54 Ala. 161. **Proof.**—Leavitt v. Smith,

7 Ala. 175; Whitsett v. Slater, 23 Ala. 626; Johnson v. Cunningham, 1 Ala. 249; Kennedy v. Smith, 99 Ala. 83. **When motion will lie for failure to collect costs.**—Gary v. Boykin, 7 Ala. 154; Pharr v. Hale, 9 Ala. 312.

3771 (3103) (3359) (3034) (2604). **For false and fraudulent return.**—For fraudulently making a false return, for the amount of the execution, interest, and ten per centum damages thereon.

Tarleton v. Gibson, 2 Ala. 639; Bondurant v. Bank, 5 Ala. 171.

3772 (3104) (3360) (3035) (2605). **For failure to give notice of collection of money.**—For failing to notify the plaintiff, his agent, or attorney, of the collection of money by execution, for five per centum per month on the amount collected, from the time when the notice should have been given, not to exceed twenty-five dollars per month.

3773 (3105) (3361) (3036) (2606). **For failure to indorse on execution true date of delivery.**—For failing to indorse on an execution the true date of its delivery to him, for ten per centum on the amount of the execution; and the officer is also responsible for any injury or loss which may arise from such omission.

Chandler v. Henry, 90 Ala. 271; O'Connor, etc., Co. v. Dickson, 112 Ala. 304.

3774 (3106) (3362) (3037) (2607). **For failure to execute mesne process.**—For failure to execute a summons, attachment, or other mesne process, which by due diligence could have been executed, for a sum not less than fifty, nor more than five hundred dollars, to be ascertained by a jury; and this remedy shall not preclude the party injured from a resort to other legal modes of redress.

Includes a witness subpœna.—Birmingham Dry Goods Co. v. Bledsoe, Ala. (21 So. 403). **Mistake of law no excuse** for failing to execute summons.—Rogers v. Carroll, 111 Ala. 610.

3775 (3107) (3363) (3038) (2608). **In favor of defendant in execution; notice; when rendered.**—Judgment must, in like manner, be rendered in favor of the defendant in execution against the sheriff or coroner, on three days' notice, in the following cases:

3776 (3108) (3364) (3039) (2609). **For failure to pay over excess received on sales.**—For failure to pay over on demand any excess of money which may remain upon a sale under execution, after the satisfaction thereof, and of the costs, for the amount of such excess, and five per centum per month after demand.

Baylor v. Scott, 2 Port. 315.

3777 (3109) (3365) (3040) (2610). **For failure to return execution satisfied.**—For failing to return an execution wholly or partially satisfied, for twenty-five per centum on the amount paid.

3778 (3110) (3366) (3041) (2611). **For failure to refund money when collection has been enjoined.**—For failing to pay over on demand money paid or collected on an execution, the whole or any part of which is enjoined in chancery, for the amount so enjoined, and five per centum per month on the amount from the time of the demand.

3779 (3111) (3367, 3368) (3042, 3043) (2612, 2613). **In favor of clerk of supreme court; notice and grounds.**—Judgment must, in like manner, be rendered in favor of the clerk of the supreme court

against the sheriff or coroner, on three days' notice, for failure to return an execution from that court, for making a false return thereon, for failing to make the money thereon, when by due diligence it could have been made, or for failing on demand to pay over money collected on execution, for the penalties herein prescribed for the same defaults on executions issued from the circuit court.

3780 (3112) (3369) (3044) (2614). **Copy of execution and certificate of clerk as evidence.**—On the trial of the motion by such clerk, a copy of the execution made and certified by him, with the return thereon, if any was made, or a statement that no return was made, if such be the fact, together with his certificate that the execution was received by the sheriff, or sent to him by mail, is evidence of the facts so certified, without producing a transcript of the record from the proceedings of the supreme court; and also presumptive evidence that the writ was received by the sheriff, unless he states under oath, in writing, that he never received the writ, or that he returned it according to law.

3781 (3113) (3371). **Penalty for accepting substitute for juror; proceedings.**—Any officer who accepts or receives a substitute for any person drawn as a juror, or whom he is directed to summon as a juror, or who intentionally serves any other person than the one drawn as a juror, or whom he is directed to summon as a juror, must be fined fifty dollars, to be recovered on motion by the solicitor in the name of the state, in the circuit court of the county in which the offense is committed, on five days' notice; one half of which shall be for the use of the county, and the other half for the use of the solicitor.

ARTICLE 3.

PROCEEDINGS IN FAVOR OF SHERIFFS OR CORONERS.

3782 (3114) (3374) (3045) (2615). **Against whom, for what, and on what notice.**—Judgment must, in like manner, be summarily rendered in favor of the sheriff or coroner, on three days' notice of the pendency of the suit—

1. Against the obligors on bonds given to indemnify such officer for levying an execution or attachment, or for making sale of property so levied on or attached, after judgment against him for making such levy or sale, for the amount rendered against such officer, with interest from date of judgment against him.

2. Against the deputy of the sheriff or coroner and his sureties, or either of them, for the amount of any judgment rendered against the sheriff or coroner for the default of such deputy, with interest from date of judgment against him.

Atwood v. Craig, 3 Stew. & Port. 21; Magee v. Toulmin, 5 Ala. 141; Stephens v. Womack, 3 Ala. 738.

3783 (3115) (3375) (813). **Against judge of probate for failing to pay over fees to sheriff.**—Judgment must, in like manner, be

summarily rendered in favor of the sheriff, on three days' notice, against the judge of probate, for the amount of any fees received by him for such sheriff for the service of citations, notices, or other process in relation to estates of deceased persons or minors, which, on demand, have not been paid over, with five per cent. per month from the time of such demand.

ARTICLE 4.

PROCEEDINGS AGAINST CLERKS AND REGISTERS.

3784 (3116) (3376) (3046) (2616). **Grounds of judgment and notice.**—Judgment must, in like manner, be summarily rendered against the clerk of the circuit court and his sureties, or either of them, and against the register in chancery and his sureties, or either of them, on three days' notice, in the following cases:

Armstrong v. Holley, 29 Ala. 305.

3785 (3117) (3377) (3047) (2617). **For failure to enter return on execution.**—In favor of the plaintiff in execution, for failure to enter on the execution-docket the return made upon an execution by the proper officer, within three days after the return is made, for twenty per centum on the amount of the execution, and interest thereon.

3786 (3118) (3378) (3048) (2618). **For failure to pay over money.** For failing on demand, to pay over money received by him on any judgment, or paid into court on a plea of tender, or other plea, or by rule of court, for the sum so received by him, with five per centum per month on the amount from the time of the demand.

3787 (3119) (3379) (3049). **For failure to give notice of collection of money.**—For failing to notify the plaintiff, his agent, or attorney, under the provisions of section 1910 (2912) which are made to apply to such clerk, of the collection of money upon judgments, for five per centum per month on the amount collected, from the time when the notice should have been given, not to exceed twenty-five dollars per month.

3788 (3120) (3380) (3050) (2619). **For failure to issue executions.**—For failing to issue execution as required by sections 1882 (2884) and 1885 (2887), within the time prescribed by law after the adjournment of the court, or at any time subsequent, on the request of the party interested, his agent, or attorney, or for failing to issue execution within five days on any bond returned forfeited, and upon which execution may rightfully issue, and upon any judgment remanded from the supreme court, for twenty per centum on the amount of the judgment.

3789 (3121) (3381) (3051) (2620). **For failure to pay over money deposited in court.**—In favor of the party entitled thereto, for failing, on demand, to pay over money received by him under section 2633 (2610), for the amount so paid, and five per centum damages thereon per month from the time of the demand.

3790 (3122) (3382) (3052) (2621). **For failure to pay over county funds.**—In favor of the county treasurer, for the use of the county, for failing to pay over to that officer, on demand, any fine, forfeiture, or other money belonging to the county treasury, for the amount thereof, and five per centum per month on that amount from the time of the demand.

3791 (3123) (3383) (3053) (2622). **For failure to render statement of fines, etc.**—For failing to render to that officer, within ten days after the adjournment of court, a statement of all fines assessed, forfeitures obtained and moneys received for the county, during the previous term, as required by subdivision 16 of section 934 (768), for fifty dollars.

3792 (3124) (3384) (3054) (2623). **In favor of auditor for specified defaults; court and notice.**—In favor of the state auditor, in the circuit court held at the seat of government, or of the county in which the clerk or any surety proceeded against resides, on ten days' notice, in the following cases:

3793 (3125) (3386) (3056) (2625). **For failure to issue execution for forfeiture.**—For failing to issue execution for any forfeiture belonging to the state treasury within the time prescribed by section 1882 (2884), for two hundred dollars.

3794 (3126) (3387) (3057) (2626). **For failure to pay into state treasury fines, etc.**—For failure to pay into the state treasury any fine, penalty, or forfeiture belonging thereto, received by such clerk, within one month after it was received by him, for the amount so received, and ten per centum damages thereon.

3795 (3127) (3388) (770). **For failure to send copy of indictment to governor; court and notice.**—In favor of the solicitor for the use of the state, on three days' notice, in the circuit court of the county of such clerk, for neglect of the duty imposed by section 938 (772), for not less than one hundred, nor more than five hundred dollars, at the discretion of the court.

3796 (3128) (3389). **For failure to send up transcript in criminal case; court and notice.**—The solicitor, or prosecuting attorney, in each county, upon being notified that the clerk of the circuit court has neglected to send to the clerk of the supreme court a full transcript of the record of any criminal case appealed to the supreme court, within the time required by law, shall enter a motion against such defaulting clerk and his sureties, in the court from which the appeal was taken, setting out the title of the case, the offense of which the accused was convicted, the day on which the sentence was pronounced, the day on which the court adjourned, and the default of the clerk; and such motion shall be heard at the next term of the court, and of it the clerk shall have at least ten days' notice.

3797 (3129) (3390). **Certificate of clerk of supreme court as evidence.**—The certificate of the clerk of the supreme court that the transcript of the record in such criminal case was not received by him in twenty-five days after the final adjournment of the court in

which the case was tried, shall be prima facie evidence of the default of the clerk.

3798 (3130) (3391). **Fine against clerk and sureties for such neglect.**—On conviction for such neglect, a fine of not less than twenty-five dollars, at the discretion of the court, shall be entered against such defaulting clerk and his sureties for the use of the county.

3799 (3131) (3392) (739). **Against registers for failure to keep reverse indexes; court, notice and judgment.**—The solicitors in the several chancery districts must inquire whether the duty required of registers in chancery by section 663 (743) has been performed, and must, in every case of failure, move in the circuit court of the proper county against such register; and shall, upon three days' notice of such motion, recover judgment in favor of the state against him for one hundred dollars, unless good cause to the contrary be shown; and such recovery may be had from term to term as long as such register shall remain in default.

ARTICLE 5.

PROCEEDINGS AGAINST JUDGES OF PROBATE, TAX-COLLECTORS, TAX-ASSESSORS, COUNTY TREASURERS, AND OTHER PERSONS RECEIVING MONEY FOR COUNTIES.

3800 (3132) (3393). **Court, notice and grounds.**—Summary judgment must be rendered in favor of the state against the defaulters hereinafter named, and their sureties, or either, in any court of the county of their residence having jurisdiction, on ten days' notice, in the following cases:

1. Against any tax-assessor for failing to comply with the requirements of section 3950 (487), or section 3957, for not more than five hundred dollars; and such tax-assessor may be also imprisoned in the county jail for not exceeding three months.

2. Against any tax-assessor for making up a false or fraudulent assessment, in each case, for not more than five hundred dollars; and such tax-assessor may also be imprisoned in the county jail for not exceeding three months.

3. Against any tax-assessor for any willful neglect or failure to perform the duty required of him in section 3931, for not more than two hundred dollars.

4. Against any county treasurer for failing to pay over the excess of purchase-money, as provided in the revenue law, to the former owner of any property sold for taxes, for not less than two hundred dollars.

5. Against any judge of probate for failing to make out and forward abstracts, or reports, or returns, according to the requirements of the revenue law, for not more than five hundred dollars.

6. Against any judge of probate for issuing license to retail or

wholesale liquor-dealers contrary to the provisions of law, in each case, for not less than one hundred dollars.

7. Against any tax-collector for failing to comply with section 4003 (533), for not more than two hundred dollars.

8. Against any tax-collector for knowingly collecting more taxes from a taxpayer than authorized by law, or justified by the assessment, in each case, for not more than five hundred dollars.

9. Against any tax-collector for failing to make the statement provided by section 4019 (547), within the time required, for each week he so fails, for not more than five hundred dollars.

10. Against any tax-collector for not paying over surplus of sale of any property sold by him for the payment of taxes, as required by law, for not more than one hundred dollars.

11. Against any tax-collector for any violation of section 4027 (550), for not more than two hundred dollars.

Against defaulting tax-collectors.—Collier v. Powell, 23 Ala. 579; Ware v. Green, 37 Ala. 494; Marion County v. Brown, 43 Ala. 112; Ex parte Wilson, 54 Ala. 296; Timberlake v. Brewer, 59 Ala. 108.

3801 (3133) (3394). **When collector, assessor, or judge of probate, forfeits half pay; court and notice.**—Any tax-collector, tax-assessor, or judge of probate, who knowingly and willfully neglects to discharge any of his duties as required in the revenue law, shall forfeit one-half of his compensation under that law, for the use of the county, which may be recovered, on motion in the circuit court of the county, on ten days' notice; and it shall be the duty of the solicitor to make the motion; but any other person may make it.

3802 (3134) (3395) (930) (795). **Against county treasurer and sureties for failure to pay allowed claims; court and notice.**—If any county treasurer fail, on demand, and without good excuse, to pay an allowed claim against the county, when there are funds in the treasury to pay the same, judgment may be obtained against him and his sureties, or any or either of them, on five days' notice, on motion in the circuit court of the county, in the name of the party to whom the claim is payable, his legal representatives, or assigns, for the amount of the claim, with interest from the time of the demand, and ten per centum damages and costs.

Cohen v. Coleman, 71 Ala. 496; Boothe v. King, Ib. 497; Caldwell v. Dunklin, 65 Ala. 461; Enloe v. Reike, 56 Ala. 500; Caldwell v. Guinn, 54 Ala. 64.

3803 (3135) (3396) (920) (785). **Judgments for failure to pay over moneys of the county; court and notice.**—If any tax-collector, judge of probate, sheriff, clerk, or other officer or person, fail to pay to the county treasurer, within the time prescribed by law, or, in case no time is fixed by law, on the demand of such treasurer, any money he has collected or received for the county, judgment may be recovered against such person, or such officer and his sureties, or any or either of them, on ten days' notice, on motion in the circuit court, in the name of the county of such treasurer, for the amount so collected or received, with interest from the time fixed for the

payment, or from the demand when no time is fixed, and ten per centum damages and costs.

Dudley v. Chilton County, 66 Ala. 593; Stamphill v. Franklin Co., 86 Ala. 392.

ARTICLE 6.

PROCEEDINGS FOR AND AGAINST COUNTY SUPERINTENDENTS OF EDUCATION.

3804 (3136) (3397). **Against county superintendent for balance in his hands.**—Summary judgments must be rendered on motion, after ten days' notice, in the circuit court, or other court having jurisdiction of the amount, of the county in which the defendants, or either of them, reside, against any county superintendent of education who has resigned, removed from his county, or been legally removed from office, or whose term of office has expired, and his sureties, or any or either of them, in favor of his successor, if there be one, or if there be no successor, in favor of the superintendent of education, for the amount of school moneys belonging to his county which have not been legally disbursed by him, or paid over to his successor in office, with interest from the time of the default, and twenty per centum damages and costs; and the money, when recovered by the superintendent of education, must be turned over to the county superintendent of education.

Reed v. Summers, 79 Ala. 522.

3805 (3137) (3398). **Authority to employ counsel.**—The county superintendent of education may employ attorneys to prosecute actions under the provisions of this article against such defaulters and their sureties; but in no case shall any attorney receive more than ten per centum of the amount which may be collected on any judgment obtained by him, or of the amount which may be otherwise recovered by him.

3806 (3138) (3399). **Notice.**—The notice of such motion may be served by any sheriff of this state, and must succinctly state the cause for which, and the court and term at which, the motion will be made.

3807 (3139) (3400). **Transcript of superintendent of education evidence.**—On the trial of such motion, a transcript from the books and records in the office of the superintendent of education, or of the auditor, duly certified under his hand, shall be prima facie evidence of the facts shown by them.

3808 (3140) (3401). **Time and manner of trial.**—If the notice has been given as herein required, such motion shall stand for trial at the first term, and the court must hear and determine the same, and render judgment upon the evidence without a jury, unless a trial by jury be demanded, when a jury must be immediately impaneled to try the issues of the fact, unless good cause be shown for a continuance.

3809 (3141). **In favor of teachers for moneys due them; court**

and notice; appeal from justices' courts.—Summary judgment may also be rendered against the county superintendent of education and his sureties, or any or either of them, in favor of any teacher of the public schools, his legal representative, or assignee, by motion, on ten days' notice, in any court of the county of such superintendent, of competent jurisdiction, for failing to pay over, on demand, to such teacher any moneys in the hands of such superintendent due or owing to such teacher, as required by law, for the amount of such moneys, with interest from the time of the demand, and ten per centum damages on the aggregate amount, and costs; but from all cases tried before a justice of the peace, or notary public, either party shall have the right to appeal, as provided by law in other cases tried before such officer.

ARTICLE 7.

PROCEEDINGS AGAINST ATTORNEYS AT LAW.

3810 (3142) (3402–3404) (3062–3064) (2635–2637). **For money or property recovered and not turned over.**—Judgment may, in like manner, be summarily rendered against any attorney at law in this state who fails to pay over money collected by him, or deliver personal property recovered by him, in that capacity whether by suit or otherwise, on demand made by the person entitled thereto, his agent or attorney, for the amount collected or the value of the property recovered, interest thereon, and damages at the rate of five per centum a month, after such demand, on the aggregate amount, in the circuit court of the county in which such attorney resides, or if he has no known place of residence in this state, in the circuit court of any county, on three days' personal notice; but such attorney may, if a doubt exists as to the right of the person making the demand, or if there be a dispute as to the compensation due the attorney for the collection or recovery of the money or property, pay the money into court, or turn the property over to the sheriff, at the trial-term of such motion, and have such questions there decided, without being liable for interest or damages.

Gunn v. Clendenin, 68 Ala. 294.

3811 (3143) (3403) (3063) (2636). **Plaintiff's title to be shown; both parties may be examined; costs.**—The court may require the party claiming the money or property to establish his right thereto, and, in determining the question of compensation, may examine both parties. The court may award costs, including the sheriff's reasonable expenses for preserving the property, at discretion.

ARTICLE 8.

PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

3812 (3321) (3663) (3266) (2820). **Rendered on motion and five days' notice.**—Judgments, not exceeding one hundred dollars, may

be rendered on motion by justices of the peace in favor of the party aggrieved, or the other persons in this article specified, against the persons herein named, five days' notice thereof in writing being given, specifying the cause for which such motion will be made, and the time and place.

McMahan v. Kyle, 9 Port. 507; Evans v. Stevens, 8 Ala. 517; Henderson v. Plumb, 18 Ala. 74; Abrams v. Johnson, 65 Ala. 465; James v. Auld, 9 Ala. 462; Couch v. Atkinson, 32 Ala. 633.

3813 (3322) (3664) (3267) (2821). **Against justices for acting after vacating office.**—Against any justice of the peace for acting in an official capacity as such, after his office has been vacated by removal from the precinct for which he was elected, or from any other cause, for forty dollars, one-half thereof to the use of the county, and the residue to any one who will sue for the same.

3814 (3323) (3665) (3268) (2822). **Against justices for failure to pay over money.**—Against any justice of the peace, for failure to pay over any money received or collected by him by virtue or under color of his office, after demand made, for the amount so received or collected, with five per cent. a month thereon from the time of the demand.

Harper v. Howard, 3 Ala. 284.

3815 (3324) (3667) (3270) (2824). **Against constables for acting after vacating office.**—Against any constable, for acting as such after removal from the precinct for which he was elected, or after his term of office has expired, or has been vacated from any cause, for forty dollars, one-half to the use of the county, and the residue to any one who will sue for the same.

3816 (3325) (3668) (3271) (2825). **Against constables or sheriffs for failure to make money.**—Against any constable or sheriff, for failing to make the money on an execution issued by a justice, which, by due diligence, might have been made, for the amount of the execution and interest, and five per cent. damages on the amount thereof.

Chandler v. Francis, etc., Co., 94 Ala. 233; Hood v. Blair, 95 Ala. 629. See citations to section 3770.

3817 (3326) (3669) (3272) (2826). **Against constables or sheriffs for failure to pay over money.**—Against any constable or sheriff, for failing to pay over money collected or received by virtue of any execution, attachment, or other process, issued by a justice, on demand by the plaintiff, his agent, or attorney, for the amount so received, and five per cent. per month thereon from the time of the demand.

Morgan v. Billings, 3 Ala. 172.

3818 (3327) (3670) (3273) (2827). **Against constables or sheriffs for failure to execute summons.**—Against any constable or sheriff, for failing to execute any summons issued by a justice, which, by due diligence, could have been executed, for a sum not more than ten, nor less than five dollars.

3819 (3328) (3671) (3274) (2828). **Against constables or sheriffs**

for failure to levy an attachment.—Against any constable or sheriff for failure to execute process of attachment, returnable before a justice, which, by due diligence, could have been executed, whereby the plaintiff has lost his debt or demand, for the amount of such debt or demand, and interest.

Thompson v. Acree, 69 Ala. 178.

3820 (3329) (3672) (3275) (2829). **Against constable or sheriff for failure to make return, or for making false return.**—Against any constable or sheriff for neglecting to make return of any summons, execution, or other process, returnable before a justice, or for making a false return thereof, for a sum not more than twenty, nor less than five dollars.

Condry v. Henley, 4 S. & P. 9; Starnes v. Pierce, 2 Port. 227; Gayle v. Weir, 3 Port. 193; McMahan v. Kyle, 9 Port. 507; Robertson v. Coker, 11 Ala. 466; Henderson v. Plumb, 18 Ala. 74; Peck v. Colby, 31 Ala. 252.

3821 (3330) (3673) (3276) (2830). **In favor of constables or sheriffs in indemnity bond.**—Judgment may, in like manner, be rendered in favor of any constable or sheriff against the obligors in any bond, or promisors in any undertaking to indemnify him in levying an attachment or execution returnable before a justice of the peace, for the amount which was rendered against such constable or sheriff for making such levy, on three days' notice of the motion therefor.

3822 (3331) (3674) (3277) (2831). **Venue of motion; judgment against sureties.**—The motions authorized by this article may be made before any justice of the peace of the county in which the parties moved against, or any of them, reside, and judgments may be obtained therein against the justice of the peace, constable, or sheriff, and such of the sureties on his official bond as may be notified that such motion will be made, or against either of them.

3823 (3332) (3666) (3269) (2823). **Limitation of certain motions.** The motions authorized by sections 3814 (3323) and 3817 (3326) must be made within six months after demand made for the money received or collected.

3824 (3333) (3675) (3278) (2832). **When motion made in circuit court.**—When the amount claimed, by reason of interest or damages, exceeds the sum of one hundred dollars, the motion must be made in the circuit court of the county in which the parties moved against, or some of them, reside, unless a remittitur is entered for the excess.

CHAPTER 107.

SUPREME COURT.

ARTICLE 1.—THE SUPREME COURT AND ITS JUSTICES. 3825–3841.
2.—THE SECRETARY OF THE SUPREME COURT. 3842–3844.
3.—THE MARSHAL AND LIBRARIAN OF THE SUPREME COURT. 3845–3855.
4.—THE CLERK OF THE SUPREME COURT. 3856–3863.
5.—THE REPORTER AND REPORTS. 3864–3874.

ARTICLE 1.

THE SUPREME COURT AND ITS JUSTICES.

Feb. 12, 1891, p. 396.

3825 (673) (568) (658) (566). **Powers of court vested in five justices.**—The powers of the supreme court are vested in, and its duties performed by a chief justice and four associate justices, who are elected by the qualified electors of the state and hold office for six years from the third day of November next after their election, and until their successors are elected and qualified.

Feb. 21, 1893, p. 1091, §3.

3826 (675) (571) (660) (568). **Jurisdiction of court.**—The supreme court has authority—

1. To exercise appellate jurisdiction coextensive with the state, under such restrictions and regulations as are prescribed by law; but in deciding appeals from the chancery court no weight shall be given the decision of the chancellor upon the facts, but the supreme court shall weigh the evidence, and give judgment as they deem just.

2. To exercise original jurisdiction in the issue and determination of writs of quo warranto and mandamus, in relation to matters in which no other court has jurisdiction.

3. To issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give to it a general superintendence and control of inferior jurisdictions.

4. To establish rules of practice in such court, and all other courts of record in the state, not contrary to the provisions of this Code.

5. To direct the transcripts brought up to the court to be made up of a uniform size, and of such form that they can be conveniently bound.

6. To punish for contempts by the infliction of a fine as high as one hundred dollars, and imprisonment not exceeding ten days, one or both.

7. To exercise such other powers, not contrary to the constitution, as are or may be given to such court by law.

Jurisdiction, appellate, not original.—State v. Flinn, Minor, 8; Johnston v. Atwood, 2 Stew. 225; Bell v. Payne, Ib. 414; Ex parte Tarleton, 2 Ala. 35. **No presumption in favor of correctness of chancellor's decision on facts.**—Glover v. Hill, 85 Ala. 41. **Finding of fact by register conclusive unless exception taken.**—Bellinger v. Lehman, 103 Ala. 385; Nat. Bk v. McDonnell, 92 Ala. 387. **And, on exception, is presumed to be correct.**—Jones v. White, 112 Ala. 449. **Power to issue writs, etc.**—Davis v. Railroad Co., 4 Stew. & Port, 421;

Gates v. McDaniel, Ib. 69; State v. Paul, 5 Stew. & Port, 40; John v. State, 1 Ala. 95; State v. Williams, 1 Ala. 342; State v. Porter, Ib. 688; Ex parte Mansony, Ib. 98; Ex parte Tarleton, 2 Ala. 35; Ex parte Chaney, 8 Ala. 424; Ex parte Renfro, Ib. 490; Nugent v. State, 18 Ala. 521; Ex parte Smith, 23 Ala. 94; Ex parte Pickett, 24 Ala. 91; Ex parte City Council, Ib. 98; Ex parte Henry, Ib. 638; Ex parte Elston, 25 Ala. 72; Ex parte Greene, 29 Ala. 52; Ex parte Russell, Ib. 717; Ex parte Echols, 39 Ala. 698; Ex parte Floyd, 40 Ala. 116; Ex parte Henderson, 43 Ala. 392; Ex parte Bibb, 44 Ala. 140; Ex parte Candee, 48 Ala. 386; Ex parte Roundtree, 51 Ala. 42; Ex parte Harris, 52 Ala. 87; Ex parte Boothe, 64 Ala. 312; Ex parte Shaudies, 66 Ala. 134; Ex parte Pierson, 76 Ala. 521; Ramagnano v. Crook, 88 Ala. 450; Ex parte Jones, 94 Ala. 33; Ex parte Tower Mfg. Co., 103 Ala. 415; Garrison v. Webb, 107 Ala. 499; Ex parte Charleston, 107 Ala. 688.

3827 (676) (572) (661) (569). **Issue of writs of injunction and supersedeas.**—The justices of the supreme court have each of them authority to issue writs of certiorari, injunction and supersedeas, subject to the limitations prescribed by this Code, as judges of the circuit courts are authorized to grant the same.

3828 (677) (573) (666) (570). **Terms of court.**—The regular terms of the court shall commence on the second Tuesday in November of each year, and continue until the last day of June of the ensuing year; but the court may, in its discretion, adjourn from time to time. Feb. 16, 1891, p. 871.

3829. State divided into eight supreme-court divisions.—The state is divided into eight supreme-court divisions, each division to be numbered and composed of counties as follows:

First division.—Baldwin, Clarke, Mobile, Monroe and Washington.

Second division.—Bibb, Choctaw, Dallas, Greene, Hale, Marengo, Perry, Sumter and Wilcox.

Third division.—Autauga, Butler, Conecuh, Escambia, Lowndes and Montgomery.

Fourth division.—Barbour, Bullock, Coffee, Covington, Crenshaw, Dale, Geneva, Henry and Pike.

Fifth division.—Chambers, Chilton, Coosa, Elmore, Lee, Macon, Russell and Tallapoosa.

Sixth division.—Blount, Cullman, Fayette, Jefferson, Lamar, Marion, Pickens, Tuscaloosa, Walker and Winston.

Seventh division.—Calhoun, Cherokee, Clay, Cleburne, DeKalb, Etowah, Randolph, Shelby, St. Clair and Talladega.

Eighth division.—Colbert, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall and Morgan.

3830. Call of the divisions.—The cases from the counties composing the several divisions shall be heard and considered, and the call of the divisions shall commence and continue at each term of the court, as follows:

First division.—On the second Monday in November and the first Monday in April, and may continue one week.

Fifth division.—On the third Monday in November and the second Monday in April, and may continue one week.

Sixth division.—On the fourth Monday in November and the third Monday in April, and may continue two weeks.

Third division.—On the third Monday after the fourth Monday in

November and the second Monday after the fourth Monday in April, and may continue one week.

Seventh division.—On the second Monday in January and the fifth Monday after the fourth Monday in April, and may continue one week.

Fourth division.—On the third Monday in January and the sixth Monday after the fourth Monday in April, and may continue one week.

Eighth division.—On the first Monday after the fourth Monday in January and the third Monday after the fourth Monday in April, and may continue one week.

Second division.—On the second Monday after the fourth Monday in January and the seventh Monday after the fourth Monday in April, and may continue one week.

When the call of a division is not completed during the week allotted to its business, the same may be resumed and completed at such time as may be fixed by the court by an order entered on the minutes.

3831. Criminal cases submitted at any time by consent; when submitted without consent of the state.—During the sitting of the court, habeas corpus and other criminal cases may be submitted at any time, without oral argument, by consent of the defendant, or his counsel of record, and the attorney-general; or, when the division to which any such case belongs will not be called within the next sixty days, the same may be submitted at any time, without oral argument, upon ten days' notice to the attorney-general, unless good cause be shown against such submission.

3832. Applications for remedial writs heard on any motion-day. Applications for mandamus, prohibition, certiorari, or other remedial writs, emanating from any part of the state, may be heard on any motion-day; or, by consent of the parties, may be submitted without oral argument at any time during the sitting of the court.

3833. Cases involving the state revenue, the right to public office, injunctions or receiverships submitted at any time by consent or advanced on motion.—Causes involving the public revenue, or the right to public or corporate office, or the dissolution or discharge of injunctions, or the appointment or removal of receivers may be submitted at any time during the sitting of the court, by consent of the parties, without oral argument; or, upon motion of either party, of which three days' notice must be given the other party, any such cause may be advanced and set down for hearing at such time as may be fixed by the court.

3834 (678) (573) (662) (570). **Special terms.**—The court may, whenever it deems proper, order and hold a special term. And if, upon the expiration of the regular term there shall remain under submission any causes of the character specified in either of the three preceding sections, a special term must be held within the next sixty days for the determination of such causes.

3835 (679) (574). **Provision when justices absent.**—One justice,

or the marshal of such court, may adjourn the court from day to day, or from week to week until a majority of the justices are present; but if a majority are not present within the first thirty days of the term, the court shall stand adjourned to the day fixed for beginning the second call of the divisions; and if a majority of the justices are not present within thirty days after such day, the court shall stand adjourned to the next stated term, to which all causes are continued, subject to the action of the court at a special intervening term if one should be held.

3836. Concurrence in opinion of three justices necessary to a decision; exception.—The concurrence in opinion of three of the justices shall suffice and be necessary to the determination of any cause or question pending for the decision of the court, except that when two of them are disqualified to sit in any cause the same may be determined by a concurrence in opinion of two qualified justices. Feb. 12, 1891, p. 396, §4.

3837. When three or more justices disqualified, special justices appointed.—When three or more of the justices are disqualified to sit in any cause, the remaining justice or justices, or, if all are disqualified, the clerk of the court, shall certify the facts to the governor, who shall thereupon appoint a sufficient number of special justices from the bar of the supreme court to constitute a special court of five members, including the justices who are competent to sit, if any, for the trial of such cause. Ib.

Donnell v. Hamilton, 77 Ala. 610.

3838. When one justice disqualified and remaining four equally divided in opinion.—When one justice only is disqualified to sit in any cause, and the remaining four justices are equally divided in opinion therein, they shall certify the fact of such division to the governor, who shall then appoint a special justice from the bar of the supreme court to sit with them and hear and determine such cause. Ib.

Goodman v. Walker, 29 Ala. 444; s. c., 38 Ala. 142.

3839. When one justice disqualified, another absent indefinitely and remaining three divided in opinion.—When one of the justices is disqualified and another justice is absent from sickness or from any cause, and the remaining three justices are divided in opinion in any cause so that there can be no action by the court therein, the remaining qualified justices may, in their discretion, certify the facts to the governor, who shall then appoint two special justices from the bar of the supreme court to sit with them and hear and determine such cause.

3840 (683a) (579) (666). **Opinion not conclusive upon second appeal; qualification.**—The supreme court, in deciding each case, when there is a conflict between its existing opinion and any former ruling in the case, must be governed by what, in its opinion at that time, is law, without any regard to such former ruling on the law by it; but the right of third persons, acquired on the faith of the former ruling, shall not be defeated or interfered with by or on account of any subsequent ruling.

Stoudenmire v. DeBardelaben, 85 Ala. 85; Nat. Bk. v. McDonnell, 92 Ala. 387.

3841 (684) (580). **Salary.**—The annual salary of each justice of the supreme court is thirty-six hundred dollars.

ARTICLE 2.

THE SECRETARY OF THE SUPREME COURT.

Feb. 21, 1893, p. 1176.

3842. Secretary appointed by the justices.—The chief justice and the associate justices of the supreme court may appoint a secretary, who shall hold office for the current term of the justices. He may be removed by the chief justice of his own motion, and must be removed upon the request of three associate justices. Vacancies may in like manner be filled for the unexpired term.

Ib.

3843. Duties.—The secretary shall perform such duties as may be prescribed by the justices.

Ib.

3844. Salary.—The annual salary of the secretary is fifteen hundred dollars, payable as the salaries of other officers are paid.

ARTICLE 3.

THE MARSHAL AND LIBRARIAN OF THE SUPREME COURT.

3845 (685) (581) (670) (575). **Marshal; appointment; term of office; duties.**—A marshal of the supreme court must be appointed by the justices thereof, and may at any time be removed by them, and shall discharge such duties and obey such directions, not inconsistent with the laws of the state, and pertaining to his office, as may be required by the justices.

3846 (686). **Assistant marshal and librarian.**—The marshal and librarian is authorized to employ an assistant, who may at any time be removed by him.

3847 (687). **Compensation of assistant.**—The compensation of such assistant is six hundred dollars per annum, payable monthly, on the certificate of the marshal and librarian to the auditor.*

3848 (688) (582) (671). **Marshal is librarian.**—The library of the state, and the supreme-court library are under the charge of the marshal, who shall be librarian of the supreme-court library, and of the state library, and shall, in discharging the duties of his office, obey such rules and regulations as may be prescribed by the justices.

3849 (689) (583) (672). **Justices make rules as to library.**—The justices of the supreme court must make such rules as they may deem necessary for the preservation and protection of the libraries.

3850 (690) (584) (673) (576). **Entry of appointment; oath.** The appointment of the marshal must be entered on the minutes of the court, and before receiving any compensation, he must make oath before one of the justices, that he will faithfully discharge his

*As amended by joint committee.

duties as marshal and librarian, and that he will, to the best of his ability, preserve the libraries from loss and injury.

3851 (691) (585) (674). **Bond.**—Such marshal shall enter into bond, with good surety, payable to the State of Alabama, in the sum of one thousand dollars, to be approved by one of the justices of the supreme court, and conditioned that he will discharge all the duties which are, or may be required of him by law.

3852 (692) (586) (675) (577). **Salary.**—The annual salary of the marshal and librarian is fifteen hundred dollars.

3853 (693) (587, 603) (691) (592). **Library fund.**—The sum of five hundred dollars, annually, is appropriated for the use and benefit of the library of the supreme court, to be drawn by the warrant of the auditor, on the application of the chief justice, on the treasury, and expended under the direction of the justices. The money arising from the sales made by the secretary of state of the reports of the supreme court remaining in his office on the first day of March, 1881, must be paid to the librarian, and, under the direction of the justices, applied to the use and benefit of the library. The surplus proceeds of the sales of such reports as have been, or may be published under contract made by the governor, remaining after paying the expenses of binding and printing, must also be paid to the librarian, and be expended by him under the direction of the justices.

3854 (694). **Library tax.**—For the maintenance of the supreme-court library there shall be taxed in each civil case decided by the supreme court on appeal, the sum of five dollars, which must be taxed and collected as other costs in the cause and when collected must be paid by the clerk to the marshal and librarian, by whom it must be disbursed on the order of the justices.*

Swann & Billups v. Kidd, 79 Ala. 431.

3855. Books for attorney-general purchased from library fund. Feb. 18, 1891, p. 1195.
The marshal and librarian may use, in the purchase of law-books for the office of the attorney-general, so much of the library fund as the justices may from time to time direct

ARTICLE 4.

THE CLERK OF THE SUPREME COURT.

3856 (695) (588) (676) (578). **Appointment and removal.**—A clerk of the supreme court is appointed by the justices, and holds his office during the term of the justices making the appointment, removable at any time for cause, to be determined by the court, and entered at length on its record.

3857 (696) (589) (677) (579). **Bond.**—Before entering on the duties of his office, he must give bond with good surety in the sum of five thousand dollars, to be approved by the chief justice, and recorded in the office of the secretary of state.

*"Five" substituted for "six" by joint committee.

3858 (697) (590) (678) (580). **Additional bond.**—He must give additional bond, on the requisition of the chief justice, to be made whenever the public interest requires, and failing so to do within the time fixed by the chief justice, his office is vacated.

3859 (698) (591) (679) (581). **Office and office hours.**—He must keep his office in the capitol, open for the transaction of business on every day except Sunday and legal holidays, from nine in the morning until four in the afternoon.

3860 (699) (592) (680) (582). **Duties.**—He has authority to administer oaths, and take affidavits; and it is his duty—

1. To issue and sign all writs and process of every description, issued under the authority of the court.

2. To keep in regular order the papers, dockets and records of such court.

3. To keep an appearance, trial, motion and execution docket, under such rules as are prescribed by the court.

4. To enter from day to day the judgments and proceedings of the court.

As amended Dec. 14, 1894, p. 161.

5. To send, immediately after the expiration of the time of hearing causes, allotted by the supreme court to each of the several divisions into which the business is distributed, in the causes decided during said time, to the clerks or registers of the courts from which said causes were appealed, a certificate of the affirmance or reversal of, or other action of the supreme court upon such causes; and, upon the request of either party, said certificate shall state the date, number and character of the judgment or decree appealed from, and the name of the party taking and the date of the appeal, as shown by the transcript; but if the court or a justice thereof should recall the certificate, or the court grant a rehearing in any cause after the certificate has been sent down, the clerk must certify that fact to the clerk or register of the court below, and the latter certificate shall operate as a supersedeas of any execution which may have issued on the former certificate, without impairing the obligation of the sureties on the appeal bond; and such certificate shall be evidence in any cause in any court in this state of the facts set forth as herein provided.

6. Within twenty days after the reversal of any judgment or decree, or on the affirmance of any interlocutory order or decree, to send to the court below a certified copy of the opinion of the supreme court; and such opinion and certificate shall be legal evidence in any cause in any court.

7. At the end of each term, to have the transcripts of the records of all cases, with a copy of the orders made, and of the final judgment or decree in each case, and the manuscript opinions of the court, decided at such term, bound in strong binding, and lettered so as to show the term at which the decisions were made.

8. Immediately on the expiration of thirty days after the decision of each case, to deliver to the reporter the record of the case and opinion of the court, taking his receipt therefor. But whenever an application for a rehearing in any case is pending, he shall deliver

such record and opinion, and take such receipt immediately on the determination of such application; and when such records shall be returned by the reporter, he shall have them bound.

3861 (700) (593) (681) (583). **Record; what constitutes.**—Such transcript and copy of orders and of final judgment and the manuscript opinion of the court constitute the record in each case.

3862 (701) (594) (682) (584). **Pay for binding.**—When any of the records are bound according to the provisions of this article, the account for the same must be paid out of the state treasury as accounts for the other printing and binding of the state are paid.

3863 (702) (595) (685). **Books, blanks and stationery furnished.** The record-books, blanks and stationery, necessary to the office, shall be furnished to the clerk in like mannner as they are furnished to the other public officers in the capitol.

ARTICLE 5.

THE REPORTER AND REPORTS.

3864 (703) (596) (686, 687) (585). **Appointment of reporter.** The justices of the supreme court must, from time to time, appoint a reporter of the decisions of the court, who shall receive the records of cases and opinions of the court from the clerk, and, immediately after he has reported any case, shall return to the clerk the record and opinion in such case for binding, taking his receipt therefor.

3865 (704). **Of assistant reporters.**—Whenever the reporter shall have in his hands unreported a sufficient number of records to make one volume of reports, the court shall appoint an assistant reporter or reporters, whose compensation shall be paid by warrant on the treasury, drawn by the auditor on the certificate of the chief justice.

3866 (706). **Compensation of reporter.**—The reporter is entitled to nine hundred dollars for each volume of reports reported and published by him, payable on the certificate of the chief justice to the auditor; and the chief justice may, from time to time, in his discretion, authorize payments to be made to the reporter on account, not exceeding two-thirds of the proportionate value of the work the reporter may have done on such volume.

3867 (707). **Time within which reports to be published.**—The opinions of the supreme court must be published within six months after the determination of the cause in which an opinion is delivered, unless longer delay is necessary to accumulate a sufficient number of opinions to make a volume of reports.

3868 (708) (600). **What reports shall contain.**—The justices of the supreme court shall not be required to write opinions in cases where the decisions merely reaffirm previous decisions, or relate to questions of fact only, or when the cases decided would, in their opinion, serve no useful purpose as precedents, and they may direct what decisions delivered by them shall be published; but the title of each case decided by the court and not reported shall be published

As amended Feb. 18, 1895, p. 888.

in the reports with brief notes of the points decided and with reference to the authorities; and it is the duty of the reporter to abridge and condense all briefs or arguments of counsel, which may be published in the reports, reducing them to a mere abstract of the points made and the authorities cited. The name of the judge or chancellor who presided below must be published.

3869 (710) (602) (690). **Proprietorship and copyright of reports.** The state retains the proprietorship of the reports and the exclusive right to publish the same; and the governor must copyright each volume for the benefit of the state.

3870. Delivery to secretary of state; copies set apart.—The reports when published and accepted must be delivered to the secretary of state, who shall at once set apart two hundred volumes to be distributed as required by law, two copies for the purpose of copyright, and ten copies for the use of the state.

3871 (711) (604) (693). **Distribution of reports.**—Of the two hundred copies so set apart, there must be distributed to the governor, each judge of any court of record (except county commissioners), the attorney-general, the reporter, each chancellor, solicitor and United States district attorney in this state, one copy each, which must be delivered to their successors in office respectively, or returned to the secretary of state; also, one copy to the University of Alabama for the use of the law department; four copies to the supreme-court library, and one copy each to the department of justice of the United States and the United States circuit court of appeals for the fifth circuit.

3872 (712) (605) (694) (595). **Copies sent to other states.**—The secretary of state must turn over to the state librarian, who must transmit to the executive of each state and territory of the United States, a copy of each volume of the reports, as published, with a request that if such state or territory publishes its judicial decisions, it will in turn transmit a copy, which, if received, must be placed in the library of the supreme court.

Dec. 1, 1888, p. 5. Feb. 2, 1893, p. 235.

3873. Remaining copies sold at two dollars and fifty cents per copy.—Except the ten copies set apart for the use of the state, all the copies remaining after the distributions provided for in the two preceding sections must be sold by the secretary of state, at two dollars and fifty cents per copy; but not more than five copies of the latest volume, and not more than one copy of any preceding volume, shall be sold to any one person, mercantile firm or corporation.*

Jan. 3, 1891, p. 19.

3874. Smith's condensed reports sold at one dollar and fifty cents per copy.—The secretary of state must retain for the use of the state, ten copies of each volume of Smith's condensed reports, and may sell the remainder at one dollar and fifty cents per copy; but not more than one copy of any one volume shall be sold to any one person, mercantile firm or corporation.

*On the 13th of February, 1897, an act was approved, entitled "An act to amend an act to authorize the secretary of state to sell the volumes of the report of the decisions of the supreme court of Alabama, now in his possession, approved February 2, 1893," the body of which is as follows: "That the secre-

CHAPTER 108.

SURETIES. 3875-3888.

3875 (3144) (3405) (3065) (2638). **Surety on replevy bond may demand indemnity.**—When the principal in any replevy bond is wasting the replevied property, or is removing, or is about to remove himself or property out of the state, the surety or sureties on the replevy bond may demand of the principal adequate indemnity against loss by collateral security.

3876 (3145) (3406) (3066) (2639). **Affidavit may be made of refusal to give indemnity.**—If such security is not given within five days after demand made, the surety may make affidavit thereof before the clerk of the court in which such bond is filed, setting forth the demand of the principal for collateral security, for some one or more of the causes mentioned in the preceding section, and that the principal has failed to give such security.

3877 (3146) (3407) (3067) (2640). **Writ of seizure may then issue.**—Thereupon the clerk must issue a writ directed to the sheriff, commanding him to seize the replevied property, and hold the same until the decision of the cause in which it was replevied, or until the principal executes bond with sufficient surety, in the same penalty as the replevy bond, payable to the surety, with condition to have the property forthcoming to abide the decision in the principal cause, or to pay and satisfy the judgment rendered therein.

3878 (3147) (3408) (3068) (2641). **Bond, if given, filed with original bond.**—If the bond is given, it must be filed with the original replevy bond; and execution may issue thereon, upon a breach of the original replevy bond, in favor either of the plaintiff or of the surety.

3879 (3148) (3409) (3069) (2642). **Proceedings on writ of seizure, when property is perishable.**—If the bond is not given, and the property is seized, and is of a wasting or perishable nature, or the expense of keeping it would materially affect its value, it must be sold by the sheriff in the same manner as property levied on under execution, and return thereof made as upon a writ of fieri facias.

3880 (3149) (3410) (3070) (2643). **Judgments for sureties against their principals, and between each other; motion and notice.**—Sureties, whether bound on the contract or instrument with the principal debtor as joint, or joint and several obligors or promisors, or as accommodation drawers, acceptors, or indorsers of a bill of exchange, or in any other manner, are entitled to a summary

---

tary of state be and he is hereby authorized and required to sell the volumes of the reports of the decisions of the supreme court of Alabama, now in his possession, at the price of two dollars and fifty cents per volume; *Provided*, that he shall not sell more than one copy of each volume to any person, corporation or mercantile firm; *Provided further*, that he shall retain six copies of each volume for the use of the State." (Acts 1896-7, p. 921.)

judgment against their principal, and between each other, by motion in the circuit court, on three days' notice thereof, in the cases, and in the manner following.

Nation v. Roberts, 20 Ala. 544; Irwin v. Scruggs, 32 Ala. 516; Moody v. Findley, 43 Ala. 167.

3881 (3150) (3411) (3071) (2644). **For surety against principal debtor.**—Against the principal debtor—

1. When a judgment has been obtained against the surety, which he has satisfied, either wholly or in part, for the amount paid and interest.

2. When a surety or sureties are sued without their principal, upon notice given to the principal of the pending suit, if judgment is obtained against the surety, judgment for the same amount must be rendered against the principal in favor of the surety.

Dubberly v. Black, 38 Ala. 193; Riley v. Stallworth, 56 Ala. 481.

3882 (3151) (3412) (3072) (2645). **Judgments between sureties.** Between sureties—

1. A surety who has paid the debt of his principal may recover of each of his co-sureties their aliquot proportion of the debt; and if any of the co-sureties are insolvent, the proportion of such insolvent must be excluded from the estimate, and judgment be rendered against the remaining solvent sureties for their proportion of the debt, as if such insolvent was not a co-surety.

2. When suit is pending against one or more sureties, either in connection with, or without their principal, if the principal is insolvent or dead, the surety so sued may, on notice of the pending suit, recover judgment against such of the co-sureties as are not sued in that action for their aliquot proportion of the debt, excluding from the estimate the proportion of such of the sureties as are insolvent, as if such insolvent had not been a surety.

Roberts v. Adams, 6 P. 361; White v. Banks, 21 Ala. 705; Broughton v. Robinson, 11 Ala. 922; Waller v. Campbell, 25 Ala. 544; Rutherford v. Smith, 27 Ala. 417; Irwin v. Scruggs, 32 Ala. 516; Simmons v. Varnum, 36 Ala. 92; Jemison v. Governor, 47 Ala. 390; Broughton v. Wimberly, 65 Ala. 549.

3883 (3152) (3413) (3073) (2646). **When surety not to confess judgment.**—No surety, when sued, can confess judgment, or suffer judgment to pass by default, if the principal debtor, on being notified of the pending suit, is willing to defend the suit at his own cost, and gives good and sufficient collateral security to the surety, to be approved by the court.

Riley v. Stallworth, 56 Ala. 481.

3884 (3153) (3414) (3074) (2647). **Surety may require creditor to sue principal or other sureties; discharged on failure.**—A surety upon any contract for the payment of money, or for the payment or delivery of personal property, may require the creditor, or any one having the beneficial interest in the contract, by notice in writing, to bring suit thereon against the principal debtor, or against any co-surety to such contract; and if suit is not brought thereon, pursuant to such notice, to the first court to which suit can be

brought after the receipt of such notice, and prosecuted with diligence according to the ordinary course of law, the surety giving such notice is discharged from all liability as surety, or his aliquot proportion of the debt, as the case may be; and one surety may give the notice in behalf of his co-sureties.

Shehan v. Hampton, 8 Ala. 942; Pickens v. Yarborough, 26 Ala. 417; Savage v. Carleton, 33 Ala. 443; Darbey v. Berney Nat. Bk., 97 Ala. 643; Howle v. Edwards, 97 Ala. 649.

3885 (3154) (3415) (3075) (2648). **To what not applicable.**—The remedy secured by the preceding section does not apply to bonds or other contracts with collateral conditions, or to the bonds of executors, administrators, guardians, or public officers.

3886 (3155) (3416) (3076) (2649). **In whose favor and against whom provisions enure.**—All the provisions of this chapter enure to the benefit of the personal representatives of the creditor or surety, and in favor of sureties and co-sureties against the personal representatives of the principal, or of a surety.

Barclay v. Barclay, 42 Ala. 345.

3887 (3156) (3417) (3077) (2650). **Court in which motion should be made.**—In cases not otherwise provided for in this chapter, the motions must be made in the circuit court of the county in which the parties, or any of them, against whom the motion is made, reside, or if they are non-residents, or have no fixed residence in the state, then in the circuit court of any county in the state.

Dubberly v. Black, 38 Ala. 193.

3888 (3157) (3418) (3078) (2651). **On payment by surety, judgment must be assigned to him.**—Whenever a judgment is obtained by a creditor on a demand to which there are one or more sureties, the sureties may pay such demand, and the plaintiff in the judgment, his agent, or attorney of record, when the payment is made, must assign such judgment to the surety or sureties paying the money, who may collect the same, with interest and costs, in the name of the plaintiff, for their use, and may assert, in law or equity, any lien or right against the principal debtor, which the plaintiff could have asserted if the debt had not been paid; but in every such case, the assignee of the judgment is bound to accept and receive payment of it in the same kind of currency which he may have paid for it.

Winslow v. Bracken, 57 Ala. 368; Giddens v. Williamson, 65 Ala. 439; Vanderveer v. Ware, Ib. 606; Watts v. Eufaula Nat. Bank, 76 Ala. 474.

CHAPTER 109.

SURVEYORS AND SURVEYS.

ARTICLE 1.—APPOINTMENT AND QUALIFICATION OF COUNTY SURVEYORS; DUTIES AND COMPENSATION. 3889–3898.
2.—TOWN SURVEYS, PLATS, ETC. 3899–3905.

ARTICLE 1.

APPOINTMENT AND QUALIFICATION OF COUNTY SURVEYORS; DUTIES AND COMPENSATION.

3889 (933) (862) (947) (812). **Number; appointment; term of office.**—The court of county commissioners is authorized to appoint two surveyors for the county, who hold office for the term of three years, and until their successors may be qualified, unless sooner removed. Before making an appointment, the court must be satisfied by evidence that the person appointed is qualified to discharge the duties of a surveyor. It is no objection that a person appointed county surveyor is a qualified surveyor of an adjacent county; but he must qualify in each county.

Feb. 1, 1895, p. 342.

3890 (934) (863) (948) (813). **Removal from office.**—The court has power to remove either or both such surveyors, if satisfied the public good requires removal, and in the event of removal, to make a new appointment.

3891 (935) (864) (949) (814). **Oath of office; official bond.**—Before entering on his duties, the surveyor must take before the judge of probate the constitutional oath, which must be filed in the office of the judge; and the surveyor must give bond with sufficient sureties, in the penalty of five hundred dollars, payable to the State of Alabama, with condition to discharge faithfully the duties of the office so long as he continues therein, or discharges any of the duties thereof. The bond must be taken and approved by the judge of probate, and filed and recorded in his office.

3892 (936) (865) (950) (815). **Duties.**—It is the duty of the surveyor faithfully to execute and return all orders of survey directed to him from any court of record in the state, and make all surveys of lands or lots in the county, at the request of any person interested therein, on payment or tender of his probable fees for the same.

3893 (937) (866) (951) (816). **Chain-bearers, etc.**—He must swear his chain-bearers to perform their duties without favor or affection; must make a plat of all lands or lots he surveys, for the person requiring the same; and write on such plat the names of his chain-bearers, and also his fees for the same.

3894 (938) (867) (952) (817). **When fees taxed as costs.**—When a survey is directed by any court of record, the fees of the surveyor are to be taxed in the bill of costs.

3895 (939) (868) (953) (818). **Plat of survey evidence when notice given.**—A survey or plat of land made by a county surveyor, signed by him officially, and stating the contents, courses, distances and designation at the land-office, of any land surveyed by him, is presumptive evidence of the facts stated, if the opposite party has notice that such survey is to be made.

Nolin v. Parmer, 21 Ala. 66; Dailey v. Fountain, 35 Ala. 26; Shook v. Pate, 50 Ala. 91; Bridges v. McClendon, 56 Ala. 327; Clements v. Pearce, 63 Ala. 284; Humes v. Bernstein, 72 Ala. 546.

3896 (940) (869) (954) (819). **Liability.**—A county surveyor is liable, on his official bond, for any damages done by a wrongful survey or plat.

3897 (941) (870) (955) (820). **Compensation.**—The court of county commissioners must fix his rates of compensation, as well as that of his chain-bearers and markers.

3898 (942) (871) (956) (820). **Fences and buildings on or near line not lost by survey.**—When a survey of land is made by a county surveyor for the purpose of straightening or locating section or other lines, the owners of fences or buildings erected on or near the original or supposed lines shall not lose their right to the same, when the survey places the fences or buildings upon the lands of others.

Garrett v. Sewell, 95 Ala. 456; s. c., 108 Ala. 521.

ARTICLE 2.

TOWN SURVEYS, PLATS, ETC.

3899. Town lots; survey and plat.—Any person desiring to subdivide his lands into lots shall cause the same to be surveyed by a competent surveyor, if not already surveyed, and shall cause a plat or map thereof to be made, showing the subdivisions into which it is proposed to divide the same, giving the length and bearings of the boundaries of each lot and its number; and if it be the purpose of the owner to divide the lands into town lots, such plat or map shall show the streets, alleys and public grounds, and give the bearings, length, width and name of each street, as well as the number of each lot and block. Such plat or map must show the relation of the lands so platted or mapped to the government survey. Feb. 26, 1889, p. §1.

Joseph v. Decatur Land & Imp. Co., 102 Ala. 346.

3900. Plat to be certified, signed by owner, acknowledged and recorded; evidence.—The plat or map having been completed shall be certified by the surveyor, which certificate must also be signed by the owner, his duly authorized agent or attorney, and acknowledged by such owner, agent, or attorney, in the same manner in which deeds are required to be acknowledged. The plat or map, together with the certificate of the surveyor and of acknowledgment, shall be recorded in the office of the judge of probate in the county in which the lands are situated, in a suitable book to be kept for that purpose; and such acknowledgment and record shall have like Ib. §2.

effect, and certified copies thereof and of such plat or map, may be used in evidence to the same extent and with like effect as in the case of deeds.

Ib. §3. **3901. Operates as a conveyance, etc.**—The acknowledgment and recording of such plat or map shall be held in law and in equity to be a conveyance in fee simple of such portion of the premises platted as are marked or noted on such plat or map as donated or granted to the public, and the premises intended for any street, alleyway, common, or other public use, as shown in such plat or map, shall be held in trust for the uses and purposes intended or set forth in such plat or map.

Ib. §4. **3902. How plat vacated and annulled in whole.**—Any such plat or map may be vacated by the owner of the lands at any time before the sale of any lot therein, by a written instrument declaring the same to be vacated, executed, acknowledged and recorded in like manner as conveyances of land, which declaration, being duly recorded, shall operate to destroy the force and effect of the recording of the plat or map so vacated, and to divest all public rights in the streets, alleys and public grounds and all dedications laid out or described in such plat or map. When lots have been sold, the plat or map may be vacated, in the manner herein provided, by all the owners of lots in such plat or map joining in the execution of such writing.

Ib. §5. **3903. How plat vacated and annulled in part.**—Any part of such plat or map may be vacated in the manner provided in the preceding section, subject to the conditions therein prescribed; but such vacation shall not abridge or destroy any of the rights or privileges of other proprietors in such plat or map of land; and nothing contained in this section shall authorize the closing or obstructing of any public highway laid out according to law.

Ib. §6. **3904. Lost map or plat may be substituted.**—In cases where lands have been divided into lots prior to the twenty-sixth day of February, 1889, and the map or plat thereof lost or mislaid, and a part or all of the lots indicated therein have been sold, the owner thereof may cause a new survey to be made and a plat or map to be made therefrom, or reproduce the one lost, from survey already made, as required by the first section of this article, certified, acknowledged and recorded as therein required, and which shall have the same effect in all respects as plats or maps recorded under the first section of this article, and which may be vacated in the same manner and under the same conditions as plats or maps may be vacated under the two preceding sections.

Ib. §7. **3905. When plat or map vacated, judge of probate must write "vacated" across record.**—When a map or plat or part thereof is vacated, the judge of probate must, upon recording such vacation, write in plain letters across the record of the plat or map, or the part so vacated, the word "vacated," and shall also refer on the same to the volume and page in which the instrument of vacation is recorded.

CHAPTER 110.

TAXATION.

ARTICLE 1.—DEFINITION OF TERMS. 3906.
2.—EXEMPTIONS FROM TAXATION. 3907–3909.
3.—SUBJECTS, RATES, MATURITY AND LIEN OF TAXES. 3910–3921.
4.—TAX-ASSESSOR; ELECTION, QUALIFICATION AND COMPENSATION; DEPUTIES. 3922–3929.
5.—ASSESSMENTS; WHEN AND HOW MADE; DUTIES OF TAXPAYER AND ASSESSOR; FILING LISTS AND BOOKS OF ASSESSMENT AND NOTICE THEREOF; WHEN ASSESSOR SUSPENDED. 3930–3963.
6.—ASSESSMENTS AGAINST RAILROAD AND TELEGRAPH COMPANIES; STATE BOARD OF ASSESSMENT, ITS POWERS AND DUTIES. 3964–3976.
7.—POWERS AND DUTIES OF THE COURT OF COUNTY COMMISSIONERS AND DUTIES OF JUDGE OF PROBATE TOUCHING ASSESSMENTS; LEVY OF COUNTY TAXES. 3977–3992.
8.—TAX-COLLECTOR; ELECTION, QUALIFICATION AND COMPENSATION; DEPUTIES. 3993–4002.
9.—COLLECTING, REPORTING AND PAYING OVER TAXES; INTEREST; ESCAPED TAXES; SETTLEMENTS; WHEN COLLECTOR SUSPENDED. 4003–4045.
10.—SALE OF LANDS FOR PAYMENT OF TAXES; DOCKET, NOTICE, DECREE AND CONDUCT OF SALE; CERTIFICATE AND DEED TO PURCHASER. 4046–4077.
11.—RIGHTS AND REMEDIES OF PURCHASERS OF LAND AT TAX SALE; STATUTE OF LIMITATIONS. 4078–4089.
12.—REDEMPTION OF LANDS SOLD FOR TAXES; SALES BY THE STATE. 4090–4105.
13.—CANCELING ERRONEOUS SALES AND REFUNDING PURCHASE-MONEY. 4106–4108.
14.—GENERAL DUTIES OF AUDITOR IN SUPERVISING THE ENFORCEMENT OF THE REVENUE LAW. 4109–4121.
15.—LICENSE-TAXES; FROM WHOM AND FOR WHAT BUSINESSES REQUIRED; PRICES; COUNTY LEVY. 4122, 4123.
16.—ISSUE AND EXPIRATION OF LICENSES; BLANKS AND FORMS; RECORDS, PAYMENTS AND REPORTS; REFUNDING LICENSE-MONEY. 4124–4136.

ARTICLE 1.

DEFINITION OF TERMS.

3906 (450). **Meaning of words and phrases.**—Whenever the terms mentioned in this section are employed in this chapter, they are employed in the following sense:

1. The term "real property" shall be held to mean and include not only land, city, town and village lots, but also all things thereunto pertaining, and all structures and other things so annexed or attached thereto as to pass to a vendee by the conveyance of the land or lot.

2. The term "personal property" shall be held to mean and include all things, other than real property, which have any pecuniary value, and moneys, credits, and investments in any bonds, stocks, joint-stock companies, or otherwise.

3. The term "money," or "moneys," shall be held to mean and include gold, silver and other coin, bills of exchange, bank-bills, or

other bills or notes authorized to be circulated as money, whether in possession, or on deposit subject to the draft of the depositor, or the person having the beneficial interest therein, on demand.

4. The term "credit" includes every claim and demand for money, labor, merchandise, or other valuable things, and money and property of any kind secured by deed of trust, mortgage, or otherwise.

5. The word "person," or "party," or other word or words, importing the singular number, shall be held to include firms, companies, associations and corporations; and all words in the plural number shall apply to single individuals, in all cases in which the spirit and intent of this chapter require it; and all words importing the masculine gender also shall apply to females; and all words importing the present tense shall also apply to the future.

ARTICLE 2.

EXEMPTIONS FROM TAXATION.

3907 (451). **Property and persons exempt.**—The following property and persons shall be exempt from taxation:

1. All property belonging to the United States.

Swann v. State, 77 Ala. 545; Bonner v. Phillips, Ib. 427.

2. All bonds of the United States and of this state; all property, real and personal, of the state, and of the counties and municipal corporations in the state; all cemeteries, and all lots in incorporated cities or towns, or within one mile of any city or town, to the extent of one acre, and all lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; all school furniture and other personal property used exclusively for public-school purposes; and all property, real or personal, to an extent not exceeding twenty-five thousand dollars in value, that may be used exclusively for agricultural or horticultural associations of a public character.

3. All the property of literary and scientific institutions and literary societies, when employed or used in the regular business of such institutions.

4. The libraries of ministers of the gospel, and all libraries other than those of a professional character, and all religious books kept for sale by ministers of the gospel and colporteurs.

5. All deaf mutes and insane and blind persons, and their property to the value of one thousand dollars.

6. From poll-tax, all persons permanently disabled, whose taxable property does not exceed five hundred dollars.

7. All family portraits.

8. The following property, to be selected by the head of each family, viz.: Household and kitchen furniture, not to exceed in value one hundred and fifty dollars; one yoke of oxen, one cart or wagon, two cows and calves, twenty head of stock hogs, ten head of sheep,

all poultry, all cotton and other agricultural products which were raised or grown during the preceding year, and which shall remain in the hands of the producer thereof, and all manufactured articles, including pig iron, which shall remain in the hands of the manufacturers thereof, on the first day of October of any year immediately succeeding that in which they were raised or produced; provisions and supplies on hand for the current year, for the use of the family and the making of the crop; all wearing-apparel; all looms and spinning-wheels, kept for use of the family; farming-tools to the value of twenty-five dollars; tools and implements of mechanics to the value of twenty-five dollars; one sewing-machine in each family, when the taxable property does not exceed two hundred and fifty dollars; *Provided*, that no property or subject of taxation shall be exempted from taxation, nor shall any credit, abatement, or deduction be allowed therefrom, unless such property or subject of taxation is entered by the taxpayer upon his assessment-list, and returned by him, under oath, to the tax-assessor. Feb. 18, 1897, p. 1489, §38.

Every asserted claim of exemption from taxation will be narrowly scanned by the courts.—Swann v. State, 77 Ala. 545.

3908. Exemption of cotton-factories from county and municipal taxation.—For the purpose of encouraging the building and operating of factories for the spinning of thread, yarns, and the weaving of cloth and other fabrics of cotton and wool in the state, the court of county commissioners, or board of revenue of any county, or the constituted authorities of any city or town, in which it is proposed to locate such factories, are authorized and empowered to remit the taxes assessed on such buildings, factories, machinery used therein, or land upon which such factories or buildings are located, for all county or city purposes, for a period not exceeding five years from the date of the incorporation or organization of such manufacturing company. Feb. 21, 1893, p. 855, §1.

A legislative bounty, subject to repeal.—Calhoun Co. v. Woodstock I. Co., 82 Ala. 151.

3909. Application for such exemption; how made and granted. In order to obtain the benefits of such exemption, the person, firm or corporation owning or controlling such factory must make application in writing to the court of county commissioners or board of revenue of the county, or the constituted authorities of the city or town in which it is proposed to locate such factory, giving the location of the proposed factory, the date of the incorporation or organization and praying for an order to be made by them, granting such person, firm or corporation the exemption provided in the preceding section, which application, if granted, shall be entered on the records of their courts, and an order made allowing such exemption and designating the time when such exemption shall expire; but all such property must be returned for state taxation.* Ib. §§2, 3.

*An act approved February 13, 1897, "To promote and secure the erection of cotton mills and factories in the State of Alabama," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That any person, co-partnership, association of individuals, or corporations incorporated

ARTICLE 3.

SUBJECTS, RATES, MATURITY AND LIEN OF TAXES.

3910 (452). **Poll-tax.**—There shall be collected from every male inhabitant in this state, over the age of twenty-one years, and under the age of forty-five years, not exempt by law, the sum of one dollar and fifty cents, as poll-tax, which shall be applied exclusively in aid of the public-school fund in the counties in which it is levied and collected.

Feb. 18, 1897, p. 1308.

3911 (453). **Subjects and rate of taxation.**—For the use of this state, and to raise revenue therefor, there is levied an annual tax of fifty-five cents on each hundred dollars in value, upon the following property:

1. Each and every piece, parcel, tract, or lot of land in this state, including therein all things pertaining to such land, and all structures and other things so annexed or attached thereto as to pass to a vendee by conveyance of such land; and every separate or special interest in any land, such as mineral, timber, or other interest, when such interest is owned by a person other than the owner of the surface or soil.

Freeman v. State, Ala. (22 So. 560).

2. All wharves and wharf-boats, landings and warehouses where charges are made, cotton-pickeries, cottonseed-oil mills, compresses, grain-elevators, toll-bridges, ferries, and turnpikes, and all passes, channels, or canals, where tolls are charged, and street-railroads, printing-presses and materials.*

Feb. 26, 1887, p. 30.

3. All steamboats, vessels and water-craft of every name and kind excepting such as are engaged in foreign commerce, to be assessed and collected at the port in this state where such steamboats, vessels and water-craft are enrolled, or in the county wherein the owner or owners, or those owning the largest aggregate amount of stock in value thereof, may reside, and if such steamboat, vessel or water-craft is owned by a corporation, then in that county where the principal office of said corporation is situated, or if not enrolled at any port under the laws of the United States, then at any place or landing where

---

under the laws of the State of Alabama, that shall, within five years from the approval of this act, invest, expend, lay out and pay at least fifty thousand dollars in money in the erection, building and construction of cotton mills or factories in this state, and the buildings, plants, works, machinery, appliances, and appurtenances, proper or necessary for the practical operation of such cotton mills or factories, shall be entitled to claim and have exempt from assessment and collection for state, county and municipal taxation such cotton mills or factories, and the said proper or necessary buildings, plants, works, machinery, appliances and appurtenances for the period of ten years only from the approval of this act, and the same and every part of the same are hereby declared to be exempt from state, county and municipal taxes; *Provided, nevertheless,* that nothing in this act shall be construed to exempt from taxation the land on which said cotton mills or factories are erected; provided this act shall also apply to additions costing $50,000 or more made to cotton-mills now existing in Alabama.

"SEC. 2. *Be it further enacted,* That all laws and parts of laws, general or special, in conflict with the provisions of this act, be and the same are hereby expressly repealed." (Pamph. Acts 1896-7, p. 917.)

*As amended by joint committee on revenue.

the same may be found; and the tax of such steamboats, vessels and water-craft shall be due and collectible at the port where the same are enrolled, unless paid elsewhere, as provided herein, and the receipt therefor exhibited upon demand to the officer whose duty it is to collect the same at such port.

Nat. Dredging Co. v. State, 99 Ala. 462.

4. All stocks of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, but the amount so assessed shall in no case be less than the capital actually employed in the business nor less than sixty-six and two-thirds per cent. of the originally invoiced price of said goods, wares and merchandise to be taken and furnished to the tax-assessor as hereinafter provided, and this shall include all goods, wares and merchandise kept on plantations or elsewhere or by railroad companies or manufacturing companies, or other associations, corporations or persons, for sale or to be dealt out to laborers or employes for profit, or on account of their wages; and shall include all goods, wares and merchandise offered for sale by any person commencing business subsequently to the first day of October of the current year, but in such case the tax shall be apportioned according to the date at which the business shall be commenced, so that if commenced after the first day of January, the tax shall be three-fourths of the tax for the whole year; if commenced after the first day of April, the tax shall be one-half of the tax for the whole year, provided that the assessment herein provided for shall not include the products raised on the farms in the hands of the original producer. Every person, association or corporation carrying on such business, shall, between the first and tenth days of October in each year, make or cause to be made, a full and complete invoice of the various articles of said goods, wares and merchandise, with the value thereof, and in listing the taxes thereon, he shall present the same to the tax-assessor. If the person, association or corporation carrying on such business shall fail to make such invoice and present the same as herein required or shall fail to make return of the amount of stock as herein provided, or if the assessor is not satisfied with the return made, the assessor, in order to make a proper assessment, may examine the insurance effected by such person, association or corporation upon the stock so to be assessed, if the same can be ascertained, and may also by inquiry of persons believed to have knowledge of the subject by having assisted in taking invoice or otherwise, inform himself of the probable average amount of such stock; and from such information he may assess the same upon the best judgment he can form, and where assessments have been so made against a person, association or corporation, which has not complied with this subdivision, said assessments shall not be subject to revision at the instance of the taxpayer and shall in no case be reduced. Feb. 18. 1895, p. 1162.

5. All household furniture, libraries, jewelry, plates and silverware, ornaments and articles of taste, pianos and other musical in-

struments, paintings, clocks, gold, silver and other watches, and gold and other safety-chains; all wagons and other vehicles; all bicycles; all mechanical tools and farming-implements; all dirks and bowie-knives, swords, canes, pistols and guns; all cattle, horses, mules, studs, jacks and jennets; all hogs, sheep and goats.

Feb. 18, 1895, p. 1092, §24.

6. All money hoarded, whether in the custody of the owner, or on deposit in bank or elsewhere in this state, or in another state, subject to check, draft or order; or in any safety-deposit box, safe or vault or elsewhere.*

Solvent credits taxable at owner's residence.—Boyd v. Selma, 96 Ala. 144.

Ib.

7. All moneyed capital, that is, all money lent, solvent credits, or credits of value; and all money employed in the business of advancing, or pending on any kind of chattels, choses in action, or personal property, or used in buying or discounting notes, bonds or bills of exchange.

Feb. 18, 1897, p. 1489, §36.

8. Every share of any incorporated bank or banking association incorporated under the laws of this, or any other state, or of the United States, to be assessed and collected in the county, city, town or village where any such bank is located, and to be assessed at its actual market value to the person in whose name such share stands on the books of such bank and not to the bank or corporation. It is the duty of the president and cashier of every such bank or banking association to make out and return under oath to the assessor of the county in which the bank is located, a list showing the total number of shares of the capital stock of such bank, the full name and residence of every shareholder as far as known, the actual market value of such shares and the par value thereof, the date of the last sale of stock in such bank, with the names of the seller and purchaser thereof, and the price paid for same, the annual dividend declared upon the stock of such bank for the last three years, the value of the shares as shown by the books of the corporation and by the last report of the officers to the shareholders, the amount of the surplus and the amount of the undivided profits not included in the surplus; and such president and cashier shall, at the same time return to the assessor of the county a sworn statement of all real estate owned by the bank, situate in this state, and the value thereof as assessed for taxation the same year, and thereupon it shall be the duty of the assessor, after passing upon such assessment, to deduct from the amount or sum at which the whole of the shares are assessed, the amount or sum at which the real estate, situate in this state and belonging to such bank, is assessed for taxation; and the residue of values remaining after such deduction shall be the assessed value of the whole of such shares, and such residue, divided by the whole number of shares, shall constitute the value of each share for taxation, and the bank shall pay for the shareholder, the tax assessed against such shares. It is the intent and meaning of this subdivision that the real estate of every such bank shall be assessed for taxation

*As amended by revenue committee.

against the bank as other real estate in this state is assessed to the owner thereof, and that the bank shall pay the taxes thereon; and the shares shall be assessed for taxation against the shareholders, at their actual market value after deducting therefrom the assessed value of the real estate of the bank, and that the bank shall pay for the shareholders, respectively, the tax so assessed against their shares. In arriving at the market value of the shares there must be considered everything which gives them value, such as the franchise, the authorized capital and assets of the bank, the real and personal property, the reserve fund, the surplus, the undivided profits, and all other interests of the shareholder that would pass to a purchaser on a transfer of his stock; and except as herein expressly provided, no separate tax shall be levied upon these elements of value, or any of them. It shall be no ground of objection to such assessment of shares that it is entered upon the assessment-book in the corporate name of the bank.

Sumter Co. v. Nat. Bank, 62 Ala. 464; Pollard v. State, 65 Ala. 628; McGuire v. Bd. Rev., 71 Ala. 402; State Bank v. Bd. Rev., 91 Ala. 217; Jefferson Co. Savings Bank v. Hewitt, 112 Ala. 546.

Ib. §37.

9. Every share of any corporation organized under the laws of this state, or any other state, or of the United States (other than railroad, telegraph, express and sleeping-car companies, building and loan associations, and banks or banking associations) to be assessed and collected in the county wherein such corporation has its chief or home office in this state, and to be assessed at its actual market value, to the person in whose name such shares stand on the books of the corporation, and not to the corporation. It shall be the duty of the president or chief officer of every such corporation to make out and return under oath, to the assessor of the county in which the chief or home office of the corporation is located, a list showing the total number of shares of the capital stock of such corporation, and the par value thereof, and the full name and residence of each shareholder as far as known, the actual market value of such shares and the par value thereof, the date of the last sale of stock in such corporation, with the names of the seller and the purchaser and the price paid for the same, the annual dividend declared on the stock of such corporation for the last three years, the value of the shares as shown by the books of the corporation and by the last report of the officers to the shareholders, the amount of the surplus, and the amount of undivided profits not included in the surplus, and such president or chief officer shall, at the same time, return to the assessor a sworn statement of all the taxable property, real and personal, owned by such corporation, situated in the state, and the value thereof as assessed for taxation the same year; and thereupon it shall be the duty of the assessor, after passing upon such assessments, to deduct from the aggregate amount or sum at which the whole of the shares are assessed the aggregate amount or sum at which the real and personal property of the corporation is assessed for taxation; and the residue of values remaining after such deduction shall be the

assessed value of the whole of such shares, and such residue, divided by the whole number of shares, shall constitute the value of each share for taxation, and the corporation shall pay, for the shareholder, the tax assessed against his shares, and the amount so paid for any shareholder shall be a lien on any interest which shareholders may have in any property owned by the corporation. It is the intent and meaning of this subdivision that all the property, real and personal, of the corporation, except such property as is exempt from taxation by the laws of the state or of the United States, shall be assessed for taxation against the corporation as other property in this state is assessed to the owner thereof, and that the corporation shall pay the tax thereon whether such assessment exceeds the aggregate assessed value of the shares or not; that the shares shall be assessed for taxation against the shareholders, at their actual market value after deducting therefrom the assessed value of the real and personal property of the corporation, and that the corporation shall pay for the shareholders, respectively, the tax so assessed against their shares. If the aggregate value of the shares does not exceed the aggregate value of the real and personal property of the corporation as assessed for taxation, then no tax shall be demanded or collected on the shares. It shall be no ground of objection to such assessment of shares that the same is entered on the assessment-book in the name of the corporation.

Feb. 18, 1895, p. 1192, §25.

10. All real and personal property of water companies, including the pumping-stations, reservoirs, stand-pipes, towers, pipe-lines, gates, valves, tunnels, canals and dams used in the business of supplying water to consumers for pay; all real and personal property of electric light and power and gaslight companies, including all machinery, engines, dynamos, wires, poles, pipe-lines, and appliances of every nature and description used in connection therewith; all the real and personal property of every furnace, rolling-mill, mine, quarry, or manufacturing establishment, including all machinery, engines, and appliances of every nature used in the business; all dams across rivers and creeks.

11. All investments in bonds, except bonds of the United States and of this state, and such other bonds as are not by law taxable; but all capital invested in bonds or currency which are exempt from taxation shall be liable to be taxed under this section, should such capital, at any time during the year, be reconverted into money, bonds, or property which is taxable, unless it is made to appear that the money, bonds, or property into which such reconversion may be made has been assessed for taxes for such year.

Jan. 30, 1891, p. 208.

12. The road-bed, track and other property, real and personal, of railroads, and all tramroads, pole-roads, canals, ditches and channels used for transporting lumber, timber, logs or other valuable commodities of commerce, which are not taxed as improvements on the land, or plant, or main property of the owner of such tramroads, pole-roads, canals, ditches or channels.

Purifoy v. Lamar, 112 Ala. 123.

13. All dividends declared or earned, and not divided, by corporations doing business in this state.

14. All other property, real and personal, not otherwise specified herein, including cotton, pig iron, manufactured goods and other things of value.*

For purpose of taxation, chattels may acquire situs different from owner's residence.—Trammell v. Connor, 91 Ala. 398; Boyd v. Selma, 96 Ala. 144; Nat. Dredging Co. v. State, 99 Ala. 462.

3912 (454). **Other subjects of taxation and rates thereon.**—There shall also be assessed by the assessor in each county for taxation the following subjects at the following rates:

1. On the gross amount of sales at auction, made in or during the tax year preceding the assessment of goods, wares and merchandise owned by non-residents, each auctioneer shall be assessed and shall pay a tax of one-fourth of one per cent.; and a like tax on all sales made by him of property owned by citizens of this state, which has been imported into the state and sold at auction before the same has been assessed for taxes as other property; but on sales of goods, wares and merchandise and fruits, by cargo, the rate of taxation shall be one-eighth of one per cent.

2. On the gross amount of commissions, or sums charged and received, during each tax year, by any factor, broker, commission merchant, auctioneer or dealer in any other kind of property, in buying or selling, or for any other act in the course of their business, for a commission or compensation, by bale, sack, package, article or otherwise, and on the gross receipts, during such tax year, of all cotton-pickeries, warehouses or other places of storage of cotton, merchandise or other produce, cotton-compresses, grain-elevators, river landings, wharves, wharf-boats, stock-yards, whether attached to livery-stables or otherwise, and all foreign or domestic companies, doing the business of loaning money or other business of like character, at the same rate that property is taxed; but this shall not apply to banks and building and loan associations—otherwise taxed.*

3. On the gross incomes of all gas-works, electric-light companies, telephone companies, street-railways, toll-bridges and ferries, and also, all canals, ditches, channels, passes, tramroads, and pole-roads, used for transporting timber or other valuable commodities of commerce, at the rate that property is taxed.*

Capital City Water Co. v. Board Rev. (MS.)

3913. Telegraph companies to pay privilege tax to state treasurer.—Each telegraph company doing business between points wholly within this state, and without reference to its interstate commerce or governmental business, shall pay, in advance, on the first day of January of each year, to the state treasurer, a privilege tax based on the mileage of telegraph-line operated by it in this state, as follows: Each company whose lines within the state do not exceed one hundred and fifty miles shall pay at the rate of one dollar per mile; Feb. 28, 1889, p. 89.

*As amended by revenue committee.

each company whose lines within the state exceed one hundred and fifty miles, shall pay five hundred dollars, together with one dollar for each mile of such lines; and no telegraph company which has paid the privilege tax herein required shall be liable to pay any additional privilege tax or other tax in this state, except licenses required by cities and towns, and except upon its real estate, fixtures and other local property which shall be subject to taxation as other property in the state. The payment of such privilege tax to the treasurer shall be accompanied by a sworn report to the auditor, showing the number of miles of telegraph-line operated by such company within this state; and in default of the payment of such tax or the making of such report for sixty days after the first day of January, a penalty of double the amount of such tax shall be imposed upon and collected of such defaulting company.*

Feb. 18, 1893, p. 698.

3914. Express companies to pay privilege tax to state treasurer. Each express company doing business between points wholly within this state, and without reference to its interstate business, shall pay in advance, on the first day of January of each year, to the state treasurer, a privilege tax based on the mileage of railroad operated by it in this state, as follows: Each company whose lines within the state do not exceed five hundred miles shall pay at the rate of one dollar per mile; each company whose lines within the state exceed five hundred miles but do not exceed one thousand miles shall pay one thousand dollars; each company whose lines within the state exceed one thousand miles but do not exceed two thousand miles shall pay two thousand dollars; each company whose lines within the state exceed two thousand miles but do not exceed three thousand miles shall pay three thousand dollars; each company whose lines within the state exceed three thousand miles but do not exceed four thousand miles shall pay four thousand dollars, and each company whose lines within the state exceed four thousand miles shall pay five thousand dollars; and no express company which has paid the privilege tax hereby required shall be liable to pay any additional privilege tax or other tax in this state, except upon its real estate, fixtures and other local property, which shall be subject to taxation as other property in the state. The payment of such privilege tax to the treasurer shall be accompanied by a sworn report to the auditor showing the number of miles of railroad operated or run by the cars of such company within this state; and in default of the payment of such tax, or the making of such report for sixty days after the first day of January, a penalty of double the amount of such tax shall be imposed upon and collected of such defaulting company.

Douglass v. Anniston, 104 Ala. 291.

Feb. 16, 1893, p. 616.

3915. Sleeping-car companies to pay privilege tax to state treasurer.—Each sleeping-car company doing business between points wholly within the state, and without reference to its interstate business, shall pay, in advance on the first day of January of each year,

*As amended by revenue committee.

to the state treasurer a privilege tax of five hundred dollars, together with one dollar for each mile of railroad run by the cars of such company within this state, and no sleeping-car company which has paid the privilege tax hereby required shall be liable to pay any other privilege tax in the state, but its real estate, fixtures and other local property shall be subject to taxation as other property in this state. The payment of such privilege tax to the treasurer shall be accompanied by a sworn report to the auditor, showing the number of miles of railroad run by the cars of such company within this state; and in default of the payment of such tax or the making of such report for sixty days after the first day of January, a penalty of double the amount of such tax shall be imposed upon and collected of such defaulting company; but such privilege tax shall in no case exceed the sum of one thousand dollars, and when it amounts to that sum no report of mileage shall be required.

Feb. 18, 1897, p. 1489, §40.

3916. Building and loan associations to pay privilege and property tax.—Each building and loan association organized under the laws of this state or of any other state or country, doing business in this state, shall pay, in advance, on the first day of January of each year, to the state treasurer, a privilege tax of two hundred dollars; and no building and loan association which has paid such privilege tax shall be liable to pay any other privilege or other tax, except that every such association organized under the laws of this state shall be assessed for taxation and shall pay taxes upon the whole amount paid upon its stock or shares in force, less the amount of notes held by it secured by mortgages on real estate; and every such association, foreign or domestic, shall also be assessed for taxation and shall pay taxes upon its office furniture and real estate in this state.

Feb. 14, 1895, p. 496.

3917. Insurance companies to pay tax on gross receipts.—Each insurance company, whether organized under the laws of this state or any other state or country, doing business in this state, either as a fire, fire and marine, or inland insurance company, or as a life-insurance company doing business upon any plan, whether mutual, co-operative, assessment or otherwise, or as an accident or guarantee company, and every other style or class of insurance company, must, on filing its annual statement with the auditor, pay to the state treasurer, upon the gross premiums received by it from business done in the state during the year ending on the thirty-first day of December next preceding, a tax of one per cent. for the privilege of doing business in this state; and no credit or deduction of any kind shall be allowed or made on account of the cost of reinsurance taken by such company in any company not authorized to do business in this state. But the provisions of this section do not apply to any secret or benevolent society, such as Masons, Odd Fellows, Knights of Pythias, Knights of Honor, Ancient Order of United Workmen, or like orders. Any insurance company failing or refusing to make returns as required by law, or failing or refusing to pay the tax herein levied, shall forever be debarred from doing business

in this state, and shall be liable to a penalty in double the amount of such tax.

3918 (456). **When foreign insurance company considered as doing business in state; taxes against.**—When any person shall do or perform any of the acts, the doing or performing of which by him for any insurance company not organized under, or incorporated by, the laws of this state, renders him the agent of such company under the provisions of this Code, such company shall be held to be doing business in this state, and shall be subject to taxation for state, county and municipal purposes, in this state; and such person so doing or performing any of such acts shall be personally liable for such taxes.

Feb. 18, 1895, p. 1192, §98.

3919 (457). **When taxes become due and when delinquent.** All taxes, unless otherwise directed, shall become due and payable on the first day of October in each year, and shall become delinquent if not paid before the first day of January succeeding, except in cases when parties are about to remove from the county.*

Swann v. State, 77 Ala. 545.

Feb. 18, 1891, p. 1275.

3920 (458). **Property brought into state after first of October; when taxable.**—All property brought into the state after the first day of October, and before the assessor has completed his assessment, except property that may be brought into the state by a bona fide citizen of the state, purchased with money held on the first day of October, which money has been assessed for taxation that year, shall be subject to taxation the same as if it had been held or owned in the state on the first day of October.

3921 (459). **Lien of state and county for taxes.**—From and after the first day of October of each year, the state shall have a prior lien upon each and every piece or parcel of property, real or personal, for the payment of the taxes which may be assessed against the owner, or upon such property, during that year, for the use of the state; and the county shall have a like lien thereon for the payment of the taxes which may be assessed against such owner, or upon such property, during that year, for the use of the county.

Driggers v. Cassady, 71 Ala. 529; Rodgers v. Gaines, 73 Ala. 218; Thorington v. City Council, 88 Ala. 548; Solomon v. Willis, 89 Ala. 596; Winter v. City Council, 101 Ala. 649; Kuhl v. Long, 102 Ala. 563.

ARTICLE 4.

TAX-ASSESSOR; ELECTION, QUALIFICATION AND COMPENSATION; DEPUTIES.

3922 (460). **Tax-assessor; election and term of office.**—There shall be elected, at the time, in the manner, and for the term provided by law, a tax-assessor for each county in the state, who shall perform such duties as are, or may be prescribed by law.

3923 (461). **Official bond.**—Before entering upon the discharge of the duties of his office, the tax-assessor must execute in duplicate a

*As amended by revenue committee.

bond in the sum of two thousand dollars, payable to the State of Alabama, with sufficient sureties, to be approved by the judge of probate of his county, and conditioned faithfully to discharge the duties of his office which are, or may be required by law during the time he continues therein, or discharges any of the duties thereof. One of such duplicates must be filed and recorded in the office of the judge of probate, and the other must be filed in the office of the auditor.

3924 (462). **Oath of office.**—He shall also, before entering upon the discharge of the duties of his office, file in office of the judge of probate of his county an oath in writing that he will faithfully and diligently discharge all the duties which are, or may be imposed upon him by law; and such oath must also be recorded.

3925. Commissions of tax-assessor.—The tax-assessor shall be entitled to receive from the tax-collector out of the first moneys collected for the state, giving him duplicate receipts therefor, one of which receipts shall be forwarded to the auditor by the tax-collector, the following commissions on the state taxes, whether general or special, assessed by him (but not on each separately), to wit: In counties where the state taxes assessed do not exceed twelve thousand dollars the rate of commission shall be eight per cent. on the first thousand, four per cent. on the second thousand, and two per cent. on the remainder. In counties where the state taxes assessed exceed twelve thousand dollars the commissions shall be the same up to twelve thousand dollars, and on all above twelve thousand dollars one and one-half per cent. up to sixty thousand dollars, and one per cent. on the remainder. He shall also be entitled to receive from the tax-collector the same rates of commissions on the amount of county taxes, whether general or special (but not on each separately), regularly assessed, carried up or extended on the assessment-book, giving duplicate receipts to the tax-collector for all amounts so paid him. He shall receive five per cent. of the amount of general state taxes upon property assessed by him which has escaped taxation in the previous year, such previous assessment not having been made while he was tax-assessor. He shall also be allowed a commission of three per cent. for making list and keeping book of poll-taxes on the amount of such taxes, which shall be paid out of the poll-taxes collected, but no commissions shall be allowed on polls which are ascertained to be errors by the court of county commissioners or other court of like jurisdiction, on the report of errors submitted to such court by the tax-collector. Feb. 18, 1897, p. 1489, §2.

3926. No commissions on erroneous assessments.—He shall not receive commissions on errors made in assessments, on abatements or deductions from assessments allowed to the taxpayer, nor shall he, after the abstract-book has been turned over to the tax-collector, receive commissions on any assessment to which an objection by the taxpayer, regularly entered, may then be pending until such objection has been disposed of and the proper assessment ascertained and determined.

Feb. 18, 1897, p. 1489, §8.

3927. Fees of assessor.—For making the demand on the taxpayer for his list of assessments, and for each assessment of property to "owner unknown," to be charged to the taxpayer or property assessed, and collected with the taxes, the assessor shall be entitled to fifty cents, to be entered upon the assessment; but the assessor shall be entitled to only one demand fee against each taxpayer although such taxpayer may be assessed a poll-tax and also a property tax. He shall be entitled to a fee of twenty-five cents for each notice issued from the court of county commissioners or other court of like jurisdiction, and served or mailed by him, the same to be charged to the taxpayer if the case made against such taxpayer be sustained, and to be added to such taxpayer's assessment; but in cases where the state fails before the court of county commissioners he shall receive no fees. For serving each subpœna for state witnesses, issued by order of the court of county commissioners or other court of like jurisdiction, the tax-assessor shall be entitled to receive twenty-five cents, to be taxed against the defendant and collected with the taxes, if the state prevails; and he is entitled to a fee of fifty cents from each delinquent who, at any time after the first day of January, makes his return at the office of the assessor, whether he has made any demand on such delinquent or not; *Provided*, that the tax-assessor of Mobile and Montgomery counties shall be allowed to charge a fee after the completion of his sittings.

3928 (467). **Appointment of deputies; liability for acts of deputies.**—The tax-assessor is authorized to appoint deputies, and the acts of such deputies shall be recognized as his acts, and he shall be responsible for any loss sustained by any taxpayer, or by the state or county, by reason of any unlawful act or assessment done or made by any of such deputies. Such deputies shall receive no compensation for their services out of the state or county revenue.

Feb. 18, 1895, p. 1192, §15.

3929. Tax-assessor to have assessment-blanks printed; taxpayer entitled to copies.—It is the duty of the assessor to have printed, at the expense of the county, a sufficient number of assessment-blanks in the form prepared and furnished by the auditor; and upon request of any taxpayer the assessor shall furnish him with a copy or copies for use in rendering his assessment-list.

ARTICLE 5.

ASSESSMENTS; WHEN AND HOW MADE; DUTIES OF TAXPAYER, ASSESSOR AND APPRAISERS; FILING LISTS AND BOOKS OF ASSESSMENT AND NOTICE THEREOF; WHEN ASSESSOR SUSPENDED.

Feb. 18, 1895, p. 1192, §16.

3930. Commencement and completion of assessment; supplemental assessment.—The assessment of taxes by the tax-assessor must commence on the first day of October in every year, and shall be finished by him by the first day of February following; but the assessor may be allowed until the first Monday in May in each year to make a supplemental assessment upon property which he may have failed

to assess prior to the first day of February; and such supplemental assessment he must enter in the original book of assessment as any other assessment; and the judge of probate shall embrace such assessment in his abstracts for the auditor and collector.

Feb. 18, 1897, p. 1489, §4.

3931. Appointments by assessor and notice thereof; effect of failure to give notice or attend.—The assessor shall give at least twenty days' notice, by advertisement in a newspaper, if there be one published in the county, and by bill posted at five or more public places in each election precinct, of the time when and the place where he will attend to assess the taxes. He shall visit each precinct twice at least thirty days apart, and remain there one day each time, from eight o'clock A. M. until four o'clock P. M. Upon failure of the tax-assessor to give the notice required by this section, or to attend any appointment made by him in any precinct, he shall, after legal notice, fill new appointments, or forfeit all claims to fees from such persons in such precincts as were disappointed by his non-attendance, but he shall not be entitled to fees for their failure to attend the second appointment from persons who attended the first. But the assessor, at his second appointment, in cities or towns of one thousand inhabitants or over, shall remain at the place of appointments for one week, for the purpose of assessing taxes, and the assessor of Jefferson county shall keep his office open at the court-house during the year, and the assessor of Barbour, Lowndes, Marengo, Chambers, Pickens and Elmore counties shall keep an office open at some place in the county towns of said counties, from the first of October of each year to the first of the following January; and the assessors of Marion, Greene, Macon, Marshall, Madison, Morgan, Etowah and Cullman shall keep an office open at the court-house, from December first to January first, in each year; and the tax-assessors of Perry and Hale counties shall each keep his office open at the court-house of said county from December fifteenth to January first, in each year; and the assessors of the several counties shall keep their offices open during the month of January of each year.

Ib. §5.

3932 (470). **Taxpayer to attend appointment and return list of his property.**—It is the duty of every person liable to taxation in each election precinct to attend in person before the assessor, by the first day of the second appointment in the precinct of the taxpayer's residence, and then and there render to the assessor, under oath, a full and complete list of all the property of which he was the owner, or in which he had any interest whatever, or of which he was trustee or agent, on the first day of October of that year.

3933 (479). **Oath to be administered to taxpayer.**—The tax-assessor or his deputy must orally administer the following oath to every taxpayer before receiving his return: "You do solemnly swear that you will true answers make to the lawful questions which I may put to you touching the return you are about to make, and that you will make a full and complete return of all the property owned by you, or in which you had any interest whatever, or of which you

were trustee or agent, on the first day of October of the present tax year. So help you God."

Feb. 28, 1887, p. 3, §1. Feb. 18, 1895, p. 1192, §22.

3934 (480). **Assessor to interrogate taxpayer as to items and details of property.**—After administering the foregoing oath the assessor shall particularly inquire of the said taxpayer as to the items and details of property and subjects of taxation, of which he may be supposed to be in possession, and for which he is liable to be taxed, and property exempt from taxation, in order that he may elicit from such taxpayer a complete statement of the whole amount and specific items of the property and subjects of taxation with which he should be charged for purposes of assessment and taxation; and the same having been entered upon the proper assessment-blank, the assessor shall require the taxpayer or his agent to make and subscribe to an oath, to be actually administered to him by the assessor or his deputy, that such a list is a true and correct list of all real and personal property, effects and choses in action, owned by such taxpayer, or in which he had any interest whatever, on the first day of October of that year, and a true answer to all questions lawfully propounded to him touching the same.

3935 (471). **Demand of taxpayers failing to meet assessor at appointments.**—After he shall have completed his appointments in each year, the assessor shall, in person or by deputy, make a demand upon such taxpayers as failed to meet him and return their lists at his appointments, wherever he may find them, for a list of their taxable property, and whenever unable to find them, he may leave a written demand at their residences or places of business; or where such taxpayer is a non-resident of the county wherein such tax is to be paid, such demand may be made by letter addressed and mailed to such taxpayers' last known residence; and it shall be their duty to return such lists to him by the first day of February following, at his office or wherever he may be found.

3936 (473). **Full statement of subjects of taxation required of taxpayers.**—Every person of full age and of sound mind, and every firm and body corporate or politic shall, when legally called on by the assessor, forthwith make to him a full, true and distinct statement of all the real and personal property, with a correct description thereof, of which he is the owner or holder, individually, or as guardian, parent, husband, trustee, administrator, executor, receiver, accounting officer, partner, agent, or factor, and including all moneys and credits so held or owned, or on deposit anywhere in the state, on the first day of October preceding, except as herein otherwise prescribed.

Feb. 18, 1895, p. 1192, §23.

3937 (474). **When sworn list may be sent in by another person.** When a taxpayer resides out of the county, or, by reason of any infirmity or disability, is unable to attend the appointments of the assessor, or is a female, such taxpayer may send in his or her list, duly sworn to, by another person, or such list may be rendered by an agent having knowledge of his or her taxable property. Any

person who knowingly subscribes to a list of property which is false is guilty of perjury.

3938 (481). **When assessment of property made on information.**—If any taxpayer refuse or fail to make such return as herein required, or the assessor be not satisfied with the correctness thereof, the assessor shall, from the best information he can obtain from any source within his reach, make such assessment of the property and subjects of taxation, to be charged against such taxpayer, as he may deem just and lawful. Feb. 28, 1887, p. 3, §1.

3939. Assessor to fix value of each item of property.—The assessor shall, from such list and from all other information known to him, ascertain the amount and actual cash value of each item of property so returned by or listed to any taxpayer; and the assessor shall, in separate columns, enter on such list such amount and value, and the deduction for exemptions to which such taxpayer is entitled; and the assessor shall also add to such list any item of property owned by such taxpayer, or in which he has any interest whatsoever, and which he has failed or omitted to place on such list; and the assessor shall, upon demand, furnish the taxpayer with a certified copy of his assessment-list so amended. Feb. 18, 1895, p. 1192, §22.

3940 (475). **How values estimated; minerals and timber, when assessed separately.**—Real and personal property shall be estimated at its value in money, according to the best judgment the assessor can form upon information, inspection, or otherwise, taking into consideration, if real estate, its location, whether in town, city, or country, and whether it is vacant and lying idle, or is occupied and in use, and if occupied and in use, the rent derived therefrom, its proximity to local advantages, its quality of soil, growth of timber, mines, minerals, quarries, or coal-beds, and the amount and character of the improvements thereon; and mineral and timber interests, when they have been severed in ownership from the soil, by sale or otherwise, shall be separately assessed; and if the person returning such list demand it, the assessors shall enter the values of such property in his presence.*

State v. Bienville Water Co., 89 Ala. 325; Capital City Water Co. v. Bd. Rev., 92 Ala. 380; Ala. Min. L. Co. v. Comr's, 95 Ala. 105.

3941 (476). **How real estate may be described.**—The description of real estate may be as follows:

1. If it is an entire section, it may be described by the number of the section, township and range.

2. If it is a subdivision of a section, authorized by the United States for the sale of public lands, it may be described by a designation of such subdivision, with the number of the section, township and range.

3. If it is less or other than such subdivision, it may be described by metes and bounds, or in some way by which it may be known

4. If it is in a city, town, or village, surveyed and laid off, and a plat thereof is recorded in the office of the judge of probate of the

*As amended by revenue committee.

county, and it is a whole lot or block, it shall be described by the designation of the number thereof; and if it is a part of a whole lot or block, it may be described by metes and bounds, or in some other way by which it may be known; and it shall not be necessary to insert the quantity of such land in the assessment.

5. If it is a tract of which the subdivision is not known to the assessor, it may be described by metes and bounds, or in some other way by which it may be known or identified.

6. It shall be sufficient to describe lands to be assessed or sold for taxes, by initials, abbreviations and figures.

Description.—Driggers v. Cassady, 71 Ala. 529; Jones v. Pelham, 84 Ala. 208; Scott v. Brown, 106 Ala. 604; Zundel v. Baldwin, Ala. (21 So. 420); Smith v. Cox, Ala. (22 So. 78.).

3942 (477). **By whom property should be listed.**—The property of every minor shall be listed by his guardian, if he has one; if he has no guardian, by his father, if living; if the father is dead, by his mother, if living; if the mother is also dead, or is married, by the person having it in charge; of the wife, by the husband, if living and sane, and the parties reside together; if the husband is dead or insane, or is not living with the wife, by the wife; of any person for whose benefit property is held in trust, by the trustee; of every deceased person, by the executor or administrator; of those whose property is in the hands of receivers, by such receivers; of every firm, or body corporate or politic, by the partner, president, principal officer, or agent thereof; property in the hands or custody of any public officer or appointee of a court, by such officer or appointee; of those absent or unknown, by their agents, or the person having it in charge; of insane or idiotic persons of full age, by their guardians, if they have any; if they have no guardian, by the person having it in charge; of the lessors of real property, by such lessors; and all persons herein required to list property for others shall list it separately from their own, and in the name of the owner thereof.

Jackson v. King, 82 Ala. 432; Scott v. Brown, 106 Ala. 604; Freeman v. State, Ala. (22 So. 560).

3943 (508). **Assessment of property and receipts of telephone companies; penalty.**—The president, secretary, or manager of every telephone company, owning or operating lines, must annually, on or before the first day of February, make under oath to the assessor of the county in which such instruments are located, or such lines are operated, a return of the number of miles of telephone-wire in the county belonging to such company and the value thereof, the number of poles, batteries, instruments and articles of like kind in the county connected with its business and the value thereof, and the amount of the gross receipts of such company from its business done in the county during the preceding tax year; and in case such return is not made by any company within the required time, the assessor must ascertain, from the best information he can obtain, the amount and value of such property, and the amount of such re-

ceipts; and on the property and receipts so returned or ascertained, the assessor shall assess the taxes against such company; and when there has been a failure on the part of any company to make a return of such property and receipts within the required time, the assessor shall add to the assessment against such company a penalty of fifty per cent. on the amount thereof. Such assessment, as well as the assessment of the other taxable property of such company in the county, must be entered by the assessor in the book of assessments.

3944 (482). **When assessment of receipts made on information; penalty.**—When any person, or any company, corporation, or association, existing under the laws of this state, or under the laws of any other state or country, doing business in this state, is required to make to the assessor returns of the gross or net receipts, premiums or commissions of such business, and such returns are not made within the time required by law, but shall remain in default for the space of ten days thereafter, the assessor, after notice to the party required to make such returns, or if he is absent from the county, without notice, shall, upon the best information which he can obtain, ascertain the probable amount of such receipts, premiums or commissions, and shall assess to the person, company, corporation, or association, so in default, the amount so ascertained, with fifty per cent. thereon as a penalty; and the amount so assessed, including the penalty, shall be the amount on which the tax levied by law shall be collected. Feb. 28, 1887, p. 3, §9.

3945 (483). **Assessment made on information after February first; five per cent. penalty.**—Having failed to procure, upon verbal or written demand, from any delinquent, his list of taxable property before the first Monday in February, the assessor shall ascertain from inquiry or otherwise, the property and other subjects of taxation upon which such person is liable to be taxed, to the best of his information, and assess the same at its actual cash value, to the best of his judgment, and add five per centum of such value to the same as a penalty for non-assessment, which penalty shall not be remitted, except upon proof that the delinquent taxpayer was absent from the state, and had no resident agent therein during the time for rendering assessments, or when such taxpayer labors under disability of minority, or is a lunatic, or upon proof made that he was unable to meet the assessor at his appointment by reason of sickness. Feb. 18, 1897, p. 1489, §6.

3946 (484). **Assessments to "owner unknown"; how made; lands in one body not to be split up to multiply fees.**—Whenever the assessor, while performing the duties of his office, knows or learns of any property, real or personal, subject to taxation in his county, the owners of which he does not know and which is not embraced in any return made him, prior to the first of February, by any taxpayer, he shall assess the value to "owner unknown" according to the best information which he can obtain, and shall add to the actual cash value thereof five per centum as a penalty for non-assessment, which Ib. §7.

said penalty shall not be remitted by the court of county commissioners, except upon proper showing by the taxpayer that he was absent from the state and had no agent in the state at the time of the assessment, or that such taxpayer labored under disabilities of minority, was insane or was disabled by sickness from attending the tax-assessor's appointments; and when the tax-assessor finds a lot, tract or parcel of land that has escaped taxation, it shall be his duty to assess such land to "owner unknown," and in any notice or advertisement or motion for a decree of sale, it shall be described as so assessed; and the assessor shall be entitled to the same fees for making such assessment as for demands made by him on taxpayers. In such case lands lying in one body, other than lands platted and divided into lots, shall be assessed as a whole, unless the assessor has reason to believe that they belong to different owners, in which case all the lands lying in one body and supposed to belong to the same owner must be included in one assessment; and no fee shall be allowed the assessor for any assessment made in disregard of this provision, but the assessment is not for that reason, invalid. But no lands shall be assessed to "owner unknown" until the assessor shall have made a demand upon the person, if resident in the county, or by registered mail of a non-resident whose address is known, to whom said lands or property were last assessed, in the event said lands or property have been assessed, and said assessor shall make diligent inquiry to ascertain the name of the owner of said lands or other property.

Oliver v. Robinson, 58 Ala. 46; Lowe v. Martin, 79 Ala. 366; Crook v. Anniston City L. Co., 93 Ala. 4; Nat. Bank v. Baker Hill I. Co., 108 Ala. 635.

3947 (485). **Assessment of escaped taxes.**—Whenever the assessor, while assessing the property and other subjects of taxation in his county, shall discover that any person or property has escaped taxation in any previous assessment or assessments within five years next preceding, he shall assess the taxes against such person, or on such property, for the years during which such person or property has so escaped taxation.

Feb. 18, 1897, p. 1489, §8.

3948 (486). **Form and contents of assessment-list; assessor to make plat-book, etc.**—The taxable property, and other subjects of taxation, and the property exempt from taxation, shall be entered, or caused to be entered by the assessor, upon a blank assessment-list in the form prescribed by the auditor, with a full description of all property shown therein; and the assessor shall ascertain the value of each item or subject of taxation, and shall enter the same in appropriate columns upon such assessment-lists; and the assessor shall also enter, in appropriate columns, upon such lists, the amount of state, county and special taxes, on the aggregate of all real and personal property separately. And the assessor shall also make out a complete plat-book of all real estate in his county, unless such plat-book has already been provided, on a book to be prescribed by the state auditor, on which book the name of each owner shall be entered on the separate plat assessed to or by him where the same is practicable; for which

book each county court of commissioners or board of like jurisdiction shall pay if the price of the same be found by them to be reasonable, and shall also pay the assessor for making out such plat-book a sum not exceeding one hundred dollars in counties of twenty-five thousand inhabitants and upwards, and fifty dollars in counties of less than twenty-five thousand inhabitants.

Ib. §9.

3949. Assessor to deliver assessment-lists to court of county commissioners, etc.—Such assessment-lists shall be, by the assessor, delivered to the court of county commissioners, or other court of like jurisdiction, for examination in connection with the book of assessments, together with such supplemental assessments as he may make on or before the first Monday in June of each year, for examination by such court.

Feb. 28, 1887, p. 3, §7. Feb. 18, 1895, p. 1192, §17.

3950 (487). **Condensed statement of assessment and polls entered in books by assessor.**—The assessor must make and enter in a book, suitably ruled and substantially bound, a condensed statement of all assessments made during each tax year, showing, in separate columns, the names of persons assessed in each precinct, in alphabetical order, the number of acres of land and other real estate, with the description and value thereof, and the number, amount and value of all other taxable property, and subjects of taxation assessed to each person, and property exempt from taxation; and the number, amount and value of each separate item entered therein, together with the amount of the state tax charged to each taxpayer, shall be extended and footed up, the footings carried forward, from page to page, and the total amounts thereof footed up; and the assessor shall also keep and enter in a suitable book a list, alphabetically arranged, of all persons liable to poll-tax in each township or school district.

Riddle v. Messer, 84 Ala. 236.

Ib.

3951 (488). **Books and lists to be delivered to judge of probate.** On or before the first Monday in May of each year, the assessor shall deliver to the judge of probate of his county such assessment-book and poll-tax book, and also all assessment-lists, including supplemental assessment-lists; and such books and lists shall be open to the inspection and examination of all persons.

Ib.

3952. Judge of probate to examine book and if correct give duplicate receipts therefor; copy to be sent auditor.—Upon the delivery of such assessment-books to the judge of probate he shall carefully examine the same, and, if made correctly and in accordance with the law, he shall receive the same, giving duplicate receipts therefor to the assessor, one of which duplicates shall be by the assessor promptly forwarded to the auditor; but if the judge of probate find such books of assessment improperly made and not in accordance with the law, he shall forthwith report the facts to the governor.

Ib. §18.

3953 (489). **When assessor suspended for neglect of duty; appointment of commissioner in his stead.**—If the tax-assessor shall fail to comply with any of the provisions of the second and third

preceding sections, or is guilty of neglect of duty in carrying out other provisions of this chapter, he shall be suspended by the governor from the further performance of the duties of his office, and shall remain suspended, unless the general assembly by joint resolution restore him to office. During such suspension the governor shall appoint a tax-commissioner, who shall be at the time of such appointment a resident and qualified elector of the county in which such appointment is made, whose duty it shall be to assess the taxes of the county in which such tax-assessor has been suspended, and perform all the duties and be entitled to all the fees and compensation of the office according to law, after qualifying therefor as required by law for tax-assessors, and shall be amenable to all the rules, regulations, requirements and responsibilities declared by law for tax-assessors; and the assessor shall deliver the books and papers of his office to such commissioner.

Feb. 18, 1897, p. 1489, §10.

3954 (490). **Township and range to be noted on list and poll-tax book.**—The assessor, each year while making his assessments, shall note in the poll-tax book and on the assessment-lists, the township and range, or school district, in which each person liable for poll-tax resides; and he shall also note in the poll-tax book the number of each race, in each township or school district, liable to poll-tax. Tax-assessors shall have until the first Monday in July to deliver their poll-tax books to the judge of probate.

3955 (492). **Duty when taxpayer about to leave county.**—When the assessor has reason to believe that any person who has been assessed is about to leave the county, he shall at once notify the tax-collector, and on his failure to do so, he shall be liable for the full amount of the taxes due, or to become due upon such assessment.

Feb. 28, 1887, p. 3, §7.

3956 (493). **Duty to compute and enter county taxes and complete assessment-book.**—After the county taxes shall have been levied by the court of county commissioners, the assessor must compute the amount thereof owing by each taxpayer, and enter the same in the book of assessments opposite the name of such taxpayer, and otherwise complete such book according to law and the orders of the court of county commissioners.

Feb. 28, 1889, p. 108, §1.

3957. Land-book to be prepared by assessor.—It is the duty of the tax-assessor of each county in this state to procure at the expense of the county, a book properly ruled and bound, in which he shall enter a complete list of all the lands in the county, by the smallest subdivisions, beginning with the lowest section, township and range, proceeding in numerical order to the highest, and indicating the same by initial letters, abbreviations and figures in a marginal column on the left of each page.

Ib. §2.

3958. Form of book and entries to be made.—Such book shall contain not less than four blank columns on each page, in one of which, and opposite to each subdivision, the tax-assessor shall enter annually, stating at the top the year of entry, the word "public," if the same is public land, the word "school," if the same is school

land, the word "state," if the same has been bid in by the state for taxes; and opposite to such lands as are taxable, he shall enter the name of the reputed owner, but when the name of the owner is not known he shall write the words "owner unknown."

3959. Lands to be listed each year.—The assessor shall list such lands each year, as provided in the preceding section, by comparing the list of the preceding year with the assessment-sheet, with the list of lands bid in by the state for taxes, as furnished by the auditor, and with the supplement to the county tract-book, as furnished the judge of probate by the secretary of state. Ib. §3.

3960. Land-book to be delivered to judge of probate by first Monday in May.—The assessor shall deliver such book, with the listing complete for the year, to the judge of probate of his county, on or before the first Monday in May of each year, and the same shall be open to the inspection and examination of all persons until the first day of October following, or until such time thereafter as it shall be required by the tax-assessor. Ib. §4.

3961. Failure to make land-book renders assessor liable to suspension.—If any assessor fails to comply with the provisions of the four preceding sections, he shall be liable to suspension as provided in this chapter. Ib. §5.

3962. Judge of probate to receipt for land-book and certify fact to auditor.—It is the duty of the judge of probate to issue to the tax-assessor, when such book is delivered, if properly filled out for the year, according to the provisions of this article, a receipt for the same, and immediately certify the fact to the auditor. Ib. §8.

3963. Compensation of assessor for making land-book.—For the services rendered by the assessor in respect to such land-book, he is entitled to compensation, to be allowed by the court of county commissioners and paid by the county as follows: In counties whose population does not exceed ten thousand inhabitants, not more than fifty dollars; in counties whose population exceeds ten thousand inhabitants, and does not exceed twenty thousand, not more than seventy-five dollars; in counties whose population exceeds twenty thousand inhabitants and does not exceed thirty thousand, not more than one hundred dollars; in counties whose population exceeds thirty thousand inhabitants, and does not exceed forty thousand, not more than one hundred and twenty-five dollars; in counties whose population exceeds forty thousand inhabitants, and does not exceed sixty thousand, not more than one hundred and fifty dollars; in counties whose population exceeds sixty thousand, not more than two hundred dollars. Feb. 18, 1897, p. 1489, §11.

Looney v. Jackson Co., 105 Ala. 597.

ARTICLE 6.

ASSESSMENTS AGAINST RAILROAD AND TELEGRAPH COMPANIES; STATE BOARD OF ASSESSMENT, ITS POWERS AND DUTIES.

3964 (494). **Return to be made by railroad companies to auditor.**—On or before the first day of February of each year, the president, secretary, or auditor of any railroad company whose track or road-bed, or any part thereof, is in this state, or if such railroad is in the hands of a receiver, such receiver shall, under oath, make to the state auditor a return in writing of the total length of such railroad, including the right of way, road-bed, side-tracks and main track in this state, and specifying the total length in this state, and in each county, city and incorporated town in this state; and also of the number of the locomotive-engines, and passenger, freight, platform, construction and other cars of such company, and of the average amount of merchandise and supplies kept or carried on trains for sale, or other disposition for a profit by such company to employes or other persons in this state, for the year next preceding the return; and such return the auditor shall lay before the state board of assessment at its next meeting thereafter.*

State Auditor v. Jackson Co., 65 Ala. 142; Perry Co. v. Railroad Co., Ib. 391.

3965 (495). **Duty of auditor on failure to make such return.**—If such return is not made on or before the first day of February of each year, the auditor shall proceed to ascertain the items and values in the preceding section mentioned from the best information he can obtain, and report the same to the state board of assessment at its next meeting thereafter.

3966 (496). **State board of assessment.**—The governor, secretary of state, auditor and treasurer of the state shall constitute a board for the assessment of the items of property of railroad and other companies required to be returned to the auditor, to be known as the State Board of Assessment. The governor shall be president of such board, and a majority thereof shall constitute a quorum. In the absence of the governor the auditor shall be president pro tempore of the board.

Feb. 9, 1891, p. 493.

3967 (497). **Meetings of such board.**—Such board shall meet at the office of the auditor annually, on the first Wednesday in February, and if there should not be a majority of the board present at that time, the auditor shall immediately notify the governor of the fact, who shall appoint another day for the meeting of the board, as early as practicable thereafter, and of such appointment the auditor shall notify the other members and the attorney-general; and should any further failure to meet occur, the governor shall have the power, and he is required to repeat the appointment until a quorum is obtained; and of such subsequent appointment like notice must be given by the auditor.

3968 (498). **Assessment by board; penalty for failure to make**

*As amended by revenue committee.

return.—The board, when assembled, if ready to act, shall proceed to examine the returns made by railroad companies, and the reports of the auditor, when no such returns have been made, and determine the valuation of the different items of property required to be returned to the auditor, and to assess such property for taxation; and in case no return has been made by, or on behalf of any of such railroad companies, the board may add to the assessment which it may make against such company, a penalty of not exceeding fifty per cent. thereon.

3969 (499). **Adjournment of board; powers relative to obtaining data for assessments.**—If, at any meeting, the board should not have in its possession satisfactory data upon which to base an estimate of the value of the property with the assessment of which it is charged, or, from any other cause, is not able to make or complete any assessment, it may adjourn for any interval of time which may, in its opinion, be requisite to accomplish its object; and it shall have power to call upon any officer or agent of any railroad company, or upon any receiver in charge of the railroad of any company, for any records, books, or documents of any description pertaining to the business of such company, or for answers to any interrogatories which it may deem necessary to an intelligent discharge of its duties; and it shall also have power to require the attendance of any officer of any railroad company, or any other person, where the testimony of such officer or person may to it seem material.

3970 (500). **Attendance and duty of attorney-general at meeting of board.**—The attorney-general shall be present at every meeting of the board, to represent the interests of the state; and it shall be his duty to assist the board with his advice, or otherwise, and to make such suggestions and representations to it as he may deem advisable for the protection of the interests of the state; and his absence shall be sufficient cause for adjourning the session of the board.

3971 (501). **Record of proceedings; attorney-general decides when board equally divided.**—The board shall keep a record of its proceedings, which shall show what members were present at its meetings; and, when the members are equally divided upon any question, the attorney-general shall decide such question; and in every case in which he dissents from the conclusion of the majority of the board, he shall spread upon the records his reasons for such dissent.

3972 (502). **Principles of valuation of railroad property.**—The valuation of the property of railroad companies for taxation shall be made upon the same principles as the valuation of every other species of property—that is to say, the valuation of such property shall be had exclusively upon the consideration of what a clear fee-simple title thereto would sell for under the conditions under which that character of property is most usually sold.

3973 (503). **Notice to assessors, and copy to superintendent of companies; duty of assessors.**—When the board shall have completed the assessment of the property of any railroad company, the

auditor shall notify the tax-assessor of each county, through which such railroad runs, of the number of miles of track in his county, and the value thereof, and the proportionate value of the other property of such company assessed by the state board of assessment, and taxable in his county, which he must enter in the book of assessments, in addition to the assessment of other real estate, fixtures, machinery, tools and other property of such company, to be assessed as other property of like kind owned by private citizens of his county; and the auditor shall also send to the superintendent of each railroad company, so assessed by such board, a copy of his notification to the tax-assessor touching the assessment against such company.

3974 (504). **Returns to be made by telegraph companies.**—The president, secretary, auditor, or managing agent in this state of every telegraph company whose line, or any part thereof, is within the state, must annually, on or before the first day of February of each year, make, under oath, to the auditor, a return of the number of miles of telegraph-wire in the state belonging to such company, and the number of poles, batteries, instruments and articles of all kinds, in the state, connected with its business, specifying the several counties in which such property is situated, and the items of property situated in each of such counties, and if any of such companies, its officers, or agents fail to make such return within the time specified, the auditor must ascertain such items of property and values from the best information he can obtain.*

3975 (505). **Report of auditor to state board; assessment, and proceedings thereon; penalty.**—The auditor must lay before the state board of assessment, at its next meeting thereafter, such returns, and when not made by any company, he must report to the board the items of property and values of the company failing to make returns, as ascertained by him; and thereupon the board must proceed to examine such returns and reports, determine the valuation of such property and assess the same for taxation, as in the case of assessment of the property of railroad companies; and it may add to the assessment against any telegraph company failing to make returns within the required time, a penalty of not exceeding fifty per cent. thereon. Upon the completion of the assessment against any telegraph company by the board, the auditor shall give to the tax-assessors of the several counties in which such property is situated, and to the superintendent or managing agent of such company in this state, the same notification touching such assessment as is required of him in case of assessments against railroad companies; and thereupon such assessors must act in reference to such assessment, and to the assessment of any other property of such company taxable in their counties, as they are directed to act in case of assessments against railroad companies by the state board of assessment.

3976 (509). **Assessment of other property of railroad, etc., companies.**—All property, real or personal, belonging to railroad, tele-

*As amended by revenue committee.

graph, telephone, sleeping-car and express companies, which is not required by the provisions of this article to be returned to the auditor, must be returned to the tax-assessor of the county in which it is taxable, and by him assessed, as other property in the county is returned and assessed.

ARTICLE 7.

POWERS AND DUTIES OF COURT OF COUNTY COMMISSIONERS, AND DUTIES OF JUDGE OF PROBATE TOUCHING ASSESSMENTS; LEVY OF COUNTY TAXES.

3977 (510). Terms of commissioners' court.—For the performance of their duties under this chapter, the court of county commissioners, or other court having like jurisdiction, in each county, shall hold regular terms on the first Monday in June and the second Monday in July of each year, and such adjourned and special terms as may be necessary; and such terms, regular, adjourned and special, may continue until the business of the court has been completed. Feb. 18, 1897, p. 1489, §18.

3978 (511). Duties of the court at the June term.—The judge of probate, at the term of such court commencing on the first Monday in June, shall deliver to the court the book of assessments, the poll-tax book and all lists of assessments, as received by him from the assessor; and the courts shall then proceed to examine the same, and if they are prepared according to law, the court shall accept them; but the court must refuse to accept any assessment-list not returned in the manner prescribed by this chapter, unless it shall satisfactorily appear that the prolonged absence, or the non-residence of the taxpayer was the cause thereof; and all assessment-lists accepted by the court must be alphabetically arranged under its direction, and be carefully preserved for reference for five years, when they may be destroyed. The court must also order notice to be given for fifteen days, by advertisement in some newspaper published in the county, or if there be none, by posting the same at the court-house door and two other public places in the county, that the book of assessments has been prepared and is ready for inspection, and that the court will sit on the second Monday in July thereafter to examine the assessor's returns, and to correct any errors therein; and it shall be the duty of the judge of probate to see that such notice is given. Ib. §14.

Notice addressed to "the estate" of a decedent and left at his former residence is no notice.—Carlisle v. Watts, 78 Ala. 486; McGee v. Fleming, 82 Ala. 276.

3979. Correction of errors in assessments; proceedings; appeal.—Said court shall sit on the second Monday in July, for the purpose of hearing objections to the assessments as provided in the preceding section, and shall, if the notice therein provided has been given, determine the same, on the evidence which may be offered. Ib. §15.

Whenever objection is made, the court must cause the case to be stated on a docket in the name of the State of Alabama, as plaintiff, and the taxpayer as defendant, with a note of the objection set opposite the statement of the case. The assessor shall attend all trials of objections to assessments, and shall subpœna witnesses and introduce all documentary evidence which may be necessary to a full understanding of the question. If the taxpayer appears in person or by attorney, or has had five days' notice, the court shall raise or reduce the valuation of any property or subject of taxation and fix it at the sum which the evidence shows to be the fair market or real value thereof, and shall add such items of taxation and fix the value thereof, as may have escaped assessment. If necessary, the court may postpone the hearing to a future day, and may cause notice to the defendant to be served on him by the assessor, if he is a resident of the county, or on his agent, or attorney, if the taxpayer does not reside in the county, or if he does not reside in the county and has no agent or attorney therein, then notice shall be given by registered mail, by the assessor. In hearing such objections, the court shall receive only evidence touching the fair market or real value of the property, and shall take into consideration its character, whether improved or not, its surroundings, and, if it is productive, the amount of its average annual yield, and must render its decision at once, unless the taxpayer consents to a longer time, and the decision must be entered on the docket and signed by the presiding officer of the court. From the judgment of the court either party may appeal in five days to the next term of the circuit court, where the cause shall be tried de novo, but a bond in double the amount of the tax and probable cost shall be required of the taxpayer, conditioned to prosecute such appeal to effect, and pay such judgment as the court may render. If, on trial of the appeal, it should appear that the appeal was taken for delay, judgment must be rendered against the appellant and his sureties for the amount of the tax and costs and ten per cent. thereof. If no appeal is taken, the tax-assessor shall correct the assessment-lists according to the judgment of the court. The lien of the state on all the property of the taxpayer shall not be discharged by any appeal, but the same shall continue till the tax and costs and damages, if any, are paid in full. The court of county commissioners shall have power to correct any error or omission discovered after the July term. All appeals taken under this section shall be preferred cases, and must stand for trial at the term next after the appeal; and if the taxpayer is the appellant and the appeal is continued for the term, the court must order the taxpayer to pay the amount of taxes at which the owner assessed the property the current year, and such order of the court, entered of record, shall be sufficient authority to the tax-collector to collect that amount of the taxes claimed. But no change shall be made in the values of any preceding year when the taxes have been collected on such property.

Appearance a waiver of notice.—Com'rs v. Woodstock I. Co., 82 Ala. 151;

Tillis v. Com'rs, 91 Ala. 396. **Judgment separate as to each taxpayer**; joint certiorari not awarded.—Carter v. Com'rs, 80 Ala. 394. **Proceedings on appeal; evidence.**—Sullivan v. State, 110 Ala. 95; Ala. Min. L. Co. v. Com'rs, 95 Ala. 105; State v. Bienville Water Co., 89 Ala. 325.

Ib. §16. **3980 (513). Duty of assessor to attend court.**—The tax-assessor shall attend the terms of such court held in June or July, or any adjourned or special term thereof, while the court is engaged in examining, hearing and correcting assessments.

Ib. §17. **3981 (514). Assessments of escaped taxes reported to court; how entered, collected and paid over.**—Every assessment of escaped taxes against any person or property, made by the assessor, shall be by him reported in writing to the court of county commissioners, who, upon ten days' written notice to the person against whom the assessment is made, if known, is in the county, or has an agent therein who is known to the assessor, or to the court, to be served on him or his agent by the assessor, or his deputy, shall, at any regular, adjourned, or special term, proceed to allow, modify, or reject the assessment, as the justice of the case, upon the evidence adduced, may require. If the person against whom the assessment is made is a non-resident of the county, or has no known agent therein, ten days' notice shall be given by registered mail addressed to him at his residence, if the same be known. If the assessment is allowed as made, or is modified and allowed, it shall be entered in the book of assessments, collected and paid over as other assessments for the year in which it was made; but the rate of taxation thereon, both for state and county purposes, shall be governed by the rate for the year or years the subject of the assessment escaped taxation.

Ib. §18. **3982 (515). Intent and purpose of foregoing provisions; same liberally construed.**—The intent and purpose of the foregoing sections of this article is to have all property and subjects of taxation fairly assessed, at the value which would be realized therefrom by cash sale, but not a forced sale thereof, in such manner as such property and subjects are usually sold; and for this purpose, the power and authority conferred in this article upon the court of county commissioners shall be liberally construed. But said court is expressly prohibited from reducing the valuation of any property below the fair cash market value of the property, or what the property would sell for cash.

Ib. §19. **3983 (516). When collector notified of changes in assessment.** It shall be the duty of the court of county commissioners, if any errors are corrected, or any abatements or deductions in assessments are made at any time after the collector's book has been, by the judge of probate, turned over to the tax-collector, forthwith to notify such collector of the same.

Ib. §20. **3984 (517). Court may require assessor and collector to produce books and papers.**—The court of county commissioners shall have power to compel, at any time, the production before it of all such books and papers as by law are required to be made or kept by

the tax-assessor and tax-collector, relating to the revenue of the state or county.

Ib. §21. **3985** (518). **Levy of county tax.**—It shall be the duty of the court of county commissioners, at the term commencing on the first Monday in June, to levy the amount of taxes required for the expenses of the county for the current year, not to exceed one-half of one per cent. on the value of the taxable property, and the amount of other subjects of taxation in the county, as assessed for revenue to the state, as shown by the book of assessments after it has been corrected.

Ib. §22. **3986** (520). **Certificate on book of assessments after it is corrected and completed; warrant of collector.**—When the court of county commissioners, or other court of like jurisdiction, has completed its examination of assessments, and after the county taxes have been levied, and the assessor has corrected the book of assessments in accordance with the decisions of such court, and after the assessor has extended opposite the name of each taxpayer the amounts of the state and county taxes, and other tax, if any, with which such taxpayer is chargeable, and has footed at the bottom of each page, the aggregate amount of each of such taxes, carried his footings from page to page, and shown, in conclusion, the aggregate of each of such taxes, the presiding officer of such court shall certify on the book of assessments that the same has been examined, corrected and allowed by such court; and that the amount of state tax is $——, the amount of county tax is $——, the amount of special tax is $——, and the total amount of the poll-tax is $——, specifying the total amount of each of such taxes; and such certificate shall be the warrant to the tax-collector of the county to proceed to collect such taxes in the manner directed by law; if the poll-tax, or any part thereof, has been assessed in a separate book from the property tax, the presiding officer shall certify on such poll-tax book the amount of the poll-tax therein assessed, and such certificate shall be the warrant to the tax-collector to collect such poll-taxes.

The proper assessment-book, duly certified, is the collector's warrant.—Jackson Co. v. Gullatt, 84 Ala. 243.

Feb. 18, 1897, p. 1489, §23. **3987** (522). **On completion of the book of assessments, judge of probate to make abstracts for auditor and collector.**—When the book of assessments has been completed as herein provided, the judge of probate must, without delay, make out in duplicate, upon forms to be furnished by the auditor, a complete abstract of all real and personal property, as contained in the assessment-book of his county, showing the total amount and value of each class of taxable property, and property exempt from taxation, and the amount of tax on each item extended in a column, and a statement of the polls in his county and the amount of tax thereon, one of which he must forward to the auditor, not later than the first of September of each year, and the other he must deliver to the tax-collector by said date. The auditor shall report to the governor, any judge of

probate, who, for ten days after the time required, has failed to forward to the auditor the abstract of assessment of his county, and the governor shall forthwith require of such judge of probate an official report of the cause of such failure.

3988 (523). Judge of probate must also furnish abstract of poll-tax to superintendent of education and collector.—When the book of assessments has been completed as herein provided, the judge of probate must also make out in duplicate, on blank forms to be furnished by the superintendent of education, a correct statement of the number of polls assessed in his county, as contained in the poll-tax book, and of the aggregate amount of such taxes; one of which he shall forward to the superintendent of education not later than the first day of September of each year, and the other he shall deliver to the tax-collector. The superintendent of education must report to the governor any judge of probate failing to comply with the provisions of this section, and the governor shall forthwith require of such judge of probate an official report of the cause of such failure.*

3989. Judge of probate to furnish abstract-book to collector before October first; compensation forfeited by delay.—After the book of assessments has been completed as herein provided, the judge of probate must enter in a book, in concise form, the amount of taxes assessed against each taxpayer, showing separately the amount of taxes on real estate and personal property and other subjects of taxation, and the fees of the assessor, with a blank for the fees of the collector; and such book he must turn over to the tax-collector on or before the first day of October on which the taxes shall become due and payable; and for the services rendered by him in the preparation of such book, he shall receive compensation to be allowed by the court of county commissioners as follows, viz.: In counties where the aggregate assessed values of real and personal property amount to two million dollars or less, seventy-five dollars; when the assessed values amount to more than two, and not exceeding four million dollars, one hundred dollars; when the assessed values amount to more than four, and not exceeding six million dollars, one hundred and twenty-five dollars; when the assessed values are more than six million and not exceeding eight million dollars, one hundred and fifty dollars; and when the assessed values are more than eight million dollars, such compensation as may be fixed by the court of county commissioners, not less than two hundred dollars and not exceeding three hundred dollars; but any judge of probate who fails to complete such abstract by the time required shall forfeit all right to any compensation. Feb. 18, 1895, p. 1192, §86.

3990. Judge of probate to keep abstract of mortgages, etc., and file with assessor on October first.—The judge of probate shall keep a record, separate and apart from all other records, of every mortgage or article of agreement given to secure the payment of money, Ib. §28.

*As amended by revenue committee.

filed in his office for recording, which record shall set forth the following information, to wit: The date of the mortgage or agreement, the names of the parties thereto, the just sum of money secured, precise residence of the mortgagee or person to whom the debt is payable whenever such residence can be ascertained, a brief description of the real estate or other property upon which such mortgage is security, and the date or several dates when the said sum or sums thereby secured shall become due and payable; and it shall be the further duty of the judge of probate on the first Monday of October to file such record in the office of the tax-assessor with a certificate appended thereto, that the foregoing is a true abstract of all mortgages, liens and agreements in writing evidencing a debt recorded in his office since the first day of October next preceding; and such record, or a certified copy of any part thereof, shall be prima facie evidence of the truth of the statements there entered in any court in this state. Any judge of probate failing to comply with the provisions of this section shall be guilty of a misdemeanor.

Ib. §29. **3991. Auditor to furnish blank-book for abstract of mortgages; fees.**—The auditor, at the expense of the state, shall prepare and forward to the respective judges of probate blanks or blank-books upon which to make out such abstract and for such services so rendered by the probate judges in this state, they shall receive five cents for every instrument abstracted, to be paid by the party filing such instrument for record.

3992. (524). **List of insurance agents furnished assessor.**—The judge of probate must, on or before the tenth day of January of each year, furnish the tax-assessor with a list of all agents for insurance companies in his county, with the names of the companies represented by them, so far as the same are disclosed by any records or books in his office.

ARTICLE 8.

TAX-COLLECTOR; ELECTION, QUALIFICATION AND COMPENSATION; DEPUTIES.

3993 (525). **Tax-collector; election and term of office.**—There shall be elected, at the time, in the manner, and for the term provided by law, a tax-collector for each county in the state, who shall perform such duties as are, or may be prescribed by law.

3994 (526). **Official bond.**—Before entering upon the discharge of the duties of his office, the tax-collector must execute a bond in duplicate, in double the probable amount of the taxes that may at any one time be in his hands, to be determined for each county by the auditor, payable to the State of Alabama, with at least two sufficient sureties, to be approved by the judge of probate of his county, and conditioned faithfully to discharge the duties of his office, which are, or may be required by law during the time he continues therein, or discharges any of the duties thereof. One of such duplicates shall

be filed and recorded in the office of the judge of probate, and the other shall be filed in the office of the auditor.

State v. Lott, 69 Ala. 147; State v. Houston, 78 Ala. 576.

3995 (527). **Lien of bond.**—Such bond shall operate, from the date of its execution, a lien in favor of the state and county, on the property of the tax-collector, and from the date of his default, on the property of the sureties thereon, for the amount of any judgment that may be rendered against such tax-collector for the breach of any official duty; and any new or additional bond, given in pursuance of law by the tax-collector, shall operate a like lien.

County v. Timberlake, 54 Ala. 403; Knighton v. Curry, 62 Ala. 404; Lott v. Mobile Co., 79 Ala. 69; Schuessler v. Dudley, 80 Ala. 547; s. c., 85 Ala. 541; s. c., 86 Ala. 527; Cummings v. May, 110 Ala. 479.

3996 (528). **Oath of office.**—He shall also, before entering upon the discharge of the duties of his office, file in the office of the judge of probate of his county, an oath in writing, that he will faithfully and diligently discharge all the duties which are, or may be imposed upon him by law; and such oath must also be recorded.

3997. Commissions of tax-collector on general and special taxes. Feb. 18, 1895, p. 1192, §40. The tax-collector shall be entitled to receive commissions on taxes collected by him as follows, to wit: In counties where collections do not exceed twelve thousand dollars, the rate of commission shall be eight per cent. on the first thousand dollars, four per cent. on the second thousand dollars, and two per cent. on the remainder. In counties where the collection exceeds twelve thousand dollars, the commission shall be as above declared up to twelve thousand dollars, and one and one-half per cent. on the remainder up to sixty thousand dollars, and on all above sixty thousand dollars, one per cent. He shall also be entitled to receive two per cent. on all collections made by him of special taxes, whether such special taxes be levied for the state or county, to be paid out of such special taxes. The collector may retain his commissions upon collections when he makes payments into the state treasury.

3998. Commissions on poll-taxes and escaped taxes assessed and collected.—Feb. 18, 1897, p. 1489, §24. He shall be entitled to receive five per cent. of the amount of poll-taxes collected by him, and the same per cent. upon all escaped taxes, other than poll-taxes, assessed and collected by him.*

3999. Mileage to and from seat of government.—Feb. 18, 1895, p. 1192, §40. He shall receive five cents per mile in going to and returning from the seat of government, for the purpose of making returns and paying the taxes, once in each year, the distance to be the same as that established by law for members of the legislature.

4000. Cost of transmitting money to state treasurer allowed him.—Ib. He shall also be allowed the actual cost of transmitting his collections to the state treasurer, the same to be paid out of the treasury, or credited to the collector upon his making his annual settlement with the auditor.

*As amended by revenue committee.

Feb. 18, 1897, p. 1489, §25.

4001. Fees of collector.—For making actual demand on delinquent taxpayers, the collector shall be entitled to receive a fee of fifty cents from each taxpayer on whom such demand is made, which shall be charged against such taxpayer and collected for the use of the collector in the same manner and by the same means as taxes are collected, but he shall charge only one fee against each taxpayer, although such taxpayer may be assessed a poll-tax and also a tax on property. For making a levy on and sale of personal property for the collection of taxes, the collector shall be allowed a fee of one dollar to be collected out of the property, and in addition thereto he shall be authorized to collect out of such property the actual expenses of keeping and moving the same to the place of sale, provided that the collector may sell any personal property levied on at any place in the precinct that he may determine, or may move the same to the court-house of the county for sale. For the levy on and sale of a tract, parcel or lot of land assessed to one owner, or to "owner unknown," the collector shall receive a fee of fifty cents in addition to the demand fee on such delinquent taxpayer, the said fees to be made part of the decree of sale and collected with the taxes due on the land sold or levied on for sale.

4002 (532). **Authority to appoint, and liability for acts of deputies.**—The tax-collector is authorized to appoint deputies, and the acts of such deputies shall be recognized as his acts, and he shall be responsible for any loss sustained by any taxpayer, or by the state or county, by reason of acts done by such deputies in the line of their powers and duties. Such deputies shall receive no compensation for their services out of the state or county revenues.

Rodgers v. Gaines, 73 Ala. 218.

ARTICLE 9.

COLLECTING, REPORTING AND PAYING OVER TAXES; INTEREST; ESCAPED TAXES; ERRORS; INSOLVENCIES; LITIGATED TAXES; SETTLEMENTS; WHEN COLLECTOR SUSPENDED.

4003 (533). **Appointments by collector, and notice thereof.**—The tax-collector shall attend, at the voting-place in each election precinct in the county, twice in each year, at least thirty days apart, from eight o'clock in the morning until four o'clock in the afternoon, for the purpose of collecting the taxes of such precinct; and of the time and purpose of such appointments, he shall give at least thirty days' notice by publication in some newspaper, if one is published in the county, and by bills posted at five or more public places in each election precinct. At such appointments the collector shall receive from each taxpayer of the precinct, meeting him thereat and tendering the same, the taxes and fees assessed and charged against him.

4004 (534). **Effect of collector's failure to attend appointments; new appointments.**—If the collector fails to fill either of such ap-

pointments in any precinct, he shall make, and, after like notice, fill a new appointment; and failing to do so, he shall forfeit the fee allowed him for making demand on any taxpayer in such precinct who may become delinquent, for the taxes due by him, and who attended and was disappointed by the non-attendance of the collector at such original appointment.

Feb. 7, 1893, p. 308.

4005 (535). **Attendance at court-house; time in which appointments must be completed.**—The collector must be present at the court-house of his county for ten days preceding the first day of January of each year, except in the counties of Dallas, Jefferson, Mobile and Montgomery, in which he shall be present at the county-site thirty days preceding the first day of January, from eight o'clock in the morning until four o'clock in the afternoon, for the purpose of receiving taxes; and his appointments in the county must be completed in time to allow him to comply with the provisions of this section. But in the county of Montgomery the tax-collector may fill this appointment by remaining at his office in the city of Montgomery.

4006 (536). **Demand upon delinquent taxpayers.**—After the collector has completed his appointments, he must make a personal demand, in writing, upon delinquent taxpayers, or their agents charged with the duty of paying their taxes, wherever they may be found, for the amount of their taxes and fees; and when unable to find them, he shall leave such demand at their places of business or residence; and it shall be the duty of such delinquents forthwith to pay the taxes and fees assessed and charged against them. But a failure to comply with the requirements of this section shall not invalidate the title to any property sold for taxes.*

4007 (537). **Payment of taxes.**—It shall be the duty of the taxpayers in each precinct to meet the tax-collector at one of his appointments therein, and then pay to him their taxes; but if from any cause such payment is not made at either of such appointments, it may be made at any time before the taxes become delinquent, without incurring any penalty for failing to then make such payment; but if the taxes are paid after they have become delinquent, the taxpayer shall also pay all costs, fees and charges, if any, that may at the time of payment have lawfully accrued.

Taxes constitute a legal liability on the taxpayer, which may be enforced by action at law.—Perry Co. v. Railroad Co., 58 Ala. 546; State v. Fleming, 112 Ala. 179. **Repeal of law** under which taxes levied and assessed does not affect liability of taxpayer.—State v. Sloss, 83 Ala. 93.

Feb. 18, 1895, p. 1198, §38. Feb. 18, 1897, p. 1489, §27.

4008. Interest on taxes after becoming delinquent.—All taxes after becoming delinquent bear interest at the rate of eight per cent. per annum; and such interest must be added to and collected as part of the taxes, and reported in such manner as the auditor may prescribe.

4009 (538). **Receipt of collector to taxpayer.**—Upon the payment of taxes, and of fees and costs, if any, assessed and charged against him, by any taxpayer, the collector shall give him a receipt

*As amended by revenue committee.

therefor, taken from the stub-book mentioned in the next section, showing the name of the taxpayer, the date of payment and stating separately the amounts of state tax on real estate, state tax on personal property, special state tax, if any, specifying the purpose for which it is levied; county tax on real estate, county tax on personal property, special county tax, if any, specifying the purpose for which it is levied; and, if any interest has accrued, stating separately the amounts thereof on state tax, special state tax, county tax, special county tax and poll-tax; and stating separately the amounts of assessor's and collector's fees and other costs, if any; and stating the aggregate amount of all taxes, interest, fees and costs collected; and such receipt shall be prima facie evidence that such taxpayer has paid all his state and county taxes, for that year, on the real and personal property, and other subjects of taxation, contained in his assessment-list, and all fees and costs mentioned in such receipt.

4010 (539). **Stub-book of receipts kept by collector; delivery and production compelled by commissioners.**—The collector shall keep a stub-book, or books, of receipts for each tax year, from which all receipts given to taxpayers must be taken; and upon payment by any taxpayer, the collector shall enter on the stub from which the receipt is taken the name of such taxpayer, the date of payment and the several amounts of taxes, interest and costs, and the aggregate amount thereof, as specified in the receipt prescribed by the preceding section; and such stub and the receipt taken therefrom shall bear the same number and correspond in all respects. Such stub-book or books, at the end of the tax year, shall be delivered by the collector to the judge of probate, and the production thereof by the collector may be compelled by the court of county commissioners, at any time before the delivery thereof to the judge of probate.

Britton v. State, 77 Ala. 202; Jackson Co. v. Gullatt, 84 Ala. 243.

4011 (540). **Sale of personal property; no redemption allowed; payment before sale.**—After the first day of January of each year, the tax-collector must proceed, without delay, to levy upon any personal property of delinquent taxpayers for the payment of their taxes, and, after having first given ten days' notice of the time and place of sale, with a description of the property to be sold, by posting the same at three or more public places in the precinct of the residence of such delinquent, either at the time of assessment or of the levy, or, if he is a non-resident of the county, in the precinct in which the levy was made, he must sell the same, or so much thereof as may be necessary to satisfy the taxes, fees and expenses of sale, including expenses of keeping the property and moving the same to place of sale, in front of the court-house of the county, or at the voting-place, or, in case the amount of the taxes does not exceed five dollars, at any other place in the precinct in which such notice was posted, at public outcry to the highest bidder for cash; and the property so sold shall not be subject to redemption. For making such sale the collector shall be allowed a fee of one dollar, to be collected out of the property. But such taxpayer may, at any time before the

sale, pay the taxes, fees and expenses, including the collector's fee for the sale, the same as if it had been made, and thereby discharge the levy.

Rodgers v. Gaines, 73 Ala. 218; Solomon v. Willis, 89 Ala. 596.

4012 (541). Application of proceeds of sale; other levies and sales authorized.—The proceeds arising from such sale shall be applied to the payment of the expenses of the sale, and of the taxes and fees due from such taxpayer, and any balance remaining shall be paid to the owner of the property, if present at the sale; if not present, or if present and he refuses to receive the same, the collector shall deposit such balance with the county treasurer, or, if there be no county treasurer, with the judge of probate, taking a receipt therefor, and the same shall be kept as a special fund; and whenever such owner shall apply to the collector for such balance, the collector shall deliver to him the receipt therefor, and upon presentation thereof by such owner, the officer with whom such deposit was made shall pay to him the amount expressed in the receipt. But if such excess is not called for in three years after such sale, by the person entitled to receive the same, upon the order of the commissioners' court or board of revenue, stating the case or cases in which such excess was paid, together with a description of the lands sold, when sold, and the amount of such excess, the county treasurer shall pass such excess of money to the credit of the general fund of the county, and make record of the same on his books, and such money shall thereafter be treated as a part of the general fund of the county. Feb. 18, 1897, p. 1489, §28.

4013 (542). No property exempt from sale.—No property, whether exempt by law from taxation or not, shall be exempt from levy and sale for the payment of taxes and the fees and charges lawfully incurred in assessing and collecting the same.

Solomon v. Willis, 89 Ala. 596.

4014 (543). Collection by garnishment; collector to ascertain persons indebted to taxpayer.—If the collector ascertains, or has just cause to believe that any person is indebted to, or has in his possession, or under his control, any money, property, or choses in action belonging to any delinquent taxpayer in his county, he shall forthwith serve upon such person a notice in writing to appear before some court of the county having jurisdiction of the amount involved, naming the court, to answer as garnishee, and under oath, whether he was indebted to such taxpayer at the time of the service of the notice, or at the time of making his answer, or whether he will be indebted to him by any contract then existing, and if so, the amount of such indebtedness; and whether he has in his possession, or under his control, any and what money, property, or choses in action belonging to such taxpayer; and in such notice he shall state the amount of the taxes and fees due from such taxpayer. He shall also forthwith give such taxpayer, if in the county, written notice of the service of such garnishment; and the garnishment and notice he shall, without delay, return executed to the court before which

the garnishee is cited to appear. And it shall be the duty of the collector, as far as by diligent inquiry he can, to ascertain what persons are indebted to, or have in their possession any money, property, or choses in action belonging to any delinquent taxpayer.

4015 (544). **Proceedings on garnishment.**—Such proceedings shall be conducted in the name of the state; and if the notice served on the garnishee is returnable before a justice of the peace, the garnishee must answer within three days after service; if before the circuit court, or court having like jurisdiction, he must answer within the first three days of the term next thereafter, if service was made upon him ten days before the commencement of the term; but if not, at the second term next thereafter; and thereupon, or in the event of a failure to answer, such proceedings and judgment may be had as in cases of garnishments on judgments.

Feb. 18, 1895, p. 1192, §40.

4016 (545). **Costs in such proceedings.**—If the garnishment is returnable before a justice of the peace, the collector shall be entitled to one dollar, and the justice to two dollars, for their services in each case; if before the circuit court, or court having like jurisdiction, the clerk and sheriff shall be entitled to the same fees as in cases of garnishments on judgments, and the collector to two dollars.

Feb. 18, 1897, p. 1489, §29.

4017. Shares in private corporations subject to levy and sale for taxes of owner; procedure.—The shares or interests in the stock of private corporations are subject to levy and sale for the payment of all taxes assessed against the owner thereof. To accomplish such levy and sale the tax-collector shall make out and certify to the judge of probate a bill against such owner for the amount of the taxes due from him and any fees due the assessor or collector, and upon the approval thereof by the judge of probate, in writing indorsed thereon, such bill shall operate as a fieri facias, and thereupon such shares and interests may be, by the tax-collector or his deputy, levied upon and sold for the payment of such taxes and fees and all costs, without having or obtaining the possession of such stock, by indorsement on the bill approved by the judge of probate, stating the number of shares or other interests on which the levy is made, and giving notice thereof to the custodian of the books of transfer of such corporation, if he be known, and reside within the state, or if he be unknown, or if he reside without the state, by posting at the court-house door of the county, and by publication for three successive weeks, in a newspaper published at or near the principal place of business of such corporation; all transfers of the stock made in good faith, for a valuable consideration, before notice of the levy is given, are valid and operative, and must prevail over the levy. The levy and the sale thereunder may be made in the county of the residence of the taxpayer or in the county in which the corporation has its principal place of business; and on making the sale, the tax-collector must make to the purchaser a transfer in writing; and the purchaser has the right to require the proper officer to register such transfer on the books of the corporation, and, with or without such

registry, is entitled to all the rights and interest of the taxpayer as whose property such stock was sold.

Formerly such shares were not subject to levy and sale for taxes.—Kennedy v. Mary Lee Coal & R. Co., 93 Ala. 494.

Ib. §30.

4018 (546). When real estate may be sold for taxes.—When no personal property can be found out of which the taxes of any delinquent taxpayer can be collected, or an amount insufficient to fully satisfy such taxes, the real estate of such taxpayer, or the real estate upon which such taxes are a lien, may be sold for the payment thereof, or of the balance due thereon, in the manner hereinafter in this chapter prescribed. But the failure of the tax-collector to so exhaust such personal property shall not invalidate the sale of any real estate, but it shall render the tax-collector and the sureties on his official bond liable for the cost, which he shall be put to in redeeming such real estate, over and above the amount of the taxes, for the collection of which the sale is made, and interest thereon provided for in case of such redemption.

Feb. 28, 1887, p. 3, §20.

4019 (547). List of errors and insolvents and litigated taxes reported to the commissioners.—The tax-collector must, in each year, report on oath to the court of county commissioners, at the May term thereof, a list of the persons from whom the taxes assessed against them cannot be collected, with the amount of the taxes, state and county, assessed against each, which shall be termed "list of insolvents," and a list of such persons as have been overassessed, or otherwise wrongfully assessed, with the taxes, state and county, assessed against each, which shall be termed "list of errors in assessments," and any taxes which may be in litigation, in order that the same may be passed upon and determined by the court.

Treasurer v. Huggins, 8 Ala. 440; Perry Co. v. Railroad Co., 58 Ala. 546; State v. McBride, 76 Ala. 51.

Ib.

4020 (548). Duty of commissioners as to such lists; credits allowed collector.—At the same term, such court shall make a careful and rigid examination of such lists, and of the facts pertaining thereto, and shall ascertain and determine what taxes contained in the list of insolvents the collector could not, by the use of due diligence, have collected, and what taxes contained in the list of errors in assessment should not have been collected by him, by reason of such errors, and shall correct such lists accordingly, and shall credit the collector with the county taxes contained in such lists as corrected; and shall ascertain what taxes are in litigation and credit the collector with the county taxes so in litigation.*

Ib. §§11 20.

4021. Presiding officer to certify lists to auditor in ten days. Within ten days after the adjournment of the term of the court at which such allowances were made, the presiding officer of the court must certify to the auditor, separately, the itemized lists, as ascertained and allowed by the court, of insolvent taxes, errors in assessment and taxes in litigation, showing, in each instance, the name of the taxpayer and the amounts of state taxes and special state taxes

*As amended by revenue committee.

charged against him; and, in the case of taxes in litigation, showing also when and in what court suit was brought; and if such lists are found to be correct, the auditor must, upon the final settlement of the collector, allow him credit for the amounts of state taxes and special state taxes shown by such lists.

Ib. §§11, 40. **4022. New accounts to be opened against collector for insolvencies and taxes in litigation.**—Upon the allowance and credit to the tax-collector of insolvent taxes and taxes in litigation as provided in the two preceding sections, the court shall, in behalf of the county, state a new account against the collector for the amounts of insolvent county taxes and county taxes in litigation so allowed and credited; and upon the allowance by the auditor of the credits for insolvent state taxes and state taxes in litigation as provided in the preceding section, a new account must be stated by the auditor against the collector for the amounts of insolvent state taxes and state taxes in litigation so allowed and credited; and the collector shall remain charged with such sums until the liability is discharged as hereinafter provided.

Lott v. Mobile Co., 79 Ala. 69; Perry Co. v. Railroad Co., 58 Ala. 546.

Ib. **4023. Insolvent lists to be delivered to collector within twenty days from adjournment of court.**—Within twenty days after the adjournment of the term of the court at which such allowances were made, the presiding officer of such court shall, from the list of insolvent taxes so allowed, make out and deliver to the collector a separate list for each precinct in the county, showing the name of each insolvent taxpayer and the amounts of state and county taxes, and costs, if any, due from him; and such collector shall receipt for such lists.

Ib. **4024. Duty of collector to collect and report such insolvent taxes.**—It is the duty of the collector to proceed with all diligence to collect such insolvent taxes and to make monthly reports, payments and settlements thereof with the auditor and county treasurer as he is authorized and required to do in the collection of taxes which have not been declared insolvent; and he is entitled to the same commissions upon such insolvent taxes collected by him as are allowed by law upon the same character of taxes which have not been declared insolvent.

Ib **4025. Collector must make final report of uncollected balances of insolvent and litigated taxes; credits therefor.**—At the May term of the court held during the year next succeeding, the collector must make final report of the uncollected balance of such insolvent taxes, showing the name of each insolvent taxpayer from whom he has been unable to collect and the amounts of state and county taxes due from him, and an itemized report of the taxes still in litigation; and thereupon, if the court is satisfied that the collector has made diligent effort to collect such taxes, the court shall make an order allowing the collector credit for such insolvent taxes as he has been unable to collect and for taxes remaining in litigation, and shall credit him with all county taxes included therein; and the presiding

officer shall certify the same to the auditor who shall thereupon credit the collector with the state taxes included in the lists so allowed. The account for taxes remaining in litigation shall thereafter be kept in such manner as the auditor may prescribe.

4026. Collector must report on retiring from office; liability transferred to successor.—If the collector, while charged with the collection of insolvent taxes and taxes in litigation, shall retire from office before the expiration of the time allowed him to make such collections, he shall make, to the next term of the court thereafter, the report required by the preceding section; whereupon allowances must be made and certified and credits entered as provided in said section; but his successor in office must be charged with the several amounts so credited to the retiring collector, and is charged with the duty of collecting, reporting and paying the same, and making final report of uncollected balances in all respects as if no change in office had been made.

4027 (550). **Collection of taxes from taxpayer about to remove from county.**—It shall be the duty of the tax-collector, whenever, upon information or otherwise, he has good reason to believe that any person owing taxes, whether due or not, is about to leave or remove his property from the county, and thereby the collection of such taxes is endangered, to make out and certify to the judge of probate a bill against such person for the amount of such taxes and any fees due the assessor or collector; and upon the approval thereof by the judge of probate, in writing, indorsed thereon, such bill shall operate as a writ of fieri facias, which the collector is authorized to execute by levy and sale in the same manner as sheriffs are authorized to execute such writs when issued out of the circuit court.

4028 (551). **Liability of collector when notified of person about to leave county.**—On the failure of the collector to act when notified that any person assessed is about to leave the county, he shall be liable for the amount of the taxes assessed against such person.

4029. Collection of taxes from person who has removed from the county.—When the collector has information that any person owing taxes in his county, whether due or not, has removed to another county, he shall make out and certify to the judge of probate a bill against such person and procure the approval thereof by the judge of probate in all respects as provided in the second preceding section, and such bill shall operate as a writ of fieri facias; and the same may be executed by the collector if personal property of the taxpayer be found in his county, or may be by such collector forwarded to the collector of the county to which the taxpayer has removed, or to the collector of any county in which the taxpayer has any personal property; and the collector of such other county, on receipt of the writ, must proceed to execute the same as if issued in his county. He shall remit collections thereon to the collector sending him the writ, and is liable on his bond for any neglect of duty under this section. Feb. 18, 1891, p. 1198.

Feb. 28, 1887, p. 8, §21.

4030. Escaped taxes assessed and collected by collector; his powers in such case.—It is the duty of the collector, when engaged in the collection of taxes, for any year, if he discovers that any person or property within his county has not been assessed by the assessor with the tax or taxes lawfully chargeable to such person or property for that year, or any preceding year, not more than five years before that time, forthwith to assess and collect the taxes due on the same, and in writing notify the assessor of the fact so discovered in order that proper assessment of unassessed taxes may be made; and the collector has the same authority to administer oaths and propound questions as the assessor has, and any party failing or refusing to answer such questions or to give in his property shall be liable to the same penalties as provided in cases where parties fail or refuse to give in their property to the assessor, or answer the questions required to be propounded by the assessor.

Perry Co. v. Railroad Co., 58 Ala. 546; Lehman v. Robinson, 59 Ala. 219; Calhoun Co. v. Woodstock I. Co., 82 Ala. 151.

Ib.

4031. Collector must report escaped taxes to judge of probate; entry; abstract.—Whenever the collector assesses and collects any escaped taxes, he shall forthwith report the same to the judge of probate, who shall enter such assessment in the back part of the book of assessments, and shall certify the amount collected and the items of property so assessed in the form of an abstract to the state auditor, and the collector is chargeable with the same to the amount of taxes due the state and county respectively.

4032 (553). Separate account of poll-tax paid by each race kept.—The tax-collector shall keep a separate account of the amount of the poll-tax paid by persons of each race in each township or separate school district.

Feb. 28, 1889, p. 106.

4033. Poll-tax reported and paid into state treasury monthly; duplicate reports to county and state superintendents.—The collector must report and pay into the state treasury monthly, as other taxes are reported and paid in, all poll-taxes collected by him, after deducting the commissions allowed by law for assessing and collecting from the amount collected from each race in each township or separate school district; and he shall make a report thereof in duplicate showing the net amount due each race in each township or separate school district, one of which reports he shall furnish to the county superintendent of education of his county, and the other he shall forward to the superintendent of education.

Feb. 21, 1893, p. 1090.

4034. Annual consolidated report of poll-tax to be made to county and state superintendents.—The collector must, within ten days after making his final settlement with the auditor, make, to the county superintendent and to the superintendent of education each, a consolidated report of the net amount of poll-tax collected by him during the year and paid into the state treasury, showing by township or other separate school district the net amounts collected from each race separately.

4035 (555). Monthly reports and payments to be made by collector.—The tax-collector, within the first three business days of November, in each year, and within the first three business days of each month thereafter until he makes his final settlement for such year, shall make under oath to the county treasurer, or to the judge of probate, if there be no county treasurer in the county, an itemized report in writing, a copy of which shall be, by the collector, forwarded to the auditor, setting forth separately the taxes collected by him for the state and county during the preceding month and up to the date of such report, subsequent to his preceding report; and within five days after making such report he must pay to the state treasurer all state taxes then due from him to the state, by him before that time collected, and must then also pay to the county treasurer all county taxes then due from him to the county, by him before that time collected. The county treasurer shall give to the tax-collector a receipt in duplicate for such monthly report, one of which duplicates shall be promptly forwarded to the auditor by the tax-collector. Feb. 28, 1887, p. 3, §23.

State v. Houston, 78 Ala. 576.

4036 (556). Monthly report by county treasurer or judge of probate.—The officer receiving such report must, within three days thereafter, report in writing to the auditor the amount of state taxes collected by the collector as shown by his report; and if the collector fails to make his report within the time required by law, such officer must, within three days thereafter, report that fact to the auditor; and the auditor shall promptly report to the governor any failure on the part of a collector to comply with the provisions of the preceding section.* Ib. §45.

4037 (557). Collector must account to auditor in January and April; allowance for commissions, etc.—The tax-collector must also, on or before the tenth day of January and the tenth day of April in each year, account to the auditor, under oath, for the amount of taxes on or before the first days of January and April respectively, by him collected for the current year, and upon such accounting, shall be allowed, by the auditor, the amount then due him for commissions, fees, expenses and outlays, in the discharge of his duties, as provided by law.* Ib. §24.

4038 (558). Final settlement to be made with the auditor on or before the first of July.—On or before the first day of July in each year, the tax-collector must make final settlement, under oath, with the auditor, of all matters pertaining to the office of tax-collector, and pay over to the treasurer the balance which may be found due from him for amount of taxes with which he is chargeable under the laws of the state; and at that time he must also account to the auditor and pay over to the treasurer all money received by him from the sale of lands and other property which may have been sold for payment of taxes, and also account to the auditor for all the lands bought in by the state. He must also report under oath, to Ib. §25.

*As amended by revenue committee.

the auditor, and pay over to the treasurer, all escaped taxes assessed and collected by him.

Liability of collector for interest.—State v. Lott, 69 Ala. 147. Power of auditor to restate account.—State v. Brewer, 61 Ala. 318.

Ib. **4039. Final settlement to be made with county treasurer on or before the first of July.**—The collector must also, on or before the first day of July in each year, make final settlement, under oath, with the county treasurer for all the county taxes, which have been assessed and levied for the use of the county, and then pay over to the county treasurer the balance of the county tax due from him as such tax-collector, and not paid over prior to that date, according to the tax-books in the office of the judge of probate.

Ib. §26. **4040** (560). **Grounds of suspension by governor; appointment of commissioner during suspension.**—If any tax-collector, without good and sufficient excuse, to be decided by the governor, fails to comply with any of the requirements of the last five sections, or is guilty of neglect of duty under any of the provisions of this chapter, he shall be suspended by the governor from the further performance of the duties of his office, and shall remain suspended, unless the general assembly, by joint resolution, restore him to office; and on such suspension the governor shall appoint a tax commissioner, who shall continue in office during such suspension, and who, after giving the bond and taking the oath of office required of tax-collectors, shall collect the taxes of the county, and perform all the other duties pertaining to the office of tax-collector, and shall be subject to the same rules, requirements, responsibilities, penalties and liabilities as are made for, or imposed upon tax-collectors. On such suspension and qualification of such commissioner, the tax-collector shall deliver to him the books and papers of his office, and shall forthwith make settlements with, and pay over to the proper officers the public moneys in his hands.

4041 (561). **Settlement by personal representative on death of collector.**—On the death of any tax-collector, his personal representative, general or special, must, out of the first moneys that come into his hands belonging to the estate of his decedent, and as soon as the same come into his hands, pay to the proper state and county officers the amount of public funds collected by such decedent, and not paid over by him at the time of his death, and must make settlement with such officers of any unsettled accounts of such decedent with the state and county touching the affairs of his office, as soon as practicable, and not later than the time when tax-collectors are required to make final settlements.

4042 (562). **What receipts for special taxes must specify.** Whenever any tax-collector collects any special taxes, he shall specify in the receipts given to taxpayers the amount of such taxes, and the purpose for which they were levied and collected.

4043 (563). **Special taxes; how kept and paid over.**—Such special taxes, when collected, must be kept by the tax-collector separate

from all other public moneys in his hands, and must be paid over by him to the county treasurer as a distinct fund.

4044 (564). **How special taxes kept and disbursed by treasurer.** The county treasurer receiving such special taxes shall keep the same separate and distinct from all other public funds, and shall keep a separate account thereof, and shall promptly disburse the same upon orders drawn thereon by the legally authorized authority.

4045 (565). **How account of special taxes closed by treasurer.** When the object for which such special taxes were levied and collected shall have been accomplished, or, for any other reason, the same are no longer required for the purpose for which they were levied, the parties charged with the administration or application thereof shall notify the treasurer, who shall thereupon close the account of such taxes, and transfer any balance remaining to the account of the general fund of the county.

ARTICLE 10.

SALE OF LANDS FOR PAYMENT OF TAXES; DOCKET, NOTICE, DECREE AND CONDUCT OF SALE; CERTIFICATE AND DEED TO PURCHASER.

4046 (566). **Jurisdiction of probate court to order sale of land for taxes.**—The probate court of each county is empowered to order the sales of lands therein for the payment of taxes assessed on such lands, or against the owners thereof, when the tax-collector shall report to the court that he was unable to collect the taxes assessed against such land or the owner thereof without a sale of such land. Feb. 18, 1895, p. 1192, §46.

Without a rigid adherence to statutory requirements, a sale of land for taxes is void.—Johnson v. Harper, 107 Ala. 706; Nat. Bank v. Baker Hill I. Co., 108 Ala. 635.

4047 (567). **Docket of lands made by collector.**—It shall be the duty of the tax-collector, at the expense of the county, to procure a substantially bound book, in which he shall enter, in the manner usual in docketing causes for trial in the circuit court, each parcel of real estate assessed to any person against whom taxes have been assessed which are not paid, when a portion or all of such taxes are on such real estate, describing the same in the same manner as it is described in the assessment-list, and stating the amount of the unpaid taxes, penalties, fees and charges due by such person, specifying the amount due the state, that due the county, and that due for fees and charges; and he shall, in like manner, enter in such book each parcel of real estate which has been assessed to an "owner unknown," and the amount of taxes, fees and charges due thereon, stating in each case the fact that it was so assessed. The descriptions of such real estate shall be entered in alphabetical order, by precincts of the residence of the owners, if known, and they reside in the county; but if they are unknown, or do not reside in the county, then by the precincts in which the real estate is situate. Ib. §47.

Riddle v. Messer, 84 Ala. 236.

4048 (568). **Preparation of docket; time of delivery; effect of failure to deliver.**—Such book shall be prepared in a neat and orderly manner, in a fair and legible handwriting, with sufficient space in each case to make the necessary entries, and, in other particulars, in a manner suitable for the purposes for which it is to be used; and if it is not thus prepared, the judge of probate shall cause it to be so prepared, at the expense of the collector, and the cost thereof shall be deducted from his compensation. Such book shall be delivered to the judge of probate on or before the first day of March; but if, from any cause, there has been a failure to deliver the same by that time, it may be delivered thereafter.

4049 (569). **Notices issued to persons assessed; form of.**—On receiving such book, and as speedily as practicable, the judge of probate shall issue a notice addressed to each person against whom any unpaid taxes are assessed, as shown by such book, substantially in the following form:

"The State of Alabama, ——— county. } To ——— ———: The tax-collector has filed in my office a list of delinquent taxpayers, and of real estate upon which taxes are due. You are reported as delinquent, and the following real estate is reported as assessed to you, to wit: (Here insert description.) This is to notify you to appear before the probate court of said county, at the next term thereof, commencing on Monday, the —— day of ———, then and there to show cause, if any you have, why a decree for the sale of said real estate should not be made for the payment of the taxes assessed against you, and fees and costs.

——— ———, Judge of Probate."

Notice in the manner prescribed is essential to the jurisdiction.—Carlisle v. Watts, 78 Ala. 486; Riddle v. Messer, 84 Ala. 236. **Notice to one co-tenant not notice to others.**—Howze v. Dew, 90 Ala. 178. **Notice addressed to the "estate"** of a decedent and left at his late residence, **is no notice.**—Carlisle v. Watts, 78 Ala. 486; McGee v. Fleming, 82 Ala. 276.

4050 (570). **Service of notice; how made and returned.**—Such notice must be served by the tax-collector, or his deputy, by handing a copy thereof to the party to whom it is addressed, or his agent, or by leaving a copy thereof at the residence or place of business of such party, or his agent; and, with his indorsement thereon, showing how and when served, or if not served, showing his reasons for not serving the same, it must be by the collector, or his deputy, returned into court on or before the first day of the next term thereof. If the party against whom such assessment was made has since died, and letters testamentary or of administration have been granted upon his estate, such notice must, in like manner, be served on his personal representative, if a resident of the county. If the property or other subjects embraced in any assessment were returned or listed by a guardian, or other person, for a minor, or person of unsound mind, or by a trustee for his cestui que trust, except husband for wife, or by a personal representative for the estate of any deceased person, or by a public officer, receiver, or appointee of any court, such notice must, in like manner, be served on the party making the

return, or his successor, and also by publication or posting, as provided in the next succeeding section; and the book, to be prepared and delivered to the judge of probate by the collector, must show, in each case, by whom such returns were made.

4051 (571). **Notice by publication or posting; when given.**—If the person against whom such assessment was made is a non-resident of the county, and has no agent therein known to the tax-collector, or if he has died since making the return and there is no executor or administrator of his estate residing in the county, such notice may be given by publishing the same in a newspaper published in the county, or, if no newspaper is published therein, by posting the same at the court-house of the county for three weeks.

4052 (572). **Notice when lands assessed to "owner unknown"; form of, and how given.**—When any assessment is made to an "owner unknown," notice must be given by publication once a week for three successive weeks, in a newspaper published in the county, or, if no newspaper is published therein, by posting the same at the court-house of the county, for three weeks, substantially in the following form:

"The State of Alabama, ——— county. } To whom it may concern: Take notice that the tax-collector has filed in my office a list of delinquent taxpayers, and of real estate upon which taxes are due; and therein is reported as assessed to "owner unknown" the following real estate, to wit: (Here insert descriptions.) This is to notify you to appear before the probate court of said county, at the next term thereof, commencing on Monday, the —— day of ———, then and there to show cause, if any you have, why a decree for the sale of said real estate should not be made for the payment of the taxes assessed upon the same, fees and costs.

—— ——, Judge of Probate."

In answer to such notice, any person, having an interest in, or claim to such real estate, may appear and defend against the proceedings seeking to condemn the same to sale for the payment of the taxes assessed thereon. When practicable, all real estate, so assessed for any one year, must be incorporated in one notice, a separate paragraph only, in addition to the caption and conclusion, being given to the description of the real estate embraced in each assessment.*

Notice to appear before "the probate judge," instead of "the probate court," void.—Smith v. Cox, Ala. (22 So. 78).

4053. Publication, rate, control, etc.—The publication of notices under the three preceding sections is governed by the provisions of this article relating to the publication of notices of sales of land, so far as the same may be applicable; and the tax-collector may select the newspaper in which any notice under this article shall be given.

4054 (574). **Trial-term when service not made in time; issue of new notices; continuances.**—If the service of notice is perfected before the commencement of the term to which it is returnable, but

*As amended by revenue committee.

not in time for trial at such term, the cause shall stand for trial at the next succeeding term. If any notice is returned not served, other notices may be issued returnable to other terms of the court until service has been had; and if two notices to the same person are returned not served, notice by publication or posting may be given as in case of non-residence. For good and sufficient reason made known to the court, any cause may be continued from term to term.

4055 (575). **Collector to attend court; his book as evidence.** It shall be the duty of the tax-collector to attend at the several terms of the probate court, at which any of such causes are triable, and to have with him his tax-book; and such tax-book shall, in all cases, be accepted as prima facie evidence of the amount of taxes and fees due, and that the same have been properly assessed and charged, and are unpaid.

4056 (573). **Decree of sale.**—If service of such notice is perfected ten days before the commencement of the term to which the same is returnable, the cause shall stand for trial at such term; and if no defense is interposed, or, if interposed, and on the trial thereof the same is adjudged insufficient in law, or is not sustained by the evidence adduced, the probate court shall make and enter on such book or docket a decree of sale, substantially in the following form:

"It appearing to the court that taxes have been assessed against the person mentioned in this cause (or, if the assessment is to an "owner unknown," that taxes have been assessed on the real estate mentioned in this cause), to the amount of —— dollars for the year ——, and that the same are still due and unpaid; and it further appearing that notice of this proceeding has been given as required by law, and no valid defense has been interposed against the sale of said real estate for the payment of said taxes. It is, therefore, ordered, decreed and declared by the court, that the State of Alabama has a lien for the payment of said amount, and for the additional sum of —— dollars for fees, charges and costs in this behalf lawfully incurred, on the following described real estate, to wit: (Here insert description.) It is further ordered, adjudged and decreed by the court, that said real estate, or so much thereof as may be necessary, be sold for the payment of said delinquent taxes, and of said fees, charges and costs, and of the expenses of such sale."

Such decree, when entered, shall be signed by the judge of probate.

4057 (576). **Sales under decrees; notice of sale.**—Immediately at the end of any term of court, at which any decrees for the sales of real estate for the payment of taxes are rendered, or as soon thereafter as practicable, the tax-collector shall proceed to enforce such decrees by sales of the real estate ordered to be sold; and to this end, he shall give notice for thirty days before the day of sale, by publication in some newspaper published in the county, once a week for three successive weeks, and, at least three weeks before the day of sale, shall post a notice at the court-house in his county, and at some public place in the precinct in which the real estate is situate, that

at the time specified therein he will proceed to sell such real estate, separately describing such portions as are embraced in each decree, and stating the amount for which each decree was rendered (without stating the items of which said decree is composed), and the person against whom the taxes embraced in such decree were assessed, or, if assessed to "owner unknown," stating that fact. The rate to be charged for publishing such notice in a newspaper shall not exceed one cent per word for each insertion; but no allowance shall be made for the publication of any matter other than is required by law; and if no newspaper is published in the county, or the publication of such notice cannot be had in the county at the above rate, the posting of the notice at the court-house and at a public place in the precinct in which the real estate is situate, as required by this section, shall be sufficient notice of such sale.*

Compliance essential to validity of sale.—Johnson v. Harper, 107 Ala. 706; Nat. Bank v. Baker Hill I. Co., 108 Ala. 635.

4058 (583). **Abbreviations in advertisements and entries authorized.**—In all advertisements and notices of the proceedings in the probate court for the sale of lands for taxes, and of such sales, and in all entries required to be made by the judge of probate, tax-collector, or other officer, initial letters, abbreviations and figures may be used to indicate townships, ranges, sections, parts of sections, blocks and lots, and dates and amounts; and in estimating the costs of publication, each amount, date, or number, and each initial letter or abbreviation shall be counted as a word.

4059 (577). **Time and place of sale; judge of probate attends sales and makes record thereof.**—Such sales shall be made in front of the door of the court-house of the county, at public outcry to the highest bidder for cash, between the hours of ten in the morning and four in the afternoon, and shall continue from day to day until all the real estate embraced in the decrees has been sold. The judge of probate must attend such sales, and make a record thereof in a book to be kept by him in his office for that purpose, in which he shall describe each parcel of real estate sold, and state to whom sold, the price paid by the purchaser, the date of sale, and if no sale was effected, stating that fact, and the reason therefor, and also, in separate columns, the amounts, as taken from the book or docket in which the decrees are entered, of each kind of tax, penalties, and of the fees and costs in each case; and he must also enter in such docket, in each case, the land sold under the decree in that case, the purchaser thereof, and the amount at which it was sold.

4060 (578). **How real estate offered for sale; minimum price.** It shall be the duty of the tax-collector, in making such sales, if practicable, to so offer such real estate for sale that only such portion thereof may be sold as is necessary to satisfy the decree under which it is sold, and the expenses of sale; but no sale shall be made for a sum less than the amount of such decree and expenses.

4061 (579). **Second sale on failure of bidder to pay.**—The party

*As amended by revenue committee.

to whom any real estate at such sale is knocked off shall forthwith pay to the collector the amount of his bid, and, on his failure to do so, the collector must proceed at once to again offer it for sale.

4062 (580). **When real estate bid in for state.**—If no person shall bid for any real estate offered at such sale an amount sufficient to pay the sum specified in the decree of sale, and the costs and expenses subsequently accruing, the judge of probate shall bid in such real estate for the state, at a price not exceeding the sum specified in such decree and such subsequently accruing costs and expenses.

4063 (581). **Certificate to purchaser; contents.**—As soon after the sale as practicable, the tax-collector must make out and deliver to each purchaser, other than the state, a certificate of purchase, which shall contain a description of the real estate sold, and show that the same was assessed by the assessor, to whom assessed, the date of assessment, for what year or years the taxes were due, the amount of taxes due thereon, distinguishing the amounts due the state and county, and for school purposes, and the fees and costs, that it was advertised and how long, and that it was offered for sale, and at what time, and who became the purchaser, and at what price.

Johnson v. Harper, 107 Ala. 706.

4064 (582). **Certificate of purchase to state; lands bid in not thereafter assessed.**—For the real estate bid off for the state, in each case, the judge of probate shall make out a certificate of purchase to the state, of like import to the one provided for in the preceding section, and deliver the same to the tax-collector, who shall, on final settlement, deliver all certificates received by him from the judge of probate to the auditor, who shall cause the same to be recorded in a book kept in his office for that purpose, and properly indexed for convenient reference. Lands bid in for the state shall not be thereafter assessed, except as hereinafter provided, until the same have been redeemed from, or sold by the state.

Feb. 28, 1887, p. 3, §28.

4065 (584). **Advertisements of sale; what part paid by state.** The cost of advertising the caption and conclusion of notices for the sale of real estate for the payment of taxes, and so much thereof as pertains to those portions of such real estate as are bid off for the state, must be paid by the state; and the auditor shall, after every such sale, and after the collector has filed with the auditor the certificates of sales and purchases by the state, as provided in the preceding section, audit the account of the owner or proprietor of the newspaper in which such notices were published, and shall draw his warrant on the treasurer in favor of such owner or proprietor for the amount he may find to be lawfully due him, and payable by the state, and the treasurer shall pay the same; but the state shall pay no other costs attending any tax sale.

Burke v. Blan, 79 Ala. 97.

4066 (585). **What portion of such advertisements payable by collector.**—The cost of advertising the part of such notices, pertain-

ing to lands purchased by others than the state, shall be covered by the bids of the purchasers, and collected by the collector as part of the purchase-money, but for the use of the owner or proprietor of the newspaper in which such notices were published, and by the collector paid over to him on demand; and for such portions of such costs, as well as for the cost of advertising lands inserted in the notice by the mistake of the collector, such collector and the sureties on his official bond shall be liable to the owner or proprietor of such newspaper.

4067 (586). **Certificate of purchase assignable.**—The certificate of purchase, delivered by the tax-collector to a purchaser at such sale, is assignable by indorsement; and an assignment thereof vests in the assignee, and his legal representatives, all the right and title of the original purchaser.

4068 (587). **Officers forbidden to purchase at sale; penalty; sale void.**—If the assessor, collector, judge of probate, or other presiding officer of the court of county commissioners shall, directly or indirectly, be concerned or interested in the purchase of any real estate sold for taxes, the sale shall be void, and he and the sureties on his official bond shall be liable to a penalty of not exceeding five hundred dollars, to be fixed by the jury, which may be recovered in an action in the circuit court, or court of like jurisdiction, brought on the relation of any taxpayer of the county, in the name of the state, one half of the amount recovered to be paid to the relator, and the other half to the state.

4069 (588). **Appeal from decree of sale, and proceedings thereon.** From any decree rendered by the probate court for the sale of real estate for the payment of taxes, the defendant in the cause, or the state, in behalf of itself and the county, may appeal to the next term of the circuit court, or court having like jurisdiction, of the county, within thirty days after the rendition of the decree. If the defendant appeals, he must execute a bond in double the amount of the decree, payable to the State of Alabama, with sufficient surety, to be approved by the judge of probate, and conditioned that he will prosecute the appeal to effect, and pay such judgment as the appellate court may render thereon; but the state shall not be required to execute any bond. The solicitor of the circuit or county shall represent the state on such appeal, and of the pendency thereof the judge of probate must give him notice in writing; and on appeal by the state, notice thereof shall be given the defendant, as in other cases of appeal from that court to the circuit court. Such appeal must be tried de novo, upon an issue made up under the direction of the court. If the defendant appeals, and the issue is decided adversely to him, the court must render judgment against him and his sureties in favor of the state for the amount of the taxes, fees and costs, besides the costs of the appeal; and such judgment shall be a lien upon the lands described in the decree from which the appeal was taken, which lien, with a description of the lands, must be declared in the judgment.

4070 (589). **Disposition of money collected on judgment.**—Any money collected on such judgment, except for costs of court, must be paid to the tax-collector, who shall account for and pay the same over to the officers and persons entitled to receive the same.

Feb. 18, 1895, p. 1192, §41.

4071 (590). **Fees and costs.**—For each notice to a delinquent landowner to show cause why a decree of sale should not be rendered, the judge of probate is entitled to a fee of fifty cents, and for each decree of sale, fifty cents; the tax-collector shall have twenty-five cents for serving each notice, but for his attendance at court he shall receive no pay; and in case of appeal, the sheriff and the clerk of the appellate court shall be entitled to the same fees as for like services in other cases.

Ib. §42.

4072 (591). **Disposition of excess of purchase-money; when covered into general fund of county.**—The excess arising from the sale of any real estate remaining after paying the amount of the decree of sale, and costs and expenses subsequently accruing, shall be paid over to the owner, or his agent, or to the person legally representing such owner, or into the county treasury as in case of excess arising from the sale of personal property for taxes; and if deposited in the county treasury, it may be paid therefrom to such owner, agent, or representative in the same manner as the excess arising from the sale of personal property sold for taxes is paid. But if such excess is not called for within three years after such sale, by the person entitled to receive the same, upon the order of the court of county commissioners or board of revenue, stating the case or cases in which such excess was paid, together with a description of the lands sold, when sold, and the amount of such excess, the county treasurer shall pass such excess of money to the credit of the general fund of the county, and make a record on his books of the same, and such money shall thereafter be treated as a part of the general fund of the county.

Ib.

4073. Excess may be paid to owner within five years.—At any time within five years after such excess has been passed to the credit of the general fund of the county as provided in the preceding section, or section 4012 (541), the court of county commissioners or board of revenue may, on proof made by any person that he is the rightful owner of such excess of money, order the payment thereof to such owner, his heir or legal representative; but if not so ordered paid within such time, the same shall become the property of the county.*

Feb. 28, 1887, p. 3, §33.

4074 (592). **Deed to purchaser.**—After the expiration of two years from the date of the sale of any real estate for taxes, the judge of probate then in office must execute and deliver to each purchaser, other than the state, or person to whom the certificate of purchase has been assigned, upon the return of the certificate and payment of a fee of one dollar to the judge of probate, a deed to each lot or parcel of real estate sold to such purchaser, and remaining unredeemed, including therein, if desired by the purchaser, any number of parcels or lots purchased by him at such sale; and such deed shall con-

*As amended by revenue committee.

vey to, and vest in the grantee all the right, title, interest and estate of the person whose duty it was to pay the taxes on such real estate, and the lien and claim of the state and county thereto; but it shall not convey the right, title, or interest of any reversioner or remainder-man therein.

Jones v. Randle, 68 Ala. 258; Lassitter v. Lee, 68 Ala. 287; Bonner v. Phillips, 77 Ala. 427; Bolling v. Smith, 79 Ala. 535; Jackson v. King, 82 Ala. 432; Alexander v. Savage, 90 Ala. 383; Gist v. Beaumont, 104 Ala. 347; Jackson v. Kirksey, 110 Ala. 547; Zundel v. Baldwin, Ala. (21 So. 420); Smith v. Cox, Ala. (22 So. 78). See also citations to sections 4081 and 4083.

4075 (593). Deed to be acknowledged; effect as evidence. Such deed shall be signed by the judge of probate in his official capacity, and by him acknowledged before some officer authorized to take acknowledgments of deeds, and it shall be, in all the courts of the state, prima facie evidence of the facts recited therein, in any controversy, proceeding, or suit involving or concerning the rights of the purchaser, his heirs, or assigns to the real estate thereby conveyed.

Acknowledgment.—Jackson v. Kirksey, 110 Ala. 547. **Void tax deed as color of title.**—Alexander v. Savage, 90 Ala. 383; Gist v. Beaumont, 104 Ala. 347; Nat. Bank v. Baker Hill I. Co., 108 Ala. 635.

4076 (594). Forms of certificates and deeds prepared and distributed.—The attorney-general must furnish the auditor with suitable forms of certificates of purchase and deeds to purchasers at sales of real estate for taxes, from which the auditor shall cause to be printed a sufficient number of blank certificates and deeds, and distribute the same among the several judges of probate, to be used by them and tax-collectors on sales of lands for taxes.

Jackson v. Kirksey, 110 Ala. 547.

4077 (596). Assessment of lands bid in by the state, and not redeemed or sold.—It shall be the duty of the auditor to transmit to the tax-assessor of each county, by the first day of August of each year, a descriptive list of all the lands in the county reported to him as bid in for the state during the year, and not redeemed; and it shall be the duty of the assessor to present such descriptive list to the court of county commissioners at the term of such court then next ensuing; and it shall be the duty of the court of county commissioners, assisted by the assessor, to compare such list carefully with the record of sales of lands for taxes in the county and of the redemption thereof, and to ascertain if any of such lands have been redeemed, or were not liable for the taxes for which they were sold; and if any of such lands are ascertained to have been redeemed, or to have been sold for taxes for which they were not liable, the court of county commissioners shall promptly certify the facts to the auditor, and shall correct the record of land sales in the probate office. The assessor shall put a fair valuation on the remainder of the lands contained in such descriptive list, and shall calculate the state and county taxes on the same, and shall enter such valuation and taxes upon such descriptive list and return the same to the auditor, who shall thereupon add the taxes to the amount for which the

Feb. 28, 1887, p. 3, §30.

lands were sold. The assessor shall furnish to the judge of probate a copy of the list returned to the auditor, and it shall be the duty of the judge of probate to enter the taxes therein calculated on the record of sale thereof kept in his office.

ARTICLE 11.

RIGHTS AND REMEDIES OF PURCHASERS OF LAND AT TAX SALE; STATUTE OF LIMITATIONS.

4078 (597). **When sale invalid, lien of state and county passes.** When the sale of any land sold for the payment of taxes is, for any cause, ineffectual to pass the title to the purchaser, except in the cases in which such sales are in this chapter expressly declared to be invalid, such sale shall operate as an assignment to the purchaser of the rights and liens of the state and county in and to the land sold.

4079 (598). **Liability, when land not liable is sold.**—When lands are sold for taxes which are not liable therefor, the purchaser may recover from the officer by whose fault or neglect the assessment or sale was made, and the sureties on his official bond, the amount of purchase-money paid by him therefor, with interest thereon from the day of sale.

Feb. 18, 1897, p. 1489, §31.

4080. Liability of assessor and collector for failure of title attributable to their negligence.—In case of the sale of any real estate, either for the collection of the taxes thereon, or for the collection of other taxes due by the owner thereof, said real estate shall be described in all the proceedings incident to the condemnation and sale thereof, and in the certificate and deed issued to the purchaser, at said sale, in the manner described in the assessment thereof, and in case of the failure of the tax-collector to so describe said property in any part of said proceedings, certificate or deed, by reason of which said deed may be held insufficient to convey the property intended to be referred to, the said tax-collector and the sureties on his official bond shall be liable to the purchaser at said tax sale. Should, however, the property be insufficiently described in the assessment thereof, the said tax-assessor and the sureties on his official bond, shall likewise be responsible to the purchaser, or in case the said liability has been enforced against said tax-collector, then the said assessor and the sureties on his official bond shall be liable to the tax-collector, or his sureties, for whatever sum he shall have been compelled to pay to said purchaser on account of said defect.

Feb. 28, 1887, p. 3, §31.

4081 (599). **The state or any other purchaser may bring ejectment or unlawful detainer.**—The state or any other purchaser of lands at a tax sale, or any one claiming under him, may, after the expiration of six months from the day of sale, maintain an action of ejectment, or of unlawful detainer, or a statutory real action in the nature of ejectment, for the recovery of the possession of the lands purchased at such sale, and shall be entitled to hold the possession

thereof, on a recovery, but subject to the right of redemption hereinafter provided for. When the state is the purchaser, the auditor may, if in his judgment it is to the interest of the state, after the expiration of six months from the day of sale, institute legal proceedings in the name of the state to recover possession of the real estate so bid in at tax sale, and when so recovered such real estate shall stand subject to sale, or it may be rented out if the governor so directs.

Purchase by tenant enures to benefit of landlord.—Jackson v. King, 82 Ala. 432. **And by a tenant in common, to benefit of all co-tenants.**—Johns v. Johns, 93 Ala. 239. **But purchaser entitled to reimbursement.**—Ib. **Collusive purchase.**—Thorington v. City Council, 88 Ala. 548; s. c., 94 Ala. 266. **When purchase for benefit of mortgagor void as against purchaser at mortgage sale.**—Gilmer v. Smith, 103 Ala. 228. **When tax deed void.**—Jones v. Pelham, 84 Ala. 208; Alexander v. Savage, 90 Ala. 383; Gist v. Beaumont, 104 Ala. 347; Scott v. Brown, 106 Ala. 604; Jones v. Harper, 107 Ala. 706; Nat. Bank v. Baker Hill I. Co., 108 Ala. 635; Jackson v. Kirksey, 110 Ala. 547; Zundel v. Baldwin, Ala. (21 So. 420); Smith v. Cox, Ala. (22 So. 78). **Proof of regularity devolves on party claiming under tax sale.**—Johnson v. Harper, 107 Ala. 706. **Tax deed as color of title.**—Gist v. Beaumont, 104 Ala. 347; Nat. Bank v. Baker Hill I. Co., 108 Ala. 635.

4082. Liability of officers when suit by purchaser defeated by reason of failure of duty on their part.—If, in any suit brought for the possession of land sold for taxes, the title of the purchaser at the tax sale shall be defeated on account of any defect in the proceedings under which the sale is had, or on account of any defect in or insufficiency of, the process by which the owner of the land was brought before the probate court, as is provided, or in the service of said process, or by reason of the failure of the judge of probate, on account of any negligence or refusal on his part to produce, when called upon, sufficient evidence of the proper issuance and service of said notice or process, or by reason of any other defect or insufficiency in any of the proceedings for the condemnation and sale of said property, or of the certificate or deed to said purchaser, or any two or more of said causes, the officer or officers, on account of whose omission or error said defect or insufficiency, or defects or insufficiencies, shall have arisen together with the sureties on the official bond, shall be liable to the purchaser, whose title shall be thus defeated, and to his assignees, for the full sum of the purchase-money paid by him at said tax sale, for said property, the cost of the suit in which said title failed, which the purchaser shall have incurred in attempting to maintain his title under said tax sale, together with the interest upon each of these amounts at the rate of twelve per cent. per annum; *Provided*, that suits under this section shall be commenced within five years from the sale. Feb. 18, 1897, p. 1489, §32.

4083 (600). **When plaintiff recovers purchase-money, etc., though cast in suit for land.**—If, in any suit brought by the purchaser or other person claiming under him to recover the possession of lands sold for taxes, a recovery is defeated on the ground that such sale was invalid for any other reason than that the taxes were not due, the court shall forthwith, on the motion of the plaintiff, impanel a jury to ascertain the amount of taxes for which the lands were liable at the time of the sale, and for the payment of which

they were sold, with interest thereon from the date of sale, and the amount of such taxes on the lands, if any, as the plaintiff, or the person under whom he claims, has, since such sale, lawfully paid, with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate of twelve per cent. per annum; and the court shall thereupon render judgment against the defendant in favor of the plaintiff for the amount ascertained by the jury, and the costs of the suit, which judgment shall constitute a lien on the lands sued for, and payment thereof may be enforced as in other cases.

Complaint amendable at trial so as to make the statutory claim.—Wartensleben v. Haithcock, 80 Ala. 565. **Municipal taxes paid** by purchaser recoverable.—Turner v. White, 97 Ala. 545. **When the taxes were not due.** Watson v. Kent, 78 Ala. 602.

4084 (601). **When defendant entitled to judgment for same, though cast in suit for land.**—If, in a suit brought against such purchaser, or other person claiming under him, to recover possession of lands sold for taxes, the defendant claims and defends under the tax title, and his defense fails on the ground that such sale was invalid for any other reason than that the taxes were not due, and the plaintiff recovers, the court shall forthwith, on the motion of the defendant, impanel a jury to ascertain the amount of taxes for which the lands were liable at the time of the sale, and for the payment of which they were sold, with interest thereon from the day of sale, and the amount of such taxes on the lands, if any, as the defendant, or the person under whom he claims, has, since such sale, lawfully paid, with interest thereon from the date of such payment, the interest on both amounts to be computed at the rate of twelve per cent. per annum; and the court shall thereupon render judgment against the plaintiff in favor of the defendant for the amount ascertained by the jury, and the costs of the suit, which judgment shall constitute a lien on the lands sued for, the payment of which may be enforced as in other cases; and no writ of possession shall issue until such judgment has been satisfied.

Turner v. White, 97 Ala. 545.

4085 (602). **Tender by party claiming adversely to tax title, and effect thereof.**—In any suit under the provisions of either of the last two preceding sections, the party claiming adversely to the tax title may, at any time, tender the amounts required in such sections to be ascertained by the jury, with interest as therein prescribed; and no costs accruing after such tender shall be recovered of him, if, upon a refusal of the tender, he shall pay such amounts into court.

4086 (603). **Statement of claims under tax title made in pleadings.**—In a suit brought to recover the possession of lands, if either party claims under a tax title, he must, in order to entitle himself to the benefits of the three preceding sections, state in his complaint or plea, that he claims or defends, as the case may be, under a tax sale, giving the date of such sale; and such statement shall be a

sufficient averment of the facts necessary to entitle him to such benefits.

Complaint amendable at trial so as to make the statutory claim.—Wartensleben v. Haithcock, 80 Ala. 565.

4087 (604). **Effect of redemption or tender in suit by party claiming under tax title.**—If, in any suit brought to recover the possession of lands sold for taxes, by or against the purchaser, or other person claiming under him, it is shown that the party claiming adversely to the tax title, being entitled to redeem, made within the time allowed for redemption, the payment required by law for the redemption of such lands, or made tender thereof, and the amount of such tender has been paid into court for the opposite party, judgment must be rendered in his favor for the costs accruing after such payment or tender.

4088 (605). **Books, etc., of judge of probate and collector as evidence.**—Unless otherwise provided, on the trial of any issue involving the sale of real estate for taxes, or the redemption thereof, the books and records belonging to the office of the judge of probate or tax-collector, and required by law to be kept, or certified copies therefrom, shall be prima facie evidence of the facts stated therein.

4089 (606). **Statute of limitations as to recovery of lands sold for taxes.** No action for the recovery of real estate sold for the payment of taxes shall lie, unless the same is brought within three years from the date when the purchaser became entitled to demand a deed therefor; but if the owner of such real estate was, at the time of such sale, under the age of twenty-one years, or insane, he, his heirs, or legal representatives, shall be allowed three years after such disability is removed to bring suit for the recovery thereof; but this section shall not apply to any action brought by the state; *Provided, however*, that the provisions of this section shall not apply to cases in which the owner of the real estate sold had paid the taxes, for the payment of which such real estate was sold, prior to such sale; nor shall they apply to cases in which the real estate sold was not, at the time of the assessment, or of the sale, subject to taxation. Feb. 18, 1897, p. 1489, §33.

Does not apply when owner redeems from the sale.—Scott v. Brown, 106 Ala. 604. **Nor to bill to enforce trust** resulting from purchase by agent.—Waller v. Jones, 107 Ala. 331. **Landlord admitted to defend,** position same as if originally sued.—Turner v. White, 97 Ala. 545. Decisions under former statute.—Jones v. Randle, 68 Ala. 258; Lassitter v. Lee, 68 Ala. 287; Pugh v. Youngblood, 69 Ala. 296; Doe v. Anderson, 79 Ala. 209; Bolling v. Smith, 79 Ala. 535.

ARTICLE 12.

REDEMPTION OF LANDS SOLD FOR TAXES; SALES BY THE STATE.

4090 (607). **Persons entitled to, and time allowed for redemption.**—Real estate sold for taxes and bid off by the state may be redeemed at any time before the title passes out of the state, or if purchased by any other purchaser may be redeemed at any time within two years from the date of the sale, by the owner, his heirs, Feb. 28, 1887, p. 3, §34. Feb. 28, 1889, p. 777.

or personal representative, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor, or other creditor having a lien thereon, or on any part thereof; and an infant or lunatic entitled to redeem may redeem at any time within one year after the removal of his disability; and such redemption may be of any part of the lands so sold which includes the whole of the interest of the redemptioner.

Redemption by tenant in common enures to benefit of all co-tenants.—Scott v. Brown, 106 Ala. 604.

Ib. **4091** (608). **Mode and terms of redemption.**—To obtain such redemption, the party entitled thereto must deposit with the judge of probate of the county in which the land is situate the amount of money for which the lands were sold, with interest thereon at the rate of fifteen per cent. per annum; all taxes which have been or should have been assessed against the land since the day of sale, or if bid in for the state, such taxes as should have been assessed if the land had been in the possession of any citizen, with interest thereon at the rate of eight per cent. per annum, and all costs to officers that may have legally accrued, unless such taxes and costs have been already paid by him, which may be shown by the receipt of the tax-collector, and one dollar to the judge of probate as his fee upon such redemption; and if the redemption is by a mortgagee, or other creditor entitled to redeem, or by any other person having an interest, but not the legal title, he shall have a lien on the lands for the money expended by him in effecting the same; and if by a tenant in common, he shall have a like lien on the interest of his co-tenant.

Dec. 7, 1888, p. 10. **4092. When distinct lot or parcel sold with other lands may be separately redeemed.**—When distinct lots or parcels of land have been included in one assessment and sold for taxes under one decree, any person, other than the person against whom the decree was rendered, whose interest in one or more of such lots or parcels is such as to entitle him to redeem, but who has no interest in the other lots or parcels sold under such decree, may redeem the lots or parcels in which he has such interest, without redeeming those in which he has no interest.

Ib. **4093. Application under oath to be filed with the judge of probate; contents.**—A person desiring to redeem any separate lot or parcel of land as authorized by the preceding section must file with the judge of probate application in writing, under oath, setting forth the date of the decree, the name of the defaulting taxpayer against whom the same was rendered, the description and character of each lot or parcel of land included in the decree and the assessed value thereof if separately valued in the assessment, or, if not separately valued, stating that fact and stating the assessed value of the whole of the lands, a description of the lot or parcel which the applicant seeks to redeem and, if not separately valued in the assessment, stating the value thereof at the time of the assessment, the nature of his

interest in such lot or parcel and that he has no interest in the other lots or parcels; and such applicant must deposit with the judge of probate a sum of money which bears the same proportion to the amount of taxes and interest which would be required to redeem all the lands included in the decree, that the value of such lot or parcel as separately assessed, or, if not separately assessed, as ascertained by the judge of probate, bears to the value of the whole of the lands included in the decree; and, in addition thereto, such applicant must deposit the amount of all costs to officers which may have accrued upon such assessment and sale.

4094. Application to redeem separate lot or parcel must be submitted to the auditor for approval.—The judge of probate must, before allowing the redemption of a separate lot or parcel of land under the two preceding sections, submit the application, together with a copy of the statement or calculation ascertaining the amount to be paid on such redemption, to the auditor for his approval, and the auditor may call upon the judge of probate or the assessor or the collector for any information he may desire touching the application. If the auditor is satisfied that the applicant is entitled to redeem such lot or parcel of land and that the proper amount of money has been deposited with the judge of probate, the auditor shall indorse his approval upon the application and return the same to the judge of probate who must allow the redemption; but without the approval of the auditor the judge of probate must not allow the redemption and must return to the applicant the money deposited by him for that purpose. When such application is made within the time allowed by law for redemption, the same may be perfected as herein provided, notwithstanding the expiration of such limitation; *Provided*, that where the land sought to be redeemed has been purchased by an individual and not by the state, it shall not be necessary to submit the matter to the auditor.*

4095 (610). **Certificates of redemption, and of release.**—Upon the payment of the amount required by law for the redemption of lands sold for taxes by a party entitled to redeem, the judge of probate must issue to such party a certificate of redemption describing the lands, setting forth the facts of the sale, substantially as contained in the certificate of purchase, the date of redemption, the amount paid, and by whom the lands are redeemed; and he must make the proper entries in the book of sales in his office, and immediately give notice of such redemption to the county treasurer; and the certificate must then be presented to such treasurer, who shall countersign the same, and unless so countersigned, no certificate shall be held as evidence of such redemption. If such lands were bid in by the state, the person redeeming shall present the certificate of redemption to the auditor, who shall give to such person a certificate, releasing all claims to the lands acquired by the state at the tax sale.

4096 (611). **Redemption-money for; where deposited, and how paid over.**—If the lands redeemed were bid in by any person other Dec. 3, 1892, p. 8.

*Proviso added by revenue committee.

than the state, the redemption-money must be deposited by the judge of probate in the county treasury, and there kept separate and apart from the general funds of the county; and the judge of probate shall notify the purchaser of such deposit by mailing notice to the post-office address of such purchaser, if the same be known, and if unknown, then he shall mail such notice to such purchaser at the county-site of the county in which the lands are located; and upon the demand of the purchaser, his personal representative, or assignee, and the surrender of the certificate of purchase, the judge of probate must give him an order on the treasurer for the same.

Feb. 18, 1895, p. 1192, §41.

4097 (612). **Redemption-money must be promptly paid over, else no commissions allowed; quarterly reports.**—When lands which have been bid in by the state are redeemed, the judge of probate must, during the week in which such redemption is made, remit to the state treasurer, at the expense of the state, the proportion of the redemption-money belonging to the state, and pay into the county treasury the proportion of such money belonging to the county, and to the proper authorities the proportion belonging to the school fund, if any; and upon all such money so paid over during the week of collection, he is entitled to commissions at the rate of two and one-half per cent., which he may deduct therefrom, but he shall not be allowed any commissions on any money not so paid over; and on the last business day in March and every three months thereafter, the judge of probate shall certify to the auditor and to the county treasurer, upon blanks to be furnished by the auditor, a full and correct statement of all real estate bid in by the state and redeemed, showing separately the amount of state, county and school taxes and penalties and costs received by him on such redemption.

4098 (612). **Assessor and collector to be notified of redemption and fees paid them; duty of assessor to list lands.**—Within five days after the redemption of any real estate bid in by the state, the judge of probate shall notify the tax-assessor and tax-collector of his county thereof, and shall, on demand, pay to them the costs and fees to which they are respectively entitled; and the assessor shall enter such real estate, and the name of the party redeeming the same, on an appropriate list, to be kept by him, for assessment.

4099 (613). **Purchaser not liable for rents on redemption; exception.**—Neither the purchaser nor any one claiming under him, who may have lawfully obtained possession of any real estate purchased at tax sales, shall be liable, upon the redemption of such real estate, to account to the owner for any rents, issues, or profits during such possession, but as to such rents, issues and profits, he shall be held and considered the rightful owner of such real estate, unless such owner, at the time of the sale, was a minor, or person of unsound mind, and had no guardian, or his guardian was not lawfully served with notice of the proceedings had in the court of probate for the sale of such real estate, in which event such purchaser, or other person in possession, shall be liable for rents, issues and profits, as in other cases.

4100 (614). Description of lands bid in by state, etc., prepared by auditor; sale thereof.—It shall be the duty of the auditor to cause to be prepared a suitable book, in which shall be entered a description, as accurate as can be obtained, of all the lands which have been bid in by the state, with the amount of state and county taxes due thereon, the date when such lands were bid in, and the lowest market value of each parcel or lot; and when two years shall have elapsed from the day of sale, such portions of such lands as have not been redeemed shall be subject to sale by the state; and the auditor, with the approval of the governor, may sell the same at private sale to any purchaser who may pay therefor in cash to the treasurer such sum of money as the auditor and treasurer, with the approval of the governor, may ascertain to be sufficient to cover and satisfy all claims of the state and county, which sum shall not be less than the whole amount of taxes, interest, costs, and officers' fees as provided for and required to be paid in case of the redemption of such lands. Feb. 28, 1887, p. 3, §37.

4101. When former owner to be notified and allowed to redeem. When application is made to the auditor by any person to purchase lands in which such person had no interest, it shall be the duty of the auditor to mail a notice in writing to the owner, or some person having an interest in such lands, if his place of residence is known, or, if not known, then to the judge of probate of the county in which such lands are situate, informing him that such application has been made and fixing a reasonable time within which such owner or other person having an interest in the lands, may redeem the same; and if such lands are not redeemed within the time so fixed, the same shall be sold to the applicant or to any other person desiring to purchase the same, without other or further notice to such owner or person having an interest in the lands. If such lands are redeemed within the time so fixed, the judge of probate must, without delay, report the same to the auditor and pay over the redemption-money as required by law. Ib.

4102 (614). Auditor to execute deed to purchaser; rights thereunder.—When lands have been sold by the state as provided in the two preceding sections and the purchase-money has been paid, the auditor, in behalf of the state, shall execute to the purchaser a deed, duly acknowledged, without warranty or covenant of any kind on the part of the state, express or implied, conveying to him all the right, title and interest of the state in and to the lands purchased by him; and such purchaser shall thereafter have all the right, title and interest of the state in and to such lands, and shall be held and treated as the assignee of all the taxes due upon such lands, or for which they were sold, and the penalties, and of all the taxes that should have been, under the law, assessed upon the same, if they had been the property of a private citizen of the state; and he shall be clothed with all the rights, powers and remedies as to acquiring possession, or, if acquired, as to defending the same, as if he had Ib.

purchased such lands at the sale made by the tax-collector and had obtained a deed therefor as authorized by law.

If state acquired no title by its purchase, auditor's deed conveys none. Fleming v. McGee, 81 Ala. 409. **Mandamus** to compel auditor to make deed. Purifoy v. Lamar, 112 Ala. 123.

Ib. **4103** (614). **Auditor to certify sale to judge of probate and furnish description to assessor, etc.**—Upon the consummation of such sale the auditor must certify the same to the judge of probate, who shall make entry thereof in the book of land sales in his office; and the auditor shall furnish a description of such lands to the assessor of the county in which they are situate, who shall enter the same upon his list for assessment; but the time allowed infants and lunatics, in which to redeem lands sold for taxes, shall in nowise be affected by any such sale and conveyance.

4104 (616). **How county taxes, fees, etc., distributed.**—When lands bid in by the state have been sold by the state, under any of the provisions of this chapter, the auditor shall draw his warrant on the treasurer in favor of the judge of probate of the county in which the lands lie, for the county and school taxes, and the fees and costs due to the different officers of the county, specifying each separately; and if the same cannot be ascertained from the records and papers in his office, the judge of probate, on notice by the auditor of such redemption or sale, must certify the same to him; and the judge of probate, upon the collection of such warrant, shall pay the same over to the officers entitled thereto, or authorized by law to receive the same.

4105 (617). **Effect of failure to redeem lands bid in by state.** The right to redeem any real estate bid in for the state shall be forfeited, unless such real estate is redeemed within the time prescribed in this chapter; and if not redeemed within that time, all the right, title and interest of the owner of such real estate, and of the person whose duty it was to pay the taxes thereon, in and to such real estate, shall be transferred to, and absolutely vested in the state.

ARTICLE 13.

CANCELING ERRONEOUS SALES AND REFUNDING PURCHASE-MONEY.

Feb. 18, 1895, p. 623, §1. **4106. When sale by the state canceled and purchase-money refunded.**—When land which has been bid in for the state at tax sales has been sold by the state at private sale and the purchase-money has been paid into the state treasury, and it shall be made to appear to the satisfaction of the auditor and of the governor that such tax sale was invalid by reason of the fact that the taxes for which the land was sold were not due, the auditor, with the approval of the governor, may, upon the surrender and cancellation of the deed executed by the auditor to such purchaser, draw his warrant on the treasurer, in favor of such purchaser, his heir or representative, for the amount of money so paid to the state for such land, and the

treasurer must pay the same. But no such sale shall be canceled and the purchase-money refunded unless application therefor be made within two years from the date of such sale.

Ib. §2.

4107. Amount of such purchase-money paid over to county to be refunded to state.—The auditor must ascertain the amount of such purchase-money which has been paid to the county in which the land is situated, as fees, costs, taxes, penalty and interest, or on other account, if any such payment has been made on account of such purchase, which amount he shall certify to the judge of probate of such county, or presiding officer of the court of like jurisdiction, where the judge of probate has no connection with such court, who shall present such claim at the next succeeding term of the commissioners' court, or court of like jurisdiction of such county, when such court shall order a warrant in favor of the state for such amount, which warrant shall be a preferred claim against the county, and payable by the county treasurer to the judge of probate or presiding officer of any court of like jurisdiction where the judge of probate has no connection with such court, who shall forthwith forward such amount, less cost of remitting, to the state treasurer, and report it to the state auditor.

Feb. 28, 1887, p. 3, §§2.

4108 (595). When tax sale to private purchaser canceled and money refunded.—When land has been sold for taxes and purchased by a purchaser other than the state, and the purchase-money has been been paid into the state and county treasuries, and it shall be made to appear to the satisfaction of the judge of probate and the auditor that such sale was invalid by reason of the fact that the taxes for which the land was sold were not due, the judge of probate, upon the surrender and cancellation of the deed, if a deed has been executed to such purchaser, and an appropriate entry upon the record of sales in his office canceling such sale, must give to such purchaser a certificate to the auditor showing the amount of state taxes received by the state from the proceeds of such sale, and a similar certificate to the court of county commissioners, or court of like jurisdiction, showing the amount of county taxes received by the county from the proceeds of such sale; and the auditor, if he shall find such certificate to be correct, must draw his warrant on the state treasurer in favor of such purchaser, his heir or representative, for the amount of money so received by the state, and the treasurer must pay the same; and the amount so paid to the county must be allowed by such court at the next or any succeeding term thereof. But no such sale shall be canceled and the purchase-money refunded unless application therefor be made within five years from the date of the tax sale.

ARTICLE 14.

GENERAL DUTIES OF AUDITOR IN SUPERVISING THE ENFORCEMENT OF THE REVENUE LAWS; MISCELLANEOUS PROVISIONS.

4109 (618). **Duties of auditor as to enforcement of revenue laws.**—The enforcement of the revenue laws of the state shall be under the general supervision and direction of the auditor, who shall, by general rules, and, if need be, by specific instructions, direct the tax-assessors and tax-collectors in the discharge of their duties; and in case of doubt, he shall, after taking the opinion of the attorney-general, advise the assessors and collectors as to the construction to be placed upon the law; and such rules, instructions and advice, when followed or conformed to, shall protect them as against the state. He shall see that the returns, reports, payments and settlements, required by law to be made by any and all officers charged with the performance of any duties under this chapter, are promptly made by such officers at the time or times they are required to be made; and in default of the performance by any of them of any of such duties, he shall promptly direct such prosecutions or other legal proceedings as may be by law authorized or directed.

4110 (619). **Assessment-lists; form and printing of.**—It shall be the duty of the auditor to prepare and cause to be printed a blank form of assessment-list, specifying therein the different species of property, with appropriate blanks for a description of each, and the other subjects of taxation, which are required by law to be returned by the taxpayer to the tax-assessor for taxation; and upon this form he may cause to be placed an abstract of the duties of the taxpayers in returning their lists, and of their duties and liabilities as declared by law, and such instructions to the assessors as will advise them of their duties in making assessments of property and other subjects for taxation; and he shall furnish each assessor one or more of such forms, so that the assessor may cause to be printed, or otherwise prepared, as many copies thereof as may be needed in his county. The auditor shall also furnish to the judges of probate of the several counties blank forms, whereon are to be returned to him the abstracts of the property and other subjects of taxation, polls and taxes, required by law to be returned to him by such officers.

Feb. 18, 1895, p. 1192, §15.

4111. Auditor to prepare and furnish printed forms of questions for use by assessors.—It shall be the duty of the auditor to have prepared for the use and guidance of the tax-assessors, a printed form of questions with suitable blank spaces for answer in writing by the taxpayer, his agent, or the tax-assessor, as to the description, location, quantity, quality, and all other information required to be given as to any and all property, real, personal, mixed, or an interest therein, together with suitable columns in which to enter the value placed upon such property or interest therein, and also a column showing the amount of state, county and special taxes on the aggregate of real and personal property separately.

4112. Revenue law to be printed in pamphlet for distribution. Feb. 28, 1887, p. 3, §38. The auditor shall cause the revenue law, with a copious index thereto, to be printed in the form of a pamphlet, and after retaining the number of copies which may be necessary for the use of the officers of the state at the capitol, shall furnish a copy thereof to each of the judges of the circuit and city courts, and the chancellors and judges of the supreme court, judges of probate, solicitors, members of the general assembly, members of the courts of county commissioners or boards of revenue, and assessors and collectors, and to bar libraries and justices of the peace, and shall cause the remainder to be sold at such price as will indemnify the state against loss from printing and publication of the same, as herein required. So much of the matter included in such pamphlet as may be copied from this chapter must follow in the order and arrangement in which it appears herein, showing the number of this chapter, the number and title of each article and the head-line and number of each section as herein shown.

4113 (620). **Duty of auditor as to institution of suits; agreed statement of facts.**—It shall be the duty of the auditor to cause suit to be brought, in the name of the state, against any and all persons by law charged with the collection of state taxes, or with any duty in regard to the state revenue, and their sureties, for failure to collect such taxes or to perform such duty; and he may also, in such cases as, in his judgment, the interest of the state requires it, cause suit to be brought against defaulting taxpayers for the taxes claimed from them by the state; and, in cases in which a reasonable doubt may exist as to the construction or validity of the law under which taxes are claimed, he may authorize an agreed statement of the facts of the case to be made for the speedy adjudication of the matter in controversy.

Liability for taxes enforceable by action at law.—Perry Co. v. Railroad Co., 58 Ala. 546; State v. Fleming, 112 Ala. 179.

4114 (621). **Failure to give collector credit for commissions; how corrected.**—When the auditor finds that he has failed to give any tax-collector credit for commissions to which he is entitled, he is authorized to correct such error in his settlement with such collector; and if the account of such collector has been closed, and such commissions have been paid into the state treasury, the auditor shall draw his warrant on the treasurer for the amount thereof in favor of such collector.

4115 (622) (506). **Warrant for overpayments.**—The auditor must draw his warrant on the treasurer in favor of any judge of probate, tax-collector, county treasurer, clerk of the circuit court, or other officer paying money into the state treasury, for any amount overpaid into the treasury by such judge of probate, tax-collector, county treasurer, clerk of the circuit court, or other officer.

4116 (623). **Taxes a preferred claim in case of general assignment or insolvency.**—When a taxpayer makes a general assignment of his property for the payment of his debts, or when dead, and his estate is or becomes insolvent, any unpaid taxes assessed against him,

or against his estate, shall be a preferred claim, and shall be paid by the assignee or personal representative out of the first money received by him belonging to the trust or estate.

4117 (624). **Officer selling property under decree or process to first pay taxes.**—When any sheriff or other officer shall sell any property under execution or other process, or under any decree, judgment, or order of any court, it shall be his duty to ascertain what taxes are a lien upon such property, and, upon a sale thereof, to first apply the proceeds of such sale to the payment of such taxes.

Holding v. Thomas, 62 Ala. 4; State v. Vincent, 78 Ala. 233.

4118 (625). **Liability of agent for taxes on receipts.**—When taxes are levied on the gross or net receipts of any person, company, corporation, or association doing business in this state by an agent, such agent shall be personally liable for such taxes, and the tax-collector may collect the same from such agent by garnishment, or by the seizure and sale of any personal property belonging to him, as if such taxes were assessed against him.

4119 (626). **Copies of papers, records, etc., in auditor's office as evidence.**—In any suit against any tax-assessor, tax-collector, judge of probate, or other officer charged with the performance of any duties under this chapter, and his sureties, or either, for failure to pay over any money collected by him for the state, or to perform any other duty required of him by law, a copy of any bond, record, book, paper, contract, return, or other document, or of the official statement of any account between him and the state, in the office of the auditor or treasurer, certified by the auditor, if the original is in his office, or by the treasurer, if in his office, under the great seal of the state, shall be received as evidence in any case in which the original would be competent, unless the defendant shall deny under oath that he made or executed such original.

4120 (627). **Assessor and collector may contract for stationery, printing, etc.**—The tax-collector and tax-assessor are authorized to purchase necessary books and stationery, and to contract for the necessary printing in their respective offices, with the approval of the court of county commissioners.

White v. Williams, 49 Ala. 130.

4121 (628). **Penalty against officer failing to pay over money collected.**—Upon a verdict being returned in favor of the state, in any suit brought by the state against any officer charged with the collection of any revenue for the state, and his sureties, or either, for the recovery of any such revenue collected by him, a judgment must be rendered for the amount of such verdict, and twenty per cent. thereon.

ARTICLE 15.

LICENSE TAXES; FROM WHOM AND FOR WHAT BUSINESSES REQUIRED; PRICES; COUNTY LEVY.

4122 (629). Persons required to take out licenses, and prices to be paid therefor.—Licenses are required of all persons engaging in, or carrying on any business, or doing any act in this section specified, for which shall be paid, for the use of the state, the following taxes, to wit:

1. For each public race-track, at or within five miles of any city or town containing less than five thousand inhabitants, one hundred dollars; at or within five miles of any city or town containing more than five thousand inhabitants, two hundred dollars.

2. For the retail of spirituous, vinous, or malt liquors, on any steamboat or other water-craft, or on any sleeping, dining, or buffet car, two hundred and fifty dollars, for which the state shall have a preferred lien on such steamboat or other water-craft, and cars named; and such lien may be enforced whenever any such liquors are retailed by any person on such steamboat or other water-craft, or cars, with the knowledge or consent of the captain, or conductor, without having first procured a license therefor, as provided by law; and the tax-collector of any county in which such steamboat or other water-craft may ply, or cars run, is required to enforce such lien in the same manner, and by the same proceedings, as are authorized for the collection of taxes on steamboats and on railroad-cars.

3. For retailers of spirituous, vinous or malt liquors except as hereinafter provided, in any city, town, village, or any other place of less than one thousand inhabitants, one hundred and fifty dollars; in any city, town, or village of more than one thousand inhabitants and less than three thousand inhabitants, two hundred dollars; in any city containing three thousand inhabitants or more, and less than ten thousand inhabitants, two hundred and seventy-five dollars; and in any city of more than ten thousand inhabitants, three hundred and twenty-five dollars. But dealers in lager-beer exclusively shall be charged one-fourth of the above rates. Any person who pays for and takes out a license as a retailer, shall not be required to pay for and take out a license as a wholesale dealer in such liquors; and when a retail license is taken out after the first day of January, and before the first day of July, the price of the license shall be the same as for a license for twelve months. Any person who sells or disposes of spirituous, vinous, or malt liquors, or intoxicating bitters, in any quantity less than a quart, shall be deemed a retail dealer; *Provided*, nothing in this paragraph shall be so construed as to alter, repeal or modify any license now authorized and required to be paid to any district, city or municipality for municipal purposes. Feb. 18, 1895, p. 1192, §48.

Allred v. State, 89 Ala. 112; State v. Fleming, 112 Ala. 179.

4. For wholesale dealers in spirituous, vinous, or malt liquors in any place, two hundred dollars. Any person dealing in said arti-

cles, who shall sell, barter, or exchange, or in any way dispose of, or permit to be taken, spirituous, vinous, or malt liquors, in any quantity less than one quart, or who shall permit the same to be drunk by the glass, or single drink, in or about his place of business, shall be deemed a retail dealer; and any dealer so disposing of spirituous, vinous, or malt liquors, only in the quantity of one quart or more, shall be deemed a wholesale dealer; but any person having taken out a license as retail dealer is authorized to sell at wholesale without additional license.

5. For compounders and rectifiers of spirituous or vinous liquors, two hundred dollars. Any person who rectifies, purifies or refines distilled spirits or wines, by any process, or who mixes distilled spirits or wines with any chemicals, or compounds liquors for sale under any name, shall be deemed a compounder and rectifier.

Dec. 10, 1892, p. 71. 6. For distillers of spirituous liquors, twenty-five dollars; but this shall not apply to the distilling of fruits.

Grant v. State, 73 Ala. 13; Johnson v. State, 44 Ala. 414.

Feb. 18, 1895, p. 1192, §45. 7. For brewers, one hundred dollars. Every agency of a brewery of another state doing business in this state, shall pay the same license.

8. For bowling-alleys, for the use of which money or other compensation is charged, twenty-five dollars for each alley; and for each bowling-alley kept in connection with a drinking-saloon, whether compensation is charged or not, twenty-five dollars.

9. For each billiard-table, for the use of which money or other compensation is charged, and which is not kept in connection with the business of a barroom or drinking-saloon, twenty-five dollars.

10. For each billiard-table kept in connection with the business of a barroom or drinking-saloon, whether its use be charged for or not, fifty dollars.

11. For each table upon which the game of pin-pool is played, one hundred dollars.

12. For each table upon which a game of pool is played with fifteen balls, more or less, and not pin-pool, for the use of which money or other thing of value is charged, or when kept in connection with a barroom or drinking-saloon, whether its use be charged for or not, fifty dollars.

13. For each bagatelle or Jenny-Lind table, or any other table or device of any kind from which any kind of profit is derived by the keeper, fifty dollars.

14. For each table or device, or set of domino-bones, kept in connection with a barroom or drinking-saloon for use in playing the game commonly known as dominoes, twenty-five dollars; and for each dice-box and dice kept in a barroom or drinking-saloon, twenty-five dollars.

15. For each theatre in towns or cities containing more than eight thousand inhabitants, one hundred dollars; but this price shall not be charged for licenses for open-air or summer theatres, such as at Mobile on the bay-shore, and known as Frascati, but for each

such open-air or summer theatre, twenty-five dollars; in towns or cities containing less than eight thousand and more than two thousand inhabitants, fifty dollars; and in towns or cities containing less than two thousand inhabitants, twenty-five dollars; but the owner or manager of any theatre holding any such license must issue tickets of admission to all persons whom they admit to their exhibitions, and must thereon assign a particular seat to each such person, in such part of the theatre as the convenience of such owner or manager may require. This license shall only extend to dramatic and operatic exhibitions; and if any doubt arises as to the character of an entertainment proposed to be exhibited in any theatre, the judge of probate of the county in which the theatre is situated shall determine whether or not it is covered by the theatrical license.

16. For each public hall let for hire, twenty-five dollars.

17. For each concert, musical entertainment, public lecture, or other public exhibition or entertainment, where charges are made for admission, or for the use of any instrument or device, or the participation in any exercise or entertainment, not given for charitable, school, or religious purposes, and not otherwise provided for, five dollars; but the provisions of this subdivision shall not apply to exhibitions or entertainments given in theatres, where the owner or manager thereof has taken out license as owner or manager.

Mosby v. State, 98 Ala. 50.

18. For each day's exhibition of a circus in towns or cities having more than five thousand inhabitants, or within two miles thereof, one hundred and fifty dollars; in all other places, one hundred dollars.

19. For each exhibition of a menagerie or museum, twenty dollars.

20. For each exhibition of a side-show accompanying a circus, menagerie, or museum, ten dollars.

21. For each exhibition of feats of legerdemain or sleight of hand, or other exhibition or entertainment of like kind, ten dollars.

22. For each fortune-teller, twenty-five dollars.

23. For each company of traders or fortune-tellers, usually known as gypsies, ten dollars for each county.

24. For each shooting-gallery, twenty-five dollars.

25. For each skating-rink, twenty-five dollars.

26. For dealers in playing-cards, five dollars.

27. For dealers in pistols, or pistol cartridges, or bowie-knives, or dirk-knives, whether principal stock in trade or not, three hundred dollars. Any cartridges, whether called rifle or pistol cartridges, or by any other name, that can be used in a pistol, shall be deemed pistol cartridges within the meaning of this subdivision. Any person or firm who orders for another, or delivers any cartridges within this state, shall be deemed a dealer under this provision.* Dec. 13, 1892, p. 183.

Porter v. State, 58 Ala. 66.

28. For dealers in cigarettes, whether principal stock in trade or Feb. 18, 1895, p. 1192, §44.

*As amended by revenue committee.

not, in any place outside of incorporated towns and cities, five dollars; in incorporated towns and cities of two thousand inhabitants or less, ten dollars; in cities and towns of more than two thousand and not more than five thousand inhabitants, fifteen dollars, and in cities of more than five thousand inhabitants, twenty-five dollars.

Feb. 28, 1889, p. 93.

29. For each peddler of medicines or other articles of like character, one hundred dollars for each county in which they peddle; and for each peddler of spectacles or eye-glasses, five dollars for each county in which they peddle.

Randolph v. Yellowstone Kit, 83 Ala. 471.

30. For peddlers of medicines, with vocal or instrumental music, or both, two hundred and fifty dollars for each county in which they peddle.

Feb. 18, 1895, p. 885.

31. For peddlers in a wagon drawn by one horse, or other animal, forty dollars; in a wagon drawn by two horses or more, or other animals, fifty-five dollars; on a horse, or other animal, twenty-five dollars; on foot, fifteen dollars; when accompanied by singers or performers on any musical instruments, one hundred dollars; but peddlers of tinware only, and peddlers of wooden and stone or clay hollow-ware only, and tanners who manufacture leather goods and peddle these only, shall not be required to procure license. A peddler's license shall entitle him to peddle only in the county where it is taken out. Any person may demand of peddlers, itinerant dealers and traveling agents their license, and unless they exhibit the same, or show that they have a right under the law to peddle the articles carried by them, or to carry on the business they are engaged in without a license, such person may and is hereby authorized to arrest such peddler, itinerant dealer or traveling agent, and carry him before the nearest county-court judge, justice of the peace, mayor, recorder, intendant of any town, or notary public exercising the power of a justice of the peace, and such officer as such peddler, itinerant dealer or traveling agent is carried before must, if he finds such person to be dealing without a license, forthwith issue a warrant for his arrest, returnable to any court of the county having criminal jurisdiction, which warrant may be executed by the sheriff, or by any constable of the county, any city or town marshal, policeman, or any officer having authority to make arrests. It shall, however, be lawful for any person having but one arm or leg, or whose sight has been impaired as a result of exposure, injury or disease during his service in the Confederate army, or any other disabled Confederate soldier who is permanently disabled from any cause, or any person who has lost his eyesight in any way so that he is incompetent to perform manual labor (if he shall secure the certificate of a physician and the certificate of the judge of probate of such facts), to peddle in any county of the state free of license; nor shall this act be so construed as to require a license of peddlers of fish,

oysters, game, fresh meats, poultry, fruit and all farm products raised by the seller, nor any dealer in books or other literature.*

Vines v. State, 67 Ala, 73; Shiff v. State, 84 Ala. 454; Ballou v. State, 87 Ala. 144; Ex parte Murray, 93 Ala. 78.

32. For pawnbrokers, fifty dollars.

33. For each person or firm engaged in the business of buying or selling futures for speculation, or on a commission, three hundred dollars; but this shall not be held to legalize any contract which would otherwise be invalid.

34. For transient or itinerant auctioneers, or dealers in goods, wares and merchandise, other than licensed peddlers, and other than traveling agents of wholesale dealers in said articles, making sale thereof by sample, fifty dollars.

Shiff v. State, 84 Ala. 454.

35. The owner or master of any steamboat, or other water-craft, plying any of the rivers of this state, who engages in the business of buying, selling, or bartering any goods, wares, merchandise, produce, or commodity whatever, on or from such boat or water-craft, must pay a license of two hundred and fifty dollars; and the party so licensed shall thereby be entitled to carry on such business on the boat or water-craft therein named in any county in which the same is navigated; but cities and towns, in which such person engages in such business, may impose such license as is exacted of like business in such city or town.

36. The owner, conductor, or person in charge of every supply-car, or car from which any goods, wares, or merchandise are sold, whether to the servants of the railroad company, or to others, must pay a license of one hundred dollars; and the person so licensed shall thereby be entitled to carry on such business in the car therein named, in any county in which such car is run or drawn; but each of such counties may charge a license therefor of ten dollars.

37. Each company or person who sells, or delivers, or erects any lightning-rods in this state, shall pay to the state a license-tax of

*An act approved Feb. 11, 1897, (Pamph. Acts, p. 769) entitled "An act to allow soldiers and sailors of the Confederate States of America, who have been residents of this state for five years next before the passage of this act, to peddle in produce and merchandise in each and every county in this state, except in incorporated villages, towns and cities, without payment of the stipulated license, and providing the manner of obtaining such license," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That all the citizens of this state, who have resided here for five years next before the passage of this act, who were soldiers of the Confederate States of America, or engaged in the naval service thereof, and do not own property exceeding in value one thousand dollars, be allowed to peddle any produce or merchandise, in any and all of the counties of this state, except in any incorporated village, town or city, without the payment of the license required of such peddlers.

"SEC. 2. *Be it further enacted*, That any such soldiers or sailors desiring such licenses to peddle, must apply to the judge of probate of any county in this state, and make and submit his proof of having been such soldier or sailor, and if it is sufficient to satisfy said judge, he will issue the license without payment of money therefor and such license shall be authority to peddle such commodities in any of the counties of this State; *Provided*, that under this act there shall be no peddling of patent medicines.

"Approved February 11, 1897."

fifty dollars. The payment of this tax to the state, evidenced by the receipt of any judge of probate, shall exempt such company or person from the payment of such tax in any other county; but in each county in which such company or person carries on such business, a license-tax of ten dollars shall be paid for county purposes.*

38. Each sewing-machine, stove, range, or clock company, selling or delivering sewing-machines, stoves, ranges or clocks, either in person or through agents, or consignees, and all persons who engage in the business of selling or delivering sewing-machines, stoves, ranges, or clocks, shall pay to the state twenty-five dollars for each county in which they may so sell; but when merchants, engaged in a general business, keep sewing-machines, stoves, ranges, or clocks, as a part of their stock in trade, they shall not be required to pay the tax herein provided.*

Merritt v. State, 59 Ala. 46; Quartlebaum v. State, 79 Ala. 1; Ballou v. State, 87 Ala. 144.

Feb. 5, 1891, p. 268.

39. For each peddler of clocks doing business in this state, a state license-tax of five hundred dollars, and a county license-tax of two hundred and fifty dollars for each county in which such business is carried on.

40. Each and every person, partnership, or corporation, who engages in the business of inquiring into and reporting upon the credit and standing of persons engaged in business in this state, shall pay a license-tax of three hundred dollars; and the payment of this tax to the state, evidenced by the receipt of any judge of probate, shall exempt such person, partnership, or corporation from the payment of such tax in any other county; and payment of such tax shall not, when it has been paid by such person, partnership, or corporation, be required of any of their agents or correspondents in the state.

Feb. 18, 1897, p. 1489, §95.

41. For each auctioneer, in any city or town of twenty-five thousand inhabitants or over, a license-tax of fifty dollars per annum; in cities or towns of eight thousand inhabitants, and less than twenty-five thousand, thirty dollars per annum; in cities or towns of five thousand inhabitants, and less than eight thousand, twenty dollars per annum; in cities or towns of more than one thousand and less than five thousand, ten dollars per annum. The term "auctioneer," within the meaning of the foregoing provisions, shall be deemed to apply to any person selling goods, wares, merchandise, live stock, or other things of value, at public outcry, except as otherwise herein provided, whether a charge is made for the same or not. In the following cases, sales at public outcry may be made for a compensation, without license: (1) The estate of a decedent by the personal representative or his agent, according to law, or by the provisions of the will. (2) Property conveyed by deed of trust or decree, or ordered to be sold according to the deed, decree or order. (3) Any person may sell the agricultural products arising from his own or other labor under his control, or his real or personal estate, not purchased or sold on speculation. (4) All sales under legal process.

*As amended by revenue committee.

42. For each person, firm or corporation, engaged in the business of making abstracts in cities or towns of twenty thousand inhabitants or over, twenty-five dollars per annum; in cities or towns of ten thousand inhabitants and less than twenty thousand, ten dollars per annum; in cities or towns of less than ten thousand inhabitants, five dollars per annum.

43. For each baseball or foot park, where admission fees are charged, fifty dollars per annum.

44. For each bottler or bottling association, other than bottlers of mineral water, a license-tax of twenty-five dollars per annum.

45. For each collecting agency in cities or towns of twenty-five thousand inhabitants or over, fifty dollars per annum; in cities or towns of less than twenty-five thousand inhabitants, twenty-five dollars per annum.

46. For each construction company doing business in this state, twenty-five dollars per annum.

47. For each dummy railroad or electric railroad or railway being operated in this state, the following license-taxes: In counties of forty thousand inhabitants or over, fifty dollars; in counties of thirty thousand inhabitants and less than forty thousand, forty dollars; in counties of less than thirty thousand inhabitants, ten dollars.

48. Each water-works company or corporation, electric light and power company or corporation, gas company or corporation, operated by a person or company or corporation for public uses, other than a municipality, shall pay to the state the following license-taxes: In cities or towns of over twenty thousand inhabitants, one hundred dollars; in cities or towns of ten thousand inhabitants, and less than twenty thousand, fifty dollars; in cities and towns of five thousand inhabitants, and less than ten thousand, twenty-five dollars; in cities or towns of less than five thousand inhabitants, fifteen dollars.

49. The operator of each set of flying-jennies, called also "hobby-horses," and "merry-go-rounds," shall pay to the state the following license-taxes: In cities and towns of twenty thousand inhabitants or over, or within one mile of such, for each week, five dollars; or for each month, ten dollars; or for each year, thirty dollars; in cities or towns of less than twenty thousand inhabitants, or within one mile of such, for each week, two dollars and fifty cents; for each month, five dollars; for each year, twenty dollars. In any locality in the state, other than is provided above, for each week, one dollar; or for each month, two dollars and fifty cents; or for each year, ten dollars.

50. For each device used by persons as a source of profit to themselves, such as throwing at wooden figures, or any other objects of like character; cane-racks, knife-racks, striking an object to test the strength, blowing to test the lungs or other device of like character, for each county in which it is operated, ten dollars—but this subdivision shall not be so construed as to legalize the operation of any device which is now prohibited by law.

51. Each railroad-ticket broker, otherwise known as scalper, or other railroad-ticket agent, except agents actually employed by some

railroad, shall pay to the state the following license-tax: In cities or towns of ten thousand inhabitants or over, fifty dollars; in cities or towns of less than ten thousand inhabitants, twenty dollars.

52. Each person, firm or corporation engaged in buying, selling, or renting real estate on commission shall pay to the state the following license-taxes: In cities or towns of ten thousand inhabitants or over, fifteen dollars; in cities or towns with less than ten thousand inhabitants, five dollars.

53. Each company, corporation or association doing business in this state, whose sole or principal business is the loaning of money, whether organized in this state, or in another state, or country, and which is not elsewhere subjected to a privilege tax in this section, shall pay to the state annually, as other license-taxes are paid, one hundred dollars; *Provided*, the provisions of this subdivision shall not apply to banks or banking institutions regularly organized as such.

54. Any person, firm or corporation operating yards or inclosures for the purpose of storing pig iron therein, and issuing warrants thereon, or receipts therefor, shall pay to the state annually for each such yard or inclosure, fifty dollars; but this provision shall not apply to such yards owned and used by manufacturers of pig iron in this state.

55. All corporations doing business in this state, whether organized in this state or another state or country, not otherwise specifically required to pay a license-tax, shall pay annually the following privilege taxes: Corporations whose paid-up capital stock is under ten thousand dollars, ten dollars. Corporations whose paid-up capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars, twenty-five dollars; when the paid-up capital stock exceeds fifty thousand dollars and is not over one hundred thousand dollars, forty dollars; where the paid-up capital stock exceeds one hundred thousand dollars and does not exceed two hundred thousand, seventy-five dollars; where the paid-up capital stock exceeds two hundred thousand dollars, and does not exceed three hundred thousand dollars, one hundred and twenty-five dollars; where the paid-up capital stock exceeds three hundred thousand dollars and does not exceed four hundred thousand dollars, one hundred and seventy dollars; where the paid-up capital stock exceeds four hundred thousand dollars and does not exceed five hundred thousand dollars, two hundred dollars; where the paid-up capital stock exceeds five hundred thousand dollars and does not exceed one million dollars, three hundred dollars; where the paid-up capital stock exceeds one million dollars, five hundred dollars; when application is made for the license herein provided, it shall be accompanied by the affidavit of the president or other chief officer of the corporation showing the amount of the capital stock of such corporation, but the payment of this tax in one county in the state as evidenced by the license or official certificate of the judge of probate shall be sufficient; *Provided*, that the pro-

visions of this subdivision shall not apply to banks and banking institutions regularly organized as such.

56. Each person, firm or corporation engaged in the sole or principal business of selling illuminating or lubricating oils at wholesale, shall pay to the state one-half of one per centum of their gross sales.

57. For each detective agency, company or corporation doing business in this state, fifty dollars.

In all cases in this section, where population controls the price of licenses, the last census report of the Federal government shall govern.*

4123 (630). **Licenses for county purposes; amounts, how determined.**—The court of county commissioners of each county, except in cases otherwise provided, may, at any regular or special term, add to the taxes specified in the last preceding section such amounts, not exceeding fifty per cent. of such taxes, for county purposes, as, in their judgment, may be necessary; and no license shall be issued without the payment of such percentage for county purposes. Feb. 28, 1887, p. 3, §16.

Phœnix Carpet Co. v. State, Ala. (22 So. 627).

ARTICLE 16.

ISSUE AND EXPIRATION OF LICENSES; BLANKS AND FORMS; RECORDS, PAYMENTS AND REPORTS; REFUNDING LICENSE-MONEY.

4124 (631). **Unlawful to engage in certain businesses without license.**—It shall be unlawful for any person, firm, or corporation to engage in or carry on any business, or do any act for which a license is by law required, without having first paid for and taken out a license therefor in the manner in this chapter provided.

Action at law maintainable to recover amount of license.—State v. Fleming, 112 Ala. 179.

4125 (632). **Payment for, and issue and contents of license.** Before any person, firm, or corporation shall engage in, or carry on any business, or do any act, for which a license is by law required, he or they shall pay to the judge of probate of the county in which it is proposed to engage in, or carry on such business, or to do such act, the amount required for such license; and upon such payment, and a fee of fifty cents to such judge for issuing the same, such judge shall issue the license, countersigned by him, in the form, and on a blank to be furnished by the auditor, which shall set forth the name of the person, firm, or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the location where it is proposed to carry on such business, or to do such act, the amount paid for such license, and the time for which it is issued; and if the license is for a peddler, whether he proposes to travel on foot, on horse, or in a wagon; and such license shall not be transferable, nor shall it entitle the holder thereof to carry

*This paragraph as to census was added by the revenue committee.

on any other business, or to do any other act than that named therein, or at any other location than that therein specified.

License in no sense a contract.—Powell v. State, 69 Ala. 10. **License to one firm** confers no authority on another, though one person a member of both firms.—Wharton v. King, 69 Ala. 365. **License to one partner** no protection to firm.—Long v. State, 27 Ala. 32. **When one license sufficient**; connecting rooms.—Hockstadler v. State, 73 Ala. 24.

4126 (634). **Expiration of licenses; time for which issued; exceptions.**—All licenses shall expire on the thirty-first day of December, in each year, and shall be for one year, unless the business licensed shall commence after the first of July, in which case the price of the license shall be half the amount of the year's license.

4127 (635). **License for selling liquors on steamboats; where issued.**—Licenses for selling spirituous, vinous, or malt liquors on steamboats, or other water-craft, may be taken out in any county through which they run; and when taken out in any one of such counties, the person taking out such license may sell the liquors authorized thereby in any county in or through which such steamboat, or other water-craft is navigated.

4128 (636). **Licenses to retailers posted; penalty for failure.** All licenses for the retail of spirituous, vinous, or malt liquors must be kept posted up in plain sight near the bar; and a failure to comply with this section forfeits the license.

Feb. 28, 1887, p. 3, §30.

4129 (638). **Forms of licenses prepared by auditor; blanks furnished judges of probate.**—It shall be the duty of the auditor, with the approval of the governor, to prepare and have printed, suitable forms of licenses, and, as often as need be, to furnish to the several judges of probate blank licenses, signed by him, sufficient for the probable wants of their respective counties, taking their receipts for the same. Each such blank shall have a stub attached thereto on which shall be printed such matter as the auditor may prescribe, with appropriate blank spaces to be filled in by the judge of probate upon the issuance of any license. The auditor shall take and file in his office a proper receipt from the judge of probate for the license so furnished him.

4130. Stub to be filled up and signed before detaching license. Upon the issuance of any license the judge of probate must, before detaching the license from the stub, fill up the blank spaces in the stub to correspond in all respects with the license as issued, and sign his name thereto.

Feb. 28, 1887, p. 3, §14.

4131 (637). **License-record to be kept; annual report and return of unused licenses and stubs; examination by auditor.**—The judge of probate shall keep, in a book prepared for that purpose, an accurate account of all the licenses received by him from the auditor and of the disposition made of them, and of all money received from licenses by him issued, and make report thereof to the auditor within ten days after the first of January of each year, at which time he shall return to the auditor all unused licenses and stubs for any year preceding, or account to the auditor for all such unused licenses, and shall also return to the auditor the stubs of all licenses issued

for any year preceding; and the judge of probate shall, on demand of the auditor, at any time, exhibit to him or to any agent appointed by the auditor for that purpose, such license-record and the originals of all licenses then remaining in his hands and all stubs of licenses issued.

Feb. 18, 1895, p. 1192, §41.

4132 (633). **License-money to be promptly paid over, else no commissions allowed; quarterly reports; penalty.**—During the week in which any license-money is received by the judge of probate he must remit to the state treasurer, at the expense of the state, all money received by him for licenses belonging to the state and pay to the county treasurer all money received by him for licenses belonging to the county; and upon all such money so remitted or paid during the week of collection, he is entitled to two and one-half per cent., which he may deduct therefrom, but he shall not be allowed any commissions on any money not so remitted or paid; and on the last business day in March, and every three months thereafter, the judge of probate shall forward to the auditor a certified list of all licenses issued by him, stating therein for what business issued, the amount collected for each license, from whom collected, and the date thereof. If any judge of probate fails to comply with the provisions of this section, within ten days after the date at which he is required to make a report of licenses issued and money received by him, the auditor shall forthwith report the facts to the governor, who shall cite such judge to show why he has not made returns of such certified list of licenses, as required by law; and if such judge fails to show sufficient cause for such failure, the governor shall direct the attorney-general to institute impeachment proceedings against him before the supreme court.

Feb. 28, 1887, p. 3, §19.

4133. Auditor to furnish copies of license-reports to solicitors; duty of solicitors and grand juries.—On the first days of February and August in each year, the auditor shall furnish to the solicitor of each circuit certified copies of all reports of licenses for each of the two quarters immediately preceding, filed in the auditor's office from the counties composing the judicial circuit in which such solicitor is prosecuting officer; and such certified copies of license-reports shall be by the solicitor laid before the grand jury in each of said counties at the term of the circuit court next ensuing; and it shall be the duty of the grand jury to compare carefully such copies of license-reports with the license-book required by law to be kept in the office of the judge of probate, and if any errors or omissions are found, to make report of the same to the presiding judge in their regular report. In counties where the circuit court has no grand jury, this report shall be made to the county solicitor, and shall be laid before the grand jury of the city or criminal court by such county solicitor, which grand jury shall perform the duties hereinabove required of grand juries in the circuit court.

4134 (3894). **Judge of probate to furnish solicitor with list of licenses issued.**—The judge of probate must, on the first day of each circuit or city court of the county, furnish to the acting solicitor, to

be by him laid before the grand jury, a statement in writing showing the licenses granted and the taxes received thereon within the last twelve months preceding such court, to whom and for what business such license was granted.

Feb. 28, 1887, p. 92, §1.

4135. When license-money refunded.—When any person has taken out and paid for a license to carry on any business in this state, and has afterwards been prohibited by law from carrying on such business before the time named in the license has expired, such person shall be entitled to have refunded to him such proportionate part of the whole sum paid for such license as the unexpired time thereof bears to the whole time for which the license was originally granted.

Ib. §2.

4136. Application therefor; how money refunded.—On the application of any such person, his executor, administrator, or assigns, the judge of probate for the county in which such license was taken out shall proceed to ascertain the amount due such applicant under the provisions of the preceding section, and shall grant such certificates as will enable the state auditor and court of county commissioners to draw his warrant or their order, respectively, and such warrant or order shall be paid out of any moneys in the state treasury or county treasury, respectively, not otherwise appropriated.

A license to engage in business is a mere permit, revocable at the pleasure of the legislature.—Powell v. State, 69 Ala. 10.

CHAPTER 111.

TREES. 4137–4140.

4137 (3296) (3551) (3202 a). **Damages for destruction, injury, or removal of trees.**—Any person who cuts down, deadens, girdles, or destroys, or takes away, if already cut down or fallen, any cypress, pecan, oak, pine, cedar, poplar, walnut, hickory, or wild-cherry tree, or sapling of that kind, on land not his own, willfully and knowingly, without the consent of the owner of the land, must pay to the owner ten dollars for every such tree or sapling; and for every other tree or sapling not hereinbefore described, so cut down, deadened, girdled, destroyed, or taken away by any person, he must pay to such owner the sum of five dollars.

Russell v. Irby, 13 Ala. 131; Givens v. Kendrick, 15 Ala. 648; Rosser v. Bunn, 66 Ala. 89; Stovall v. Fowler, 72 Ala. 77; Beatty v. Brown, 76 Ala. 267; Allison v. Little, 85 Ala. 512; s. c., 93 Ala. 150; Rogers v. Brooks, 99 Ala. 31; s. c., 105 Ala. 549; Ala. State Land Co. v. Reed, 99 Ala. 20; Turner Coal Co. v. Glover, 101 Ala. 289; Morris v. West, 101 Ala. 534; Postal Tel. Co. v. Lenoir, 107 Ala. 640; Postal Tel. Co. v. Brantley, 107 Ala. 683; Clifton Iron Co. v. Curry, 108 Ala. 581 (changed by next section); Farrow v. N. C. & St. L. R. Co., 109 Ala. 448; Higdon v. Kennemer, 112 Ala. 351; Gravlee v. Williams, 112 Ala. 539; Williams v. Hendricks, Ala. (22 So. 439).

4138. Owner of trees owner of land within meaning of preceding section.—When one person owns the land and another person

owns the trees standing thereon, the owner of the trees is the owner of the land within the meaning of the preceding section.

4139 (3297) (3552) (3202 b). **Damages for destruction or injury of fruit or ornamental trees, etc.**—Any person who cuts down, digs up, girdles, destroys, or mutilates any fruit-tree, or ornamental tree, or shrub, bush, or plant, which is inclosed on premises not his own, willfully and knowingly, without the consent of the owner, must pay to such owner fifteen dollars for every such tree, shrub or plant.

4140 (3299) (3554) (3202 d). **Court in which suit must be brought; limitation; to what no bar.**—Any action for the specific penalties given by this chapter may be brought in any court of competent jurisdiction, and must be brought within one year from the time the injury was committed, and not after; and neither suit brought, nor penalty incurred, under any of the provisions of this chapter, is a bar to any action for further damages, or to any criminal proceeding for any offense included in the acts for which such penalties are herein imposed, or connected therewith.

Washington v. Timberlake, 74 Ala. 263.

CHAPTER 112.

TRIAL OF RIGHT OF PROPERTY. 4141–4151.

4141 (3004, 3012, 3014, 3365) (3341, 3290, 3676) (3016, 2965, 3279) (2587, 2537, 2833). **Personal property levied on may be claimed by a stranger to the writ; when delivered to claimant.**—When an execution or attachment issued from any court, or by any officer, is levied on personal property as to which any person not a party to the writ claims to own the title, legal or equitable, or a lien paramount to the right, title, or interest in the property of the defendant in the writ, such person may try the right to such property before a sale thereof upon making affidavit by himself, his agent or attorney, which may be taken by the officer levying the writ or any officer authorized to administer oaths, that he holds such title to, or such lien upon, the property claimed, and executing bond with two good and sufficient sureties to be approved by the officer making the levy and payable to the plaintiff in double the value of the property levied on and claimed, the value thereof to be determined by the officer making the levy, but in no case to be more than double the amount of the writ levied, with condition to have the property forthcoming for the satisfaction of the judgment or claim of the plaintiff, if it be found liable therefor, and also for the payment of such costs and damages as may be recovered for interposing the claim for delay; whereupon the property levied upon must be delivered into the possession of the claimant.

As amended Feb. 28, 1887, p. 150.

The proceeding authorized a suit.—Keyser v. Maas, 111 Ala. 390; Lassiter v. State, 106 Ala. 292; Heyward v. Phillips, 97 Ala. 533; Catching v. Bowden, 89 Ala. 604; McAdams v. Beard, 34 Ala. 478; Jacott v. Hobson, 11 Ala. 434; P. & M. Bank v. Borland, 5 Ala. 531. **What the commencement thereof.**—McAdams v. Beard, 34 Ala. 478. **Who may maintain.**—McGrew v. Hart, 1 Port. 175; Marrs v. Gantt, Minor, 406; Cotten v. Thompson, 21 Ala. 574; Braley v. Clark, 22 Ala. 361; Cooper v. Peck, Ib. 406; Loeb v. Manasses, 78 Ala. 555 (declaring Meyer v. Sulzbacher, 75 Ala. 423, on this point, a dictum); King v. Hill, 20 Ala. 133; Strode v. Clark, 12 Ala. 621. **What title necessary to support.**—Frow v. Downman, 11 Ala. 880; Foster v. Smith, 16 Ala. 192; Thomas v. DeGraffenreid, 17 Ala. 602; Abraham v. Carter, 53 Ala. 8; McKeithen v. Pratt, Ib. 116; Lehman v. Warren, Ib. 535; Boswell v. Carlisle, 55 Ala. 554; Treadway v. Treadway, 56 Ala. 390; Starnes v. Allen, 58 Ala. 316; Block v. Maas, 65 Ala. 211; Columbus Works v. Renfro, 71 Ala. 577.

Equitable title.—Ballard v. Mayfield, 107 Ala. 396; Patapsco v. Ballard, Ib. 710; Hardy v. Ingram, 84 Ala. 544. **Or lien of a landlord.**—Wells v. Cody, 112 Ala. 278; Ballard v. Mayfield, 107 Ala. 396; Patapsco v. Ballard, Ib. 710; Hardy v. Ingram, 84 Ala. 544. **Or his assignee.**—Wells v. Cody, 112 Ala. 278. **Claimant must recover on his own title;** cannot set up an outstanding title with which he is not connected.—Keyser v. Maas, 111 Ala. 390; Seisel v. Folmar, 103 Ala. 491; Bush v. Henry, 85 Ala. 605; Wollner v. Lehman, Ib. 274; Jones v. Franklin, 81 Ala. 161; Loeb v. Manasses, 78 Ala. 555; Jackson v. Bain, 74 Ala. 328; Shehan v. Herzberg, 73 Ala. 59; Pollak v. Graves, 72 Ala. 347; Elliott v. Stocks, 67 Ala. 290; Block v. Maas, 65 Ala. 211; Starnes v. Allen, 58 Ala. 316; Treadway v. Treadway, 56 Ala. 390; Lehman v. Warren, 53 Ala. 535; Pace v. Lee, 49 Ala. 571; Thomas v. DeGraffenreid, 17 Ala. 602; Foster v. Smith, 16 Ala. 192; Frow v. Downman, 11 Ala. 880; McGrew v. Hart, 1 Port. 175. **A joint claim by two or more claimants can be supported only by proof of joint ownership.**—Cottingham v. Armour, 109 Ala. 421. **Obligors in a forthcoming or replevy bond cannot interpose claim after forfeiture.**—Roswald v. Hobbie, 85 Ala. 73; Munter v. Leinkauff, 78 Ala. 546; Brown v. Hamil, 76 Ala. 506; Rhodes v. Smith, 66 Ala. 174; Adler v. Potter, 57 Ala. 571; Woolfolk v. Ingram, 53 Ala. 11; Mitchell v. Ingram, 38 Ala. 395; Braley v. Clark, 22 Ala. 361; Cooper v. Peck, Ib. 406; Dunlap v. Clements, 18 Ala. 778; Easley v. Walker, 10 Ala. 671; Mead v. Figh, 4 Ala. 279. **But may before forfeiture; when.**—Roswald v. Hobbie, 85 Ala. 73; Cooper v. Davis, 88 Ala. 569. **Claim does not destroy the lien of the execution.**—Sandlin v. Anderson, 82 Ala. 330; Munter v. Leinkauff, 78 Ala. 548. **Proceeding governed by law in force at the time claim filed.**—Seisel v. Folmar, 103 Ala. 491; Hardy v. Ingram, 84 Ala. 544; Wetzler v. Kelly, 83 Ala. 440; N. E. Mort. Co. v. Board of Rev., 81 Ala. 110; Warten v. Matthews, 80 Ala. 429; Farris v. Houston, 78 Ala. 250; Ex parte Oehmig, 91 Ala. 558. **Affidavit and bond essential to jurisdiction;** cannot be waived by parties.—House v. West, 108 Ala. 355; Mobile Ins. Co. v. Teague, 78 Ala. 147; Catching v. Bowden, 89 Ala. 604; Graham v. Hughes, 77 Ala. 590; Walker v. Ivey, 74 Ala. 475. **Sufficiency of affidavit.**—Catching v. Bowden, 89 Ala. 604; Gayle v. Bancroft, 22 Ala. 316; Rives v. Wilborne, 6 Ala. 45; M'Gregor v. Hall, 3 S. & P. 397. **Affidavit and bond conclusive as to what property was claimed and delivered to claimant.**—Wollner v. Lehman, 85 Ala. 274; Munter v. Leinkauff, 78 Ala. 546; Braley v. Clark, 22 Ala. 361; Jemison v. Cozens, 3 Ala. 636. **But not evidence of the value of the property.**—Roswald v. Hobbie, 85 Ala. 73; Wollner v. Lehman, Ib. 274; Townsend v. Brooks, 76 Ala. 308. **Bond and liability thereon.**—King v. Walton, 3 Port. 289; Bradford v. Dawson, 2 Ala. 203; Elliott v. Gray, 4 Stew. & Port. 168; Hughes v. Garrett, 8 Ala. 483; Babcock v. Williams, 9 Ala. 150; Henderson v. Bank, 11 Ala. 855; Del Barco v. Bank, 12 Ala. 238; Gayle v. Bancroft, 17 Ala. 351; Robertson v. Patterson, Ib. 407; Gayle v. Bancroft, 22 Ala. 316; s. c., Ib. 648; Madden v. Hooper, 42 Ala. 397; McElrath v. Whetstone, 89 Ala. 623; Robertson v. Patterson, 17 Ala. 407. **Bondsmen relieved by a claim of exemptions sustained.**—Munter v. Leinkauff, 78 Ala. 546. **But not by the death or destruction of the property.**—Madden v. Hooper, 42 Ala. 397; Derrett v. Alexander, 25 Ala. 265. **Sureties not discharged by agreement of parties to assess the value of property in gross.**—Jaffray v. Smith, 106 Ala. 112; Carter v. O'Bryan, 105 Ala. 305. **Nor by agreement to hear several claim suits together.**—Triest v. Enslen, 106 Ala. 180. **Execution of the bond estops claimant from denying levy.**—Schamagel v. Whitehurst, 103 Ala. 260; Guy v. Lee, 81 Ala. 163; Meyer v. Clark, 40 Ala. 259; Campbell v. May, 31 Ala. 567; Henderson vs. Bank, 11 Ala. 855. **Mandamus will lie to compel sheriff to receive affidavit and pass upon the sufficiency of the bond.**—Roswald v. Hobbie, 85 Ala. 73. **Claim bond may be amended.**—Martin v. Mayer, 112 Ala. 620; Roswald v. Hobbie, 85 Ala. 73; Rhodes v. Smith, 66 Ala. 174; Ex parte Morgan, 30 Ala. 51. **Sureties on bond are not parties to the judgment.**—Petree v. Wilson, 104 Ala, 157; Seisel v. Folmar, 103 Ala. 491; Tobias v. Treist, 103 Ala. 664; Catching v. Bowden, 89 Ala. 604; Langworthy v. Goodall, 76 Ala. 325. **When judgment will be corrected on appeal.**—Seisel v. Folmar, 103 Ala. 491; Tobias v. Triest, Ib. 664;

Parker v. Wimberly, 78 Ala. 64. **When may be amended nunc pro tunc.** Myers v. Conway, 90 Ala. 109; Parker v. Wimberly, 78 Ala. 64; Gray v. Raiborn, 53 Ala. 40. **Distinct from original suit.**—Gray v. Raiborn, 53 Ala. 40; Seamans v. White, 8 Ala. 656. **Attachment suit cannot proceed to final judgment until claim suit determined.**—Abraham v. Nicrosi, 87 Ala. 173; Moore v. Dickerson, 44 Ala. 485; Lampley v. Beavers, 25 Ala. 534. **But a claim to only a part** of the property levied on **does not require a suspension of the trial.**—Richards v. Bestor, 90 Ala. 352. **Proper form of judgment in claim suit** when levy is under execution, and when under attachment.—Jaffray v. Smith, 106 Ala. 112; Seisel v. Folmar, 103 Ala. 491; Tobias v. Treist, Ib. 664; Townsend v. Brooks, 76 Ala. 308; Langworthy v. Goodall, Ib. 325; Seamans v. White, 8 Ala. 656. **Property regarded as in custody of the law.**—Rapier v. Paper Co., 64 Ala. 330. **Levy of other executions thereon.**—Langdon v. Brumby, 7 Ala. 53; Spencer v. Godwin, 30 Ala. 355; McLemore v. Benbow, 19 Ala. 76; Babcock v. Williams, 9 Ala. 150; Branch Bank v. Broughton, 15 Ala. 127; Kemp v. Porter, 7 Ala. 138; Hobson v. Kissam, 8 Ala. 357; Rives v. Wilborne, 6 Ala. 45; McLemore v. Benbow, 19 Ala. 76; Scarborough v. Malone, 67 Ala. 570; Cordaman v. Malone, 63 Ala. 556; Powell v. Rankin, 80 Ala. 316. **Title acquired by purchasers from parties.**—Jackson v. Gewin, 9 Ala. 114; Atwood v. Pierson, Ib. 656; Spencer v. Godwin, 30 Ala. 355.

4142 (3005, 3366) (3342, 3677) (3017, 3280) (2588, 2834). **Papers returned; issue made up; burden of proof.**—The officer making the levy must, except as otherwise provided in sections 4146 (3006) and 4148 (3010), return the writ, affidavit and bond to the next term of the court to which it is returnable, when an issue must be made up between the plaintiff in the writ and the claimant, in which the former must allege that the property claimed is the property of the defendant in the writ and is liable to its satisfaction; and on the trial of such issue the burden of proof is on the plaintiff.

Court is without jurisdiction to hear the claim suit before the return-term.—Johnson v. Dismukes, 104 Ala. 520; Johnson v. Johnson, 108 Ala. 124. **The issue defined; how made up.**—Warren v. Liddell, 110 Ala. 232; Ramey v. Peeples, 108 Ala. 476; Scott v. Renfro, 106 Ala. 611; Rodenberg v. Claflin, 104 Ala. 560; Shahan v. Herzberg, 73 Ala. 59; Starnes v. Allen, 58 Ala. 316; Boswell v. Carlisle, 55 Ala. 554; Lehman v. Warren, 53 Ala. 535; Dryer v. Abercrombie, 57 Ala. 497; Langdon v. Brumby, 7 Ala. 53; Phelan v. Faucher, 5 Ala. 449; P. M. Bank v. Willis, Ib. 770; Branch Bank v. Parker, Ib. 731; Hall v. Dargan, 4 Ala. 696; Lucas v. Hitchcock, 2 Ala. 287. **Generally, the claimant cannot deny the plaintiff's debt.**—Rodenberg v. Claflin, 104 Ala. 560; Allison v. Pattison, 96 Ala. 159; Shahan v. Herzberg, 73 Ala. 59; Dryer v. Abercrombie, 57 Ala. 497; Boswell v. Carlisle, 55 Ala. 554; Pulliam v. Newberry, 41 Ala. 168; Taliaferro v. Lane, 23 Ala. 369; Hardy v. Gascoignes, 6 P. 447; Butler v. O'Brien, 5 Ala. 316; Harrell v. Floyd, 3 Ala. 16; Huff v. Cox, 2 Ala. 310; Stone v. Stone, 1 Ala. 582; Collingsworth v. Horn, 4 S. & P. 237; Carlton v. King, 1 S. & P. 472. **Nor can plaintiff set up title in himself.**—Starnes v. Allen, 58 Ala. 316; Boswell v. Carlisle, 55 Ala. 554; Barker v. Bell, 37 Ala. 354; Dent v. Smith, 15 Ala. 286; Powell v. Williams, 14 Ala. 476. **But in an attachment suit to enforce a statutory lien, plaintiff may set up such superior lien,** and claimant may deny the existence of the lien, or prove payment of plaintiff's debt. Allison v. Pattison, 96 Ala. 159; Foster v. Goodwin, 82 Ala. 384; Carter v. Wilson, 61 Ala. 434; Dryer v. Abercrombie, 57 Ala. 497; Boswell v. Carlisle, 55 Ala. 554. **Irregularities in original proceedings not available to claimant.**—Carter v. O'Bryan, 105 Ala. 305; Schamagel v. Whitehurst, 103 Ala. 260; Nordlinger v. Gordon, 72 Ala. 239; Taliaferro v. Lane, 23 Ala. 369; Sandlin v. Anderson, 76 Ala. 403; Jackson v. Bain, 74 Ala. 328; Pace v. Lee, 49 Ala. 571; Harrell v. Floyd, 3 Ala. 16; Huff v. Cox, 2 Ala. 310; Fryer v. Dennis, Ib. 144; Bettis v. Taylor, 8 Por. 564. **Otherwise, if process void.**—Nordlinger v. Gordon, 72 Ala. 239; Jackson v. Bain, 74 Ala. 328; Sandlin v. Anderson, 76 Ala. 403; Schamagel v. Whitehurst, 103 Ala. 260, 263. **Burden of proof on plaintiff to make a prima facie case; then shifts to claimant.**—Keyser v. Maas, 111 Ala. 390; City Fur. Co. v. Simmons, Ib. 438; Jordan v. Collins, 107 Ala. 572; Ross v. Lawson, 105 Ala. 351; Smart v. Hodges, Ib. 634; Rodenberg v. Claflin, 104 Ala. 560; Schamagel v. Whitehurst, 103 Ala. 260; Smith v. Barker, 102 Ala. 679; Mitcham v. Schuessler, 98 Ala. 635; Claflin v. Rodenberg, 101 Ala. 213; Allison v. Pattison, 96 Ala. 159; Waxelbaum v. Bell, 91 Ala. 331; Wollner v. Lehman, 85 Ala. 274; Roswald v. Hobbie, 85 Ala. 73; Bush v. Henry, 85 Ala. 605; Foster v. Goodwin, 82 Ala. 384; Jones v. Franklin, 81 Ala. 161; Loeb v. Manasses, 78 Ala. 555; Powe v. McLeod, 76 Ala. 418; Jackson v. Bain, 74 Ala. 328; Shahan

v. Herzberg, 73 Ala. 59; Elliott v. Stocks, 67 Ala. 290; Grady v. Hammond, 21 Ala. 427; Foster v. Smith, 16 Ala. 192. See citations to preceding section.

As amended Dec. 12, 1892, p. 85.

4143 (3007, 3367) (3343, 3680) (3018, 3283) (2589, 2837). **Value of property assessed; damages for delay.**—If the jury, or the justice, find the property levied on liable to the satisfaction of the writ, they must, as far as practicable, assess the value, at the time of the interposition of the claim, of each article separately; and if it be a case in which execution has been levied, and it be shown on the trial that the claim was interposed for delay, they must also assess such damages as the plaintiff may be entitled to, not more than fifteen per centum on the amount of the execution.

If practicable, **the verdict and judgment must assess the value of each article separately.**—Avary v. Perry Mfg. Co., 96 Ala. 406; Warehouse Co. v. Johnson, 85 Ala. 178; Roswald v. Hobbie, Ib. 73; Roberts v. Burgess, Ib. 192; Wollner v. Lehman, Ib. 274; Johnson v. McLeod, 80 Ala. 433; Townsend v. Brooks, 76 Ala. 308; Tait v. Murphy, 80 Ala. 440; Haynes v. Crutchfield, 7 Ala. 189. **Assessing value of stock of merchandise;** what sufficient.—Avary v. Perry Mfg. Co., 96 Ala. 406; Savage v. Russell, 84 Ala. 103; Munter v. Leinkauff, 78 Ala. 546; Townsend v. Brooks, 76 Ala. 308; Jones v. Anderson, Ib. 427; Brumby v. Langdon, 10 Ala. 747. See also Powell v. Hadden, 21 Ala. 745; Seamans v. White, 8 Ala. 656; Phelan v. Faucher, 5 Ala. 449; Burnett v. Maxey, 9 Por. 410; Wallis v. Rhea, 10 Ala. 451; Langworthy v. Goodall, 76 Ala. 325; Gray v. Raiborn, 53 Ala. 40; Lee v. Bryan, 3 Ala. 278; Williams v. Jones, 2 Ala. 314; Mundine v. Perry, 2 S. & P. 130; Lewis v. Lewis, Minor, 95. **Process, levy, etc., as evidence.**—Carter v. O'Bryan, 105 Ala. 305; Schamagel v. Whitehurst, 103 Ala. 260; Guy v. Lee, 81 Ala. 163; Thomas v. Henderson, 27 Ala. 523; Taliaferro v. Lane, 23 Ala. 369; Yarborough v. Moss, 9 Ala. 382; Mayer v. Clark, 40 Ala. 259; Gayle v. Bancroft, 22 Ala. 316. **Failure to assess value of articles separately,** not ground for motion in arrest of judgment.—Jordan v. Collins, 107 Ala. 572. **Effect and conclusiveness of judgment.**—Oden v. Stubblefield, 2 Ala. 684; Williams v. Jones, Ib. 314; Roberts v. Heim, 27 Ala. 678; Lenoir v. Wilson, 36 Ala. 600. **When only one of several execution creditors entitled to recovery.**—Burnett v. Handley, 8 Ala. 685. **Proceedings same under venditioni exponas as under attachment.**—Yarborough v. Moss, 9 Ala. 382. **Damages for delay.**—Murphy v. Butler, 75 Ala. 381. See citations to section 4141.

4144 (3008, 3013, 3368) (3344, 3291) (3019, 2966) (2590, 2538). **Forfeiture of claim bond; execution thereon.**—If judgment is rendered against the claimant, and he fails to deliver the property to the officer making the levy and pay the costs of the trial of the right of property within thirty days, if the writ issued from the circuit court or other court of like jurisdiction, or within ten days if the writ issued from a justice of the peace, such officer must indorse the bond forfeited; and thereupon, if the property was levied on under execution, or, if levied on under attachment, after judgment in favor of the plaintiff against the defendant in attachment, the clerk, or justice, as the case may be, must issue execution against the obligors on the bond for the amount of the plaintiff's judgment, if that is less than the assessed value of the property, or for the amount of such assessed value, if that is not greater than the amount of the judgment, and also for the damages, if any were assessed, and the costs of the trial of the right of property. And in the event the claimant delivers the property, but fails to pay damages and costs within thirty days, execution must issue for such damages and costs only.*

*Last clause added by joint committee.

There must be a "trial of the right of property," before bond may be returned forfeited.—Foust v. Greene, 90 Ala. 539; Catching v. Bowden, 89 Ala. 604. **Execution without a return of bond forfeited, may be quashed.**—Catching v. Bowden, 89 Ala. 604. **Mandamus will lie to compel sheriff to return bond forfeited.**—Cooper v. Davis, 88 Ala. 569. **Bond forfeited if property delivered only in part**; obligors entitled to a credit on the execution only for the amount realized by sale of the portion delivered. Wilcox v. Piedmont, 97 Ala. 552; s. c., 98 Ala. 281; Munter v. Leinkauff, 78 Ala. 546. **When execution enjoined in equity.**—Jaffray v. Smith, 106 Ala. 112; Triest v. Enslen, Ib. 180. **When bond not statutory.**—King v. Walton, 3 Port. 289. See also Allen v. Hays, 1 Stew. 10; Elliott v. Gray, 4 Stew. & Port. 168; Garnett v. Roper, 10 Ala. 842; Patton v. Hamner, 33 Ala. 307; Langworthy v. Goodall, 76 Ala. 325; and citations to section 4141.

4145 (3017) (3349) (3024) (2595). **Claim by mortgagee or lien-holder; payment of secured debt by plaintiff.**—When the claim interposed is based on a mortgage or lien, the claimant must state in his affidavit the nature of the right which he claims, and in case such claim is sustained on the trial, the amount of it, whether then due or not, with interest to the date of the trial, must be ascertained by the jury, or the justice, as the case may be; the plaintiff may then pay to the mortgagee, or his assignee, or to the lien-holder, the amount so ascertained, and in such case the property shall be sold as well for the payment of the debt secured by the mortgage or the lien as ascertained, as for the satisfaction of the plaintiff's judgment, the proceeds of the sale to be first applied, after payment of the costs, to reimburse the plaintiff the amount so paid by him to such mortgagee or lien-holder.

Bingham v. Vandegrift, 93 Ala. 283; Nelson v. Warren, Ib. 408; Draper v. Nixon, Ib. 436; Boswell v. Carlisle, 70 Ala. 244; Floyd v. Morrow, 26 Ala. 353.

4146 (3006) (705) (799) (667). **Proceedings when execution issued from probate or chancery court.**—If the levy was made under execution issued from the probate or chancery court the sheriff must return the original execution to the court from which it issued with an indorsement thereon showing the interposition of the claim; and he must return a copy of the execution and of the returns thereon, the affidavit and the bond to the next term of the circuit court, or other court of like jurisdiction, of his county, where the trial of the right of property must be had according to the provisions of this chapter.

Ex parte Oehmig, 91 Ala. 558.

4147 (3009) (706) (800) (678). **Return of execution in such case.** If in the case provided for in the preceding section the bond is forfeited, the execution on the forfeited bond must be made returnable to the court from which the original process issued; of which, and of the time of its receipt by the sheriff, the clerk must give the judge of probate, or the register in chancery, as the case may be, written notice, which shall be presumptive evidence of the fact against the sheriff.

4148 (3010) (3345) (3020) (2591). **Proceedings when execution or attachment is levied from another county.**—When the levy is made in a different county from that in which the judgment was rendered or the original attachment issued, if a claim is interposed to the property, it is the duty of the officer levying the writ to return

the original to the court from which it issued, with a statement thereon showing the interposition of the claim, and true copies of the affidavit and bond, certified by him; and he must return the original affidavit and bond, and a true copy of the writ under which the levy was made, certified by him, to the circuit court, or other court of like jurisdiction, of his own county, where the trial of the right of property must be had; and the copies thus required to be made, certified as herein provided, must be received in lieu of, and have, in all respects, the same effect as the originals.

Henderson v. Bank, 11 Ala. 855; Ex parte Dunlap, 71 Ala. 73.

4149 (3011) (3346) (3021) (2592). **Proceedings on forfeiture of bond in such case.**—If, in the case provided for in the preceding section, the property levied on is found liable to the satisfaction of the writ, and is not delivered up to the sheriff of the county in which the trial of the right of property was had within twenty days thereafter, he must indorse the bond forfeited, and thereupon the clerk must issue execution as in other cases of the trial of the right of property, except that he must make the same returnable to the court from which the original writ issued; of which, and of the time of its receipt by the sheriff, he must give the proper officer of such court written notice; which shall be presumptive evidence of the fact against the sheriff; and he must also issue a separate execution for the costs of his own court.

4150 (3015) (3347) (3022) (2593). **Levy on other property not prevented.**—The interposition of a claim for the trial of the right of property shall not prevent the plaintiff from levying on other property of the defendant in the process.

4151 (3016) (3348) (3023) (2594). **Damages against the sheriff released by claim.**—A claim interposed for the trial of the right of property is a release by the claimant in favor of the sheriff from all damages for seizing the property levied on.

Towns v. Alford, 2 Ala. 378; Lenoir v. Wilson, 36 Ala. 600.

CHAPTER 113.

TRUSTS AND TRUSTEES.

ARTICLE 1.—EXPRESS TRUSTS FOR PAYMENT OR SECURITY OF DEBTS. 4152–4173.
2.—INVESTMENT, REMOVAL AND LIABILITY OF TRUST ESTATES. 4174–4187.
3.—RESIGNATION, APPOINTMENT AND REMOVAL OF TRUSTEES. 4188–4204.

ARTICLE 1.

EXPRESS TRUSTS FOR PAYMENT OR SECURITY OF DEBTS.

4152 (3549). **Trustee of certain express trusts required to give bond.**—When an express trust is created for the payment or security

of debts, and by the terms thereof the trustee is not required to give bond with surety, any creditor interested therein may apply to the register of the court of chancery of the district in which the trust property, or the most valuable portion thereof, may be, for an order requiring such trustee to give bond with surety for the faithful administration of the trust.

Royall v. McKenzie, 25 Ala. 363; Jones v. McPhillips, 77 Ala. 314; s. c., 82 Ala. 102; Stuckey v. McKibbon, 92 Ala. 622; Andrews v. Ford, 106 Ala. 173.

4153 (3550). **Contents of application; notice.**—The application must be in writing, verified by affidavit; must state the nature and character of the trust and of the interest of the applicant therein, and must state, in the opinion of the applicant, said interest is, or will be endangered, if bond with sureties is not required of such trustee; and, on the filing of such petition, the register must appoint a day for the hearing thereof, of which not less than five days' notice, by the service of summons to appear and answer, must be given the trustee, if he resides in the state; and if he resides without the state, notice must be given by publication for three successive weeks in some newspaper published in the district, if there be such paper, and if there be not, in the paper published nearest to such district.

4154 (3551). **Hearing; order.**—On the day appointed, or on any other day to which such application may be continued, if it appears that the applicant has a real, bona fide interest in the administration of the trust, and that by the terms thereof the trustee is not required to give bond with surety, and that a majority in number and interest of all the creditors for whose benefit such trust may be created do not oppose such application, the register must make and enter an order requiring such trustee to give bond with at least two good and sufficient sureties, payable to such register, in such sum as the register may prescribe, subject to change on application to the chancellor in term time or vacation, with condition for the faithful discharge of all the duties of such trustee, which bond must be approved, filed and recorded in his office.

4155 (3552). **Failure of trustee to give bond; appointment of successor.**—If the trustee fails, for three days from and after the making of such order, to give such bond, the register must make and enter an order removing him as trustee, and may make and enter an order appointing a successor, of whom bond with sureties, payable and conditioned as provided in the preceding section, must be required.

Stuckey v. McKibbon, 92 Ala. 622.

4156 (3553). **Trustee to make inventory of trust property and file two copies with the register.**—It is the duty of the trustee of an express trust created for the payment of debts, within ten days after entering upon the execution of such trust, to make an inventory of the entire trust property so far as the same has come to his possession or knowledge, describing the real estate and grouping and classifying the personal property in as brief and comprehensive manner as may be consistent with its proper identification and appraisement,

and stating the amount and character of all choses in action, with the names of debtors, belonging to the trust. In reducing such inventory to writing the trustee must leave appropriate spaces opposite each article or item, with proper caption, in which spaces the appraised value may be inserted by the appraisers. The trustee must, within the time above stipulated, file, in the office of the register in chancery of the district in which the most valuable portion of the trust property may be, two copies of such inventory, each of which shall be duly verified by his affidavit; and if there be property in more than one county, a separate inventory of the property in each county must be made and filed. Supplemental inventories may be made in like manner.

4157 (3554). **Appointment and duty of appraisers.**—On the filing of such inventory the register must indorse upon each of such copies the fact and date of such filing and must appoint three competent and disinterested persons, who must not be of kin or of counsel to any person interested in the trust estate, appraisers of and in each county in which any part of the trust property may be, and must attach to the commission one of the copies of such inventory filed by the trustee; and the appraisers must, in writing, appraise at its true value, the property described in such inventory and set down in figures opposite each article or item, the appraised value thereof, add each column and carry forward the result so as to show the aggregate or total valuation placed upon such property, and verify the same by affidavit and make return thereof to the register who must record the commission to the appraisers and such combined inventory and appraisement, together with the affidavits appended thereto. The other copy of the inventory filed by the trustee must be carefully preserved by the register, free to the examination of all persons, but must not be recorded. The appraisers are severally entitled to two dollars for each day's service in making such appraisement, to be taxed as costs and collected and paid over by the register.

4158. When trustee, or assignor, or creditors may file petition to have trust administered.—If the value of the trust estate as appraised by the appraisers exceeds one thousand dollars, the trustee, or assignor, or any creditor, or any number of them, may file a petition in the chancery court of the district in which the inventory and appraisement are required to be filed, for the administration of the trust. Such petition must briefly allege the making of the assignment, the value of the trust estate as shown by the appraisement and the names and residences of all creditors so far as known, and pray that the trust be administered by the chancery court.

4159. Petition to be submitted to chancellor and time fixed for filing claims.—Upon the filing of such petition the register must submit the same, together with the inventory and appraisement, upon the original papers, to the chancellor, whether in term time or vacation; and the chancellor must make an order designating a day, not less than two nor more than twelve months from the date

thereof, by or on which day all claims against the trust estate must be presented, verified by affidavit.

4160. Register to give notice; form of notice.—Upon the making of such order the register must give notice thereof by mail, postage prepaid, to each creditor whose name and address he may, by diligent inquiry and investigation, ascertain from the trustee, or assignor, or the record of the deed of assignment in the office of the judge of probate, or any other available source of information, and must also give notice by publication once a week for three successive weeks in a newspaper published in the county, or, if there be no such paper, by posting the notice at the court-house door for the same length of time. Such notice may be substantially in the following form:

"To the creditors of A. B., of ———:

The said A. B. having made an assignment for the benefit of creditors, and C. D. having filed his petition for the administration of such trust by the chancery court, and the chancellor having made an order designating the —— day of ——— as a day by or on which all claims of creditors must be presented; all parties in interest are hereby notified of the filing of such petition, and all persons having claims against the trust estate are required to file the same, or a statement thereof, verified by affidavit, in the office of the register in chancery at ———, by or on the day above specified or the same will be barred. This the —— day of ———.

E. F., Register."

4161. Claims must be presented within the time prescribed; verification; effect of failure to present.—All claims against the trust estate must be presented by or on the day specified in such order and notice, by filing the claim, or a statement thereof, in the office of the register, verified as claims against the estate of a decedent are required to be verified, before a notary public or other officer authorized to take and certify affidavits within or beyond the state; and all claims not so presented are precluded from sharing in the assignment or participating in any dividend that may be made from the trust estate, until all presented and allowed claims shall have been paid in full. But when a claim has been so presented prior to the giving of such notice, a second presentation is not necessary. Any defect or insufficiency in the affidavit may be remedied by amendment at any time. The register must give to the creditor, his agent or attorney, a receipt for his claim, and must indorse thereon the date of filing and sign his name thereto.

4162. Register must keep a docket of claims.—The register must keep a docket in which he must enter each claim, showing, under appropriate captions, the name and address of the claimant, the amount and character of his claim, when due, by whom verified and when filed, with appropriate spaces for the insertion of the amount of each claim allowed and the amount of the dividend thereon at each distribution of the trust estate.

4163. Claims presented and not objected to stand allowed.—All claims to which no objection is made in the manner hereinafter provided, within three months after the expiration of the time prescribed for the presentation of claims, stand allowed without further proof.

4164. Objections to claims.—At any time within three months after the expiration of the time allowed for the presentation of claims, or at any time prior thereto, the trustee, or assignor, or any creditor or party in interest may object to the allowance of any claim filed against the trust estate, by filing objections thereto in writing.

4165. Register to fix time for hearing objections and give notice.—Within thirty days after the expiration of the time allowed for filing objections to claims, the register must appoint a time, not less than twenty nor more than sixty days thereafter, for the hearing of such objections as have been filed; and of the nature of the objections and the time appointed for such hearing he must give notice to each person whose claim is contested, by citation to be served upon him, his agent or attorney, or, if he be a non-resident and have no resident agent or attorney, such citation must be sent by mail, postage prepaid, to such claimant, at his post-office address.

4166. Hearing objections; order.—On the day appointed for the hearing, or any day to which the same may be continued, the register must proceed to hear and note the testimony for and against the contested claim, the verified claim or statement thereof being prima facie evidence of its correctness, and must make an order allowing or disallowing the claim, in whole or in part, according to the evidence.

4167. Trustee must account within three months and every six months thereafter.—Within three months after the expiration of the time allowed for the filing of objections to claims, the trustee must render, under oath, to the register, an account charging himself with all the moneys of the trust estate which have come into his possession, or with which he is chargeable, and crediting himself with all sums to which he is entitled as credits, and must file therewith the vouchers on which he relies to sustain such credits; and a similar account must be filed every six months thereafter.

4168. Day appointed for settlement; notice.—Upon the filing of such account the register must appoint a day, not less than twenty nor more than sixty days thereafter, to hear and pass upon the account, and must give notice thereof by mail, postage prepaid, to each creditor, his agent or attorney, and to the assignor.

4169. Hearing and passing upon account; decree.—Upon the day so appointed or any day to which the hearing may be continued, the register must proceed to examine and audit the account; and upon such auditing, the assignor or any creditor or party in interest, his representative or transferee, may move the register to charge the trustee with other sums than those with which he has charged himself, or may object to the allowance of any item for which he claims credit; all such matters must be heard and the account stated and passed upon by the register and distribution made

and decreed to creditors as in insolvent estates administered in the court of probate; and after deducting the costs and expenses of administration, including five per cent. commissions to the trustee on the amount of money with which he is charged, and the allowance of reasonable charges for the preparation of the deed of assignment, and after the discharge of all liens or claims having priority, the register must decree to each creditor whose claim has been allowed, his proportion of such money, reserving in the hands of the trustee a ratable proportion for such claims as may be then contested and undecided; and if no appeal is taken as hereinafter provided and prosecuted to effect, the register may issue execution upon such decrees, against the trustee, and the sureties on his bond if he has given bond. But upon application to the register by the assignee or any party in interest, such compensation of the assignee may be increased or diminished by the register for good cause shown.*

4170. Proceedings before the register; evidence; exceptions; appeal.—Upon a hearing before the register under any of the provisions of this article, any competent legal testimony, written or oral, may be received; but all such testimony must be noted and oral testimony reduced to writing by the register; and within ten days thereafter, either party may file exceptions to the action or conclusion of the register and may have the same reviewed by the chancellor in term time, or, at the instance of either party, such exceptions may be heard in vacation upon ten days' notice to the other party; such review to be without any presumption in favor of the correctness of the action or conclusion of the register; and from the decision of the chancellor thereon an appeal lies to the supreme court within thirty days.

4171. Compromise or sale of bad debts.—Upon the application of the trustee the register may authorize the compromise of any bad and doubtful debts or choses in action belonging to the trust estate, or the sale thereof to the highest bidder, on such terms and notice as the register may prescribe.

4172. Sale of real estate; notice to creditors.—The trustee may make sale of any real estate or interest therein belonging to the trust estate, at public outcry to the highest bidder, after giving notice thereof by publication once a week for three successive weeks in a newspaper published in the county where the real estate is situated, or, if there be no such paper, by posting notice at the court-house door for the same length of time; and of such sale the trustee must also give notice by mail, postage prepaid, to each creditor, in time to reach him ten days before the day of sale. But nothing herein contained shall prevent the assignee from exercising powers of sale or other powers conferred by the deed of assignment, unless specially restrained from so doing by an order made in writing by the chancellor and filed in court.*

4173. When settlements compelled; removal of trustee and appointing successor.—If the trustee shall fail to make settlement,

*As amended by joint committee.

partial or final, as required in this article, he may be compelled to do so, by citation to be issued by the register, at the instance of any creditor or party interested in the trust, in all respects as executors and administrators may be compelled to make settlements in the court of probate; or, upon motion of a majority in value of the creditors, the register must remove such defaulting trustee and appoint another in his stead, who may be nominated by the creditors as provided by this Code for the nomination of an administrator of an insolvent estate by the creditors thereof.

ARTICLE 2.

INVESTMENT, REMOVAL, AND LIABILITY OF TRUST ESTATE.

4174 (3555) (3742). **Trustees may invest in state or United States securities.**—A trustee, having moneys to invest or loan, may invest them in the purchase of the interest-bearing securities of this state, or of the United States; but for such investment his liability is governed by the general rules of law.

4175 (3556) (3743). **Investment without the state.**—If the cestuis que trust, or any of them, reside without the state, and the trustee has funds to loan or invest, the loan or investment whereof in the state of their residence is desirable, the trustee may there loan and invest them, under the authority of a decree of the court of chancery.

4176 (3557) (3743). **Mode of obtaining authority.**—The trustee may obtain authority for the making of such loan or investment, by petition to the court of chancery of the district in which the trust was created, or in which the trust is being administered. The petition must be verified by affidavit, and must state who are the parties having interests in the funds, the nature of the interest, their places of residence, which of them, if any, are minors or of unsound mind, the amount and character of the fund to be loaned or invested, the security upon which the loan is to be made, or the nature and character of the investment to be made, and the facts which render such loan or investment desirable.

4177 (3558) (3743). **Hearing; notice of petition.**—The petition may be heard, and decree may be rendered in term time or in vacation. On the filing of the petition, the time for the hearing must be fixed by the register, and thereof notice must be given to such of the cestuis que trust as are of full age and of sound mind, residing in this state, by the service of summons for at least ten days; and like notices to such as are minors or of unsound mind, by the service of summons on their guardian, if any they have; and if they have no guardian, upon such person as may have charge of them, or with whom they may reside. Notice by publication for such length of time, and in such mode as the chancellor may direct, shall be given to the cestuis que trust who reside without the state. The chancellor or register, after notice has been given, must appoint a suitable

person as guardian ad litem to represent the cestuis que trust who are minors or of unsound mind.

4178 (3559) (3743). **Decree on hearing.**—If, on the hearing, the court is satisfied from the evidence adduced, which may be oral, or by deposition, that it would be to the interest of the cestuis que trust that the loan or investment should be made, it must render a decree authorizing it.

4179 (3560) (3744). **Removal of trust estate.**—The court of chancery of the district in which a trustee resides, or in which a trust estate is created, or is being administered, may authorize the removal of such estate to another state.

4180 (3561) (3745). **Mode of obtaining authority for removal.** A cestui que trust or a trustee may obtain authority for the removal of a trust, by petition verified by affidavit, which may be heard in term time or in vacation, and which must state the property to be removed, the place to which removal is desired, the names and residences of the parties having interests therein, which of them, if any, are minors, or of unsound mind, and the facts which show that the removal will be of benefit to the cestuis que trust.

4181 (3562) (3745). **Hearing; notice.**—On the filing of the petition, the register must appoint a day for the hearing thereof, of which notice for at least ten days must be given the parties residing within this state, by the service of summons. If any of such parties be minors or of unsound mind, summons must be served on their guardian, if any they have, or if they have no guardian, upon such person as may have charge of them, or with whom they may reside. If any of such parties reside without the state, notice must be given them by publication, in the mode, and for the length of time prescribed by the chancellor. After notice given, the register or chancellor must appoint a suitable person as guardian ad litem to represent and defend for the minors or parties of unsound mind.

4182 (3563) (3746). **Decree on hearing.**—If, on the hearing, the court is satisfied from the evidence adduced, which may be oral or by deposition, that a removal would be to the interest of the cestuis que trust, a decree must be rendered authorizing it. But before the execution of the decree, the party or parties, at whose instance the removal is to be made, must, in the state to which the property is to be removed, before a court having jurisdiction, give bond with sufficient surety, to be approved by such court, in penalty and with condition that will fully protect all parties in interest from loss or injury by reason of the removal, or because of the waste or negligence of the party or parties to whose care and custody such property is intrusted; which bond must be properly certified, and filed in the court of chancery, and must, before the removal, be approved by the chancellor.

4183 (3564) (3747). **Liability of trust estate.**—A trustee, or an executor, or an administrator, may render the estate in his hands to be administered liable for the payment for necessary services rendered to him, or for necessary repairs in and upon the estate, or for

necessaries furnished to him, if he be or become insolvent without making payment, and has not charged the estate with, and obtained credit for such services, repairs, or necessaries.

Askew v. Myrick, 54 Ala. 30; Steele v. Steele, 64 Ala. 438; Dickinson v. Conniff, 65 Ala. 581; Munden v. Bailey, 70 Ala. 63; Blackshear v. Burke, 74 Ala. 239; Mosely v. Norman, 74 Ala. 422.

4184 (3565) (3747). **Mode of enforcing such liability.**—The liability of the estate may be enforced by the party rendering such services, or by whom such repairs were made, or necessaries furnished, or by his assignee, or by the personal representative of either, by petition filed in the court of chancery against such trustee, executor, or administrator, or, if his authority has terminated, against his successor in the trust or administration; which petition may be filed in the district of the residence of the defendant, or in the district in which such estate is situate, or is being administered. If pending suit an abatement occurs by the death or disability of the petitioner, or by the termination of the authority of the trustee, or of his successor, there may be a revivor as in other suits in equity.

Askew v. Myrick, 54 Ala. 30; Steele v. Steele, 64 Ala. 438; Dickinson v. Conniff, 65 Ala. 581; Munden v. Bailey, 70 Ala. 63; Blackshear v. Burke, 74 Ala. 239.

4185 (3566) (3747). **Decree.**—If, on the hearing, the evidence is sufficient, the court must render a decree charging the trust estate, or the assets subject to administration, with the payment of the sum ascertained to be due the petitioner, and with the costs of the petition; and if the decree be against an executor or an administrator, or his successor, it must be preferred in payment, as are the fees and charges of administration.

Daily v. Daily, 66 Ala. 266; Steele v. Steele, 64 Ala. 438.

4186 (3567) (3748) (4425). **When suit for administration pending.**—If there be a pending suit, in which the court of chancery has taken jurisdiction of the administration of the trusts, or of the estate, the petition must be filed in, and become a part of the proceedings in such suit.

Munden v. Bailey, 70 Ala. 63.

4187 (3568). **Real estate to be charged.**—If the personal assets be insufficient, and it be necessary to charge lands descended, or lands devised, with the payment of such claims, the heirs to whom the lands have descended, or the devisees to whom they are devised, must be made parties defendant to the petition.

ARTICLE 3.

RESIGNATION, APPOINTMENT AND REMOVAL OF TRUSTEES.

4188 (3569) (3727) (3447) (2991). **Trustee of express trust may resign on application to the register.**—When any express trust is created by will or deed, the trustee may resign on application to the register of the district where the trust property, or the most val-

uable portion of the same, is, or of the district in which the trustee resided when he was appointed trustee.

Royall v. McKenzie, 25 Ala. 363.

4189 (3570) (3728) (3448) (2992). **Notice of the application by advertisement.**—Notice of the application must be given in such paper as the register may direct, for three successive weeks.

4190 (3571) (3729) (3449) (2993). **Trustee to account and settle upon resignation.**—The trustee must render a full account, and pay over to the parties entitled to the same, or to the register, all moneys due by him.

4191 (3572) (3730) (3450) (2994). **Accounts not conclusive; payments valid.**—No account so taken is conclusive on any of the parties interested in the trust; but the trustee may be required to account up to the time of granting the application, in the same manner as if no proceedings had been had; except that he is entitled to the benefit of all payments made by him under the provisions of the preceding section.

4192 (3573) (3731) (3451) (2995). **New trustee appointed; bond if necessary.**—The register, on the granting of such application, may appoint a trustee, and, if necessary to protect the parties interested in the trust property, may require the necessary bond of such trustee.

4193 (3574) (3732) (3452) (2996). **On death of trustee, register appoints another; bond in such cases.**—Upon the death of the trustee of such express trust, the register of the district in which the trust property, or the most valuable portion of the same, is, may, on the application of any party in interest, appoint a trustee, and may also require of him a bond, as under the preceding section, except that in all cases where the husband dies, leaving the wife surviving, who is the owner of an equitable separate estate in real or personal property, the legal title to such equitable separate estate shall descend to and vest absolutely in the surviving wife, and no proceeding by appointment of another trustee under this chapter or by bill in chancery shall be necessary in any case to establish the legal title to such property in the wife. As amended Feb. 28, 1889, p. 87.

Allison v. Little, 85 Ala. 512.

4194 (3575) (3733) (3453) (2997). **Notice of the application to appoint.**—All the parties interested in such trust property must have ten days' personal notice of such application, or by publication, once a week for three successive weeks, in such paper as the register may direct.

4195 (3576) (3734) (3454) (2998). **Guardians for infants in such cases.**—In any proceeding to appoint a trustee before the register, he has authority, where minors or persons of unsound mind are interested, to appoint guardians ad litem for their defense, and to protect their interest.

4196. Representative of deceased trustee to settle with succeeding trustee.—Upon the death of a sole trustee, his personal representative must make, with the succeeding trustee, settlement of the accounts of the deceased trustee as in case of resignation.

4197 (3577) (3735) (3455) (2999). **Causes of removal of trustee, on petition to the chancery court.**—Upon the petition or bill of any person interested in the execution of a trust, the court of chancery may remove any trustee who has violated or threatened to violate his trust; who is insolvent, or whose insolvency there is good reason to apprehend; who has removed from the state; or who, for any other cause, is an unsuitable person to execute the trust; or the court may require such bonds as will effectually protect the interest of the parties.

4198 (3578) (3736) (3456) (3000). **New trustee appointed by the court in such case.**—Such court has authority to appoint a new trustee in the place of a trustee removed, or may cause the trust to be executed by one of its own officers.

4199 (3579). **Refusal of trustee to accept trust.**—If the trustee of an express trust, created by will or deed, refuse to accept and execute the trust, on the application of any party therein interested, the register of the court of chancery of the district in which the trust estate, or the most valuable portion thereof, may be, may appoint a trustee to execute the trust. Notice of the application must be given in such paper as the register may direct, for three successive weeks.

4200 (3580) (3737) (3457). **Trustee appointed to receive trust property in another state and remove it to this state.**—Where there is trust property in another state, held under deed, will, marriage settlement, or otherwise, and the beneficiary owning the entire interest in such trust property has removed to or resides in this state, and desires that the property may also be removed to this state, such beneficiary may, if of age, or by next friend, if a minor or married woman, make application to the register of the chancery court of the district in which such beneficiary resides, to appoint a trustee to receive such trust property and remove the same to this state.*

4201 (3581) (3738) (3458). **Day of hearing appointed and notice given by register.**—The register in chancery must appoint a day for hearing such application, and notice thereof must be given by advertisement in some paper published in the district for three successive weeks, or if no paper is published in such district, by posting such notice at the court-house door, and at three other places in the district, three weeks before the day appointed for hearing the application; and a copy of such notice must be sent to the non-resident trustee of such trust estate, if there be one, and his place of residence be known.

4202 (3582) (3739) (3459). **Trustee appointed by register.** Upon the hearing of such application, if there be no good and sufficient reason to the contrary, such register must appoint a trustee living in the district wherein such beneficiary resides to receive and remove the trust property to such district.

4203 (3583) (3740) (3460). **Bond of trustee.**—Such trustee, before he enters on the discharge of the duties of such trust, must give

*The words "or resides in" inserted by joint committee.

bond, with good and sufficient surety, payable to the register of such chancery court, in double the amount of the supposed value of such trust estate, conditioned that he will faithfully execute the trust.

4204 (3584) (3741) (3461). **Fees of register; by whom paid; how refunded.**—A fee of five dollars, to be paid to the register for his services rendered under the provisions of the four preceding sections, must be paid by the party making the application; and such party may be reimbursed for this, and all other expenses growing out of such application, from such trust fund when received by the trustee appointed by such register.

CHAPTER 114.

VENUE.

ARTICLE 1.—VENUE OF ACTIONS. 4205–4209.
2.—CHANGE OF VENUE. 4210–4216.

ARTICLE 1.

VENUE OF ACTIONS.

4205 (2640) (2928) (2562) (2164). **Venue of actions.**—All actions on contracts, except as may be otherwise provided, must be brought in the county in which the defendant, or one of the defendants, resides, if such defendant has within the state a permanent residence; all other personal actions, if the defendant, or one of the defendants, has within the state a permanent residence, may be brought in the county of such residence, or in the county in which the act or omission complained of may have been done, or may have occurred. All actions for the recovery of land, or of the possession thereof, or for a trespass thereto, must be brought in the county where the land lies; a summons issuing contrary to this section must be abated on the plea of the defendant.

Does not apply to suit commenced by attachment.—Herndon v. Givens, 16 Ala. 261. **Although served by summoning a garnishee.**—McPhillips v. Hubbard, 97 Ala. 512; **An unmarried man,** who rents and occupies a room as a sleeping-apartment, taking his meals elsewhere, **is not a householder.**—Katzenberg v. Lehman, 80 Ala. 512. **A non-resident found here and personally served** with process in a transitory action **is bound by the service.**—Smith v. Gibson, 83 Ala. 284. **Detinue may be brought in any county where the property sued for may be found** in the possession of the defendant.—Rand v. Gibson, 109 Ala. 266; Montgomery Iron Wks. v. Eufaula Oil & F. Co., 110 Ala. 395.

4206 (2641) (2929) (2563). **Residents of new counties not organized.**—Persons residing in new counties may sue and be sued in the counties from which their residences are taken, until such new counties have elected their officers and are organized.

4207 (2642). **Corporation sued in any county where it does business by agent.**—A foreign or domestic corporation may be sued in any county in which it does business by agent.

Home Protection Ins. Co. v. Richards, 74 Ala. 466; Sullivan v. Sullivan Timber Co., 103 Ala. 371; Montgomery Iron Wks. v. Eufaula Oil & F. Co., 110 Ala. 395.

4208 (2643) (2930). **Suits by, or for the use of the state.**—At the election of the attorney-general, all suits or summary proceedings by or for the use of the state, founded on the breach of the official bond of a state officer, or of a former state officer, of a tax-collector or former tax-collector, of a judge of probate or former judge of probate, of a tax-assessor or former tax-assessor, or clerk of the circuit court or former clerk of the circuit court, may be brought in a court of the county of Montgomery having jurisdiction of the subject-matter, or in a court of the county in which any one of the obligors in such bond may reside.

As amended Feb. 18, 1895, p. 849, §66.

4209 (2644). **Venue of actions in which the convict system is interested.**—All actions in which the convict system, or the state for the convict system, is interested, must be brought in Montgomery county in any court having jurisdiction of the subject-matter.

ARTICLE 2.

CHANGE OF VENUE.

4210 (2645) (3114) (2761) (2359). **Venue changed once on motion of a party.**—Either party to a civil suit may, at any time before final trial, move the court to change the venue, making affidavit that for causes set forth, he cannot have a fair and impartial trial in the county where the suit is pending. The court may direct a change to the nearest county free from proper objection by either party, to be determined by affidavits; and, whenever it will best secure the ends of justice, may require the applicant to give bond and security for costs. The same party can have the venue changed but once.

Ex parte Remson, 23 Ala. 25; s. c., 31 Ala. 270; Gager v. Gordon, 29 Ala. 341; Ex parte Holton, 69 Ala. 164; Ex parte Rice, 102 Ala. 671.

4211 (2646) (3115) (2762) (2360). **Depositions of witnesses in the county taken.**—When there has been a change of venue, the party opposed to such change may take the depositions of witnesses residing in the county from which the venue has been changed, under the same rules and regulations as are now provided by law for taking depositions in other cases.

4212 (2647) (3116) (2763) (2361). **Witnesses subpœnaed to attend at place of trial.**—The clerk of the court where the cause is pending must, unless otherwise directed, issue subpœnas to all witnesses to attend the court to which the venue is changed.

4213 (2648) (3118) (2766) (2363). **Original paper and transcript of orders transmitted.**—When a change of venue is directed, the clerk of the court must make a transcript of all the minutes, orders and other proceedings in the cause, and certify under the seal of his court that the same is a true copy. This transcript, together with all the original papers, he must envelope and securely seal, and write his name across the seals, and certify on the back of the

envelope that the inclosed papers, numbered from 1 to ——, include all the original papers in the cause, naming it; and these signatures and certificates must be received as true until the contrary is shown. This package the clerk may deliver himself, or send by messenger or express to the clerk of the trial-court, and, if not mutilated or defaced, must be presumed to be as it came from the hands of the clerk of the court from which the venue is changed.

4214 (2649) (3119) (2767) (2364). **Pay of messenger for carrying the papers.**—The clerk or messenger so carrying the papers is entitled to five cents per mile and tolls and ferriages going and returning, which must be paid in advance by the party applying for the change of venue; if paid by the opposing party, to be taxed in the bill of costs against his adversary.

Ex parte Holton, 69 Ala. 164.

4215 (2650) (3117) (2764) (2362). **Trial removed to new county if defendant resides in it.**—In like manner, when new counties are formed out of old counties, the original papers of all unfinished business in the county where the defendant resided, with a transcript of all orders made in the cause, must be transmitted to the new county as soon as it is organized.

4216. Change of venue when convict system interested.—If on the trial of any cause in any county in this state it is suggested to the court by the president of the board of inspectors of convicts that the convict system is interested, such cause must be transferred to the proper court of Montgomery county in accordance with the provisions of this chapter in other cases of change of venue. Feb. 18, 1895, p. 849, §66

CHAPTER 115.

WATER-CRAFT.

4217 (3298) (3553) (3202 c). **Damages for injuries to canoe, boat, or water-craft; limitation, etc.**—Any person, who, without the consent of the owner, destroys, or who, without such consent, looses, sinks, or takes away, and fails to return, any canoe, boat, or water-craft, must pay to the owner double the value thereof; or if taken away, loosed, or sunk, and returned, but not in as good condition as when taken away, loosed, or sunk, such person must pay to the owner twenty-five dollars, and the expense of putting it in such condition. Section 4140 (3299) of this Code is applicable to any case arising under this section.

CHAPTER 116.

WAREHOUSEMEN AND COMMON CARRIERS. 4218-4229.

As amended Dec 8, 1890, p. 51.

4218 (1174) (2139) (1883). **Warehousemen or common carriers give receipt or bill of lading; contents.**—Warehousemen or common carriers, receiving things or property of any kind for safe-keeping, or for carriage, for hire or reward, must, on the delivery to them of such things or property, give the person from whom received a receipt or bill of lading, stating the order or condition in which such things or property may be, and if cotton in bales is received, stating expressly the condition of the bagging, ropes, or ties, and of the cotton, whether dry, damp, wet, or very wet; and such warehouseman or common carrier is bound to deliver in like order and condition as when received; and if such receipt or bill of lading be not given, such things or property must be deemed and taken to have been in good order or condition at the time of delivery to such warehouseman or carrier, and he is bound to deliver in like good order and condition; and the warehouseman or carrier, neglecting or failing to give such receipt or bill of lading, is liable for all loss or damages the owner of such things or property may sustain in consequence of such neglect or failure; but nothing in this section contained must be construed as affecting the common-law liability of a warehouseman or of a common carrier for an injury to or for the loss of such things or property.

M. & E. R. Co. v. Kolb, 73 Ala. 396; Lehman v. Pritchett, 84 Ala. 512.

4219 (1175). **Receipt or bill of lading; when not to be given.** A warehouseman, common carrier, or a wharfinger, or other person engaged in the business of storage, carriage, or of keeping for shipment, or of forwarding things or property, must not give a receipt or bill of lading for the things or property for storage, for carriage, or for keeping for shipment, or for forwarding, unless such things or property have been actually delivered to him, or placed under his control; and a second receipt or bill of lading must not be issued or given, the original being outstanding, without writing across the face thereof the word "duplicate."

Lehman v. Pritchett, 84 Ala. 512.

4220 (1176). **Delivery to cotton-compress.**—A delivery of cotton at or to a compress for the purpose of being compressed, at the instance, or in the usual course of business of a warehouseman, common carrier, wharfinger, or other person engaged in the business of storage, or of carriage, or of keeping for shipment, or of forwarding, may be taken and deemed as an actual delivery to such warehouseman, carrier, wharfinger, or other person, and therefor a receipt or bill of lading may be issued or given.

4221 (1177). **Sale, etc., by warehouseman, carrier, or wharfinger.**—A warehouseman, common carrier, wharfinger, or other per-

son engaged in the business of storage, carriage, or of keeping for shipment, or of forwarding things or property, must not, otherwise than is authorized by law, or by the contract of delivery to them, make sale of things or property intrusted to them; nor, without the assent in writing of the person to whom they may have given a receipt or bill of lading, or of the legal holder of such receipt or bill of lading, encumber or transfer the same; nor must they, otherwise than as may be authorized by the contract of delivery to them, part with the control or possession of such things or property, without the assent in writing of the person to whom they may have given a receipt or bill of lading, or of the legal holder of such receipt or bill of lading.

Ala. State Bank v. Barnes, 82 Ala. 607; Lehman v. Pritchett, 84 Ala. 512.

4222 (1178). **Warehouse receipt negotiable.**—The receipt of a warehouseman, on which the words "not negotiable" are not plainly written or stamped, may be transferred by the indorsement thereof, and any person to whom the same is transferred, must be deemed and taken to be the owner of the things or property therein specified, so far as to give validity to any pledge, lien, or transfer made or created by such person; but this section must not be so construed as to affect or impair the lien of a landlord on such things or property for rent or advances, or to affect or impair any lien thereon created by contract, of which notice is given by registration in the mode prescribed by law; and unless the words "not negotiable" be plainly written or stamped on the receipt, the warehouseman must not deliver the things or property therein specified except on the delivery and cancellation of the receipt; or in case of partial delivery, without an indorsement thereon of such partial delivery; in the event of the loss or destruction of such receipt, the warehouseman, not having notice of the transfer thereof by indorsement, may make delivery of the things or property to the rightful owner thereof; if the things or property, or any part thereof, be claimed or taken from the custody or possession of the warehouseman under legal process, the surrender thereof may be made without the delivery or cancellation of such receipt, or without indorsement thereon.

Commercial Bank v. Hurt, 99 Ala. 130; Commercial Bank v. Lee, 99 Ala. 493.

4223 (1179). **False or second receipts, or delivery without cancellation, or indorsement of partial delivery.**—If any common carrier, not having received things or property for carriage, shall give or issue a bill of lading, or receipt, as if such things or property had been received, or any warehouseman, or wharfinger, or person engaged in the business of storage, or keeping for shipment, or forwarding, shall issue a receipt for things or property, not having received them; or if any of such parties shall give or issue a second bill of lading, or receipt, the original being outstanding, not expressing in such second bill of lading, or receipt, that it is a duplicate, or shall surrender such things or property without receiving and canceling the bill of lading or receipt issued therefor, or make partial delivery

without indorsing such partial delivery on such bill of lading or receipt, except as provided in the preceding section, such carrier, warehouseman, wharfinger, or person is liable to any person injured thereby for all damages, immediate or consequential, therefrom resulting.

Jasper Trust Co. v. K. C. M. & B. R. Co., 99 Ala. 416; Southern Ex. Co. v. Bank of Tupelo, 108 Ala. 517.

4224 (1180). **How common carrier absolved from liability as insurer on arrival of freight.**—A common carrier, if the place of destination of freight is a city or town having two thousand inhabitants, or more, and a daily mail, is not relieved from liability as a common carrier by reason of a deposit or storage of freight in a depot or warehouse, unless, within twenty-four hours after the arrival of such freight, notice thereof is given the consignee, personally or through the mail; and if notice is given through the mail, the postage must, by the consignee, be refunded to the carrier.

C. & W. R. Co. v. Ludden, 89 Ala. 612; A. & A. R. Co. v. Ledbetter, 92 Ala. 326; Collins v. A. G. S. R. Co., 104 Ala. 390; Southern Ex. Co. v. Holland, 109 Ala. 362.

4225 (1181) (2140, 2141) (1884, 1885). **Sale of perishable freight to pay charges.**—When any fruit, vegetables, fresh meat, oysters, eggs, or fish, or other property of so perishable a nature as to be in danger of great depreciation, has been transported by a common carrier to the place of destination, and remains unclaimed for one day after its arrival, or if the consignee resides, or is present at the place of destination, for one day after personal notice in writing to him, or his agent, of the arrival of the freight, and the amount of charges due thereon, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place at the point of destination, on one day's notice, indicating the nature of the package, the consignee and the time and place of sale, by publication in some newspaper published at the place of destination, or, if none is published thereat, then by posting the notice at the office or place of business of the carrier.

4226 (1182) (2141) (1885). **Sale of other freight to pay charges.** When any other freight than that mentioned in the preceding section remains unclaimed for sixty days after its arrival at the place of destination, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place at the point of destination, after notice, indicating the nature of the package, the consignee, and the time and place of sale, has been given for three weeks by publication, once a week, in some newspaper published at the place of destination, or, if no such paper is there published, by posting the notice at three public places therein; but before any sale can be made under this section, the carrier must, before giving notice of the sale, demand payment of the charges due thereon from the owner or consignee, if either of them resides at the place of destination; but if neither of them resides at such place, failure to make such demand shall not prevent the sale; but notice of such sale must be given the consignor by mail.

Western R. Co. v. Rembert, 50 Ala. 25; Nathan v. Shivers, 71 Ala. 117; Crass v. M. & C. R. Co., 96 Ala. 447.

4227 (1183) (2142) (1886). **Insurance; sale; proceeds.**—The common carrier may insure the freight, at the expense of the owner, from the date of its arrival to the sale above authorized; and the proceeds of any sale made under the last two sections shall be applied to the payment of the freight, insurance, and all charges incident to storage and sale, and the residue, if any, shall be paid over to the owner or consignee.

4228 (1184) (2143) (1887). **Three preceding sections applicable to warehousemen.**—The provisions of the three preceding sections apply to warehousemen to whom freight is delivered by a common carrier.

4229 (1185). **Concealing cotton or changing marks.**—Any person, who conceals cotton delivered to himself or another for sale or storage, or changes or mutilates the marks or brands thereof for the purpose of hindering the owner or person having a lien thereon from recovering it, and any warehouseman who permits such conduct, shall be liable to the owner or lienor for all damages, immediate or remote, by him sustained; and any warehouseman with whom such cotton has been stored, who has information which would lead to the discovery thereof, and refuses, on application, to impart the same to the owner or lienor, is liable to him for the value of the cotton.

CHAPTER 117.

WEIGHTS AND MEASURES. 4230–4240.

4230 (1217) (1460) (1198) (948). **Must conform to standard established by congress.**—There is but one standard of measure of length and surface, one of weight, and one of capacity, throughout this state, which must be in conformity with the standard of measure of length, surface, weight and capacity established by congress.

4231 (1218) (1461) (1199) (949). **Contracts construed in reference to.**—All contracts, made within this state for any work to be done, or for any thing to be sold and delivered, must be construed to have been made according to the standard of weight and measure thus ascertained, unless the parties stipulate to the contrary.

4232 (1219) (1462) (1200) (950). **Standards furnished counties by secretary of state.**—Any county which has not been furnished with weights and measures, consisting of one weight of fifty pounds, one of twenty-five pounds, one of fourteen pounds, one of seven pounds, two of four pounds, two of two pounds, and two of one pound, avoirdupois; one measure of one yard, and one of one foot, cloth measure; one measure of half a bushel, one of one peck, and one of one-half peck, dry measure; one measure of one gallon, one

of a half gallon, one of one quart, one of one pint, one of one-half pint, and one of one gill, wine measure, in conformity with such standard, must be supplied therewith, by the secretary of state, as early as practicable.

4233 (1220) (1463). **When furnished in case of destruction.**—If the weights and measures of any county are destroyed, without the fault of any official who by law had charge of the same, the secretary of state shall, upon the requisition of the probate judge, furnish weights and measures to such county.

4234 (1221) (1464). **New counties.**—New counties must be furnished with weights and measures.

4235 (1222) (1465) (1201) (951). **Expense of obtaining, etc.; how defrayed.**—For the expense of obtaining such weights and measures, and furnishing the same to counties, the auditor must, on the account being certified by the secretary of state, draw his warrant on the state treasury.

4236 (1223) (1466) (1202) (952). **Notice of receipt of weights and measures.**—The judge of probate of each county, when furnished with such weights and measures, must, within three weeks thereafter, give notice thereof by advertisement at the court-house door, and at five other public places in the county.

4237 (1224) (1467) (1203) (953). **Seal of weights and measures.** Such judges must try all weights and measures presented to them, by such standards, and if found to agree with the same, must seal them with a seal to be provided at the expense of the county.

4238 (1225) (1468) (1205) (955). **Penalty for selling by false weights and measures.**—Three months after the notice prescribed in this chapter has been given, every person selling any commodity by weight or measure, which does not correspond with such standard, forfeits the sum of ten dollars to any person suing for the same.

4239 (1226) (1469) (1206). **Standard balances, by whom kept.** The set of balances intended for the adjustment of weights and measures furnished to this state by act of congress, must be kept by the secretary of state.

As amended Feb. 18 1891. p. 1353.

4240 (1227). **Weights of certain commodities.**—If not otherwise agreed upon, the legal weights per bushel of the following commodities shall be as follows: Cottonseed, thirty-two pounds; wheat, sixty pounds; shelled corn, fifty-six pounds; corn in the ear, seventy pounds; corn in the shuck, seventy-five pounds; pease, sixty pounds; rye, fifty-six pounds; oats, thirty-two pounds; barley, forty-seven pounds; Irish potatoes, sixty pounds; sweet potatoes, fifty-five pounds; beans, sixty pounds; dried peaches, unpeeled, thirty-three pounds; dried peaches, peeled, thirty-eight pounds; dried apples, twenty-four pounds; turnips, fifty-five pounds; meal, forty-six pounds; unbolted meal, forty-eight pounds.

Courts cannot take judicial notice of the rule for measuring corn in the shuck.—S. & N. A. R. Co. v. Wood, 74 Ala. 449.

CHAPTER 118.

WILLS.

ARTICLE 1.—GENERAL PROVISIONS. 4241–4262.
2.—EXECUTION AND PROBATE OF WILLS. 4263–4286.
3.—CONTESTING THE VALIDITY OF WILLS. 4287–4300.

ARTICLE 1.

GENERAL PROVISIONS.

4241 (1945) (2274) (1910) (1589). **Who may devise lands.** Every person of the age of twenty-one years, of sound mind, may, by his last will, devise his lands, tenements, or hereditaments, or any interest therein, descendible to his heirs

What constitutes testamentary capacity; of "sound mind."—Coleman v. Robertson, 17 Ala. 84; Taylor v. Kelly, 31 Ala. 59; Stubbs v. Houston, 33 Ala 555; Leeper v. Taylor, 47 Ala. 221; O'Donnell v. Rodiger, 76 Ala. 222; Kramer v. Weinert, 81 Ala. 414; Eastis v. Montgomery, 95 Ala. 486; Knox v. Knox, 95 Ala. 495; Bulger v. Ross, 98 Ala. 267; Burney v. Torrey, 100 Ala. 157; s. c. Ala. (21 So. 348); Henry v. Hall, 106 Ala. 84; Murphree v. Senn, 107 Ala. 424.

4242 (1946) (2275) (1911) (1590). **To whom devises may be made.**—A devise of lands, tenements, or hereditaments may be made to any person or corporation capable by law of holding real estate.

Bequest to "the Baptist Societies for Foreign and Domestic Missions and the American and Foreign Bible Society," held valid.—Carter v. Balfour, 19 Ala. 814. **And to "Pilgrims' Rest Association."**—Williams v. Pearson, 38 Ala. 299. **And for the erection of monuments to certain named persons.** Gilmer v. Gilmer, 42 Ala. 9. **A bequest of money "to be used in solemn masses for the repose of" testator's soul, is void.**—Festorazzi v. St. Joseph's Catholic Church, 104 Ala. 327.

4243 (1947) (2276) (1912) (1591). **Descent of realty, when devisee incapable of taking.**—Any estate or interest in real property, devised to a person or corporation incapable of taking, descends as in case of intestacy, or, if the testator has no heirs competent to take, to the residuary devisee, if any is named in the will capable of holding such estate or interest; otherwise, it escheats to the state.

Carter v. Balfour, 19 Ala. 814; Williams v. Pearson, 38 Ala. 299; Johnson v. Holifield, 82 Ala. 123.

4244 (1948) (2277) (1913) (1592). **What passes by general devise.**—Every devise, made by a testator, in express terms, of all his real estate, or in any other terms denoting his intention to devise all his real property, must be construed to pass all the real estate he was entitled to devise at the time of his death.

Johnson v. Holifield, 82 Ala. 123; Kelly v. Richardson, 100 Ala. 584; Graham v. DeYampert, 106 Ala. 279.

4245 (1949) (2278) (1914) (1593). **What estate in lands passes.** Every devise of land must be construed to convey all the estate of the devisor therein, unless it clearly appears from the will that he intended to convey a less estate.

4246 (1950) (2279) (1915) (1594). **Character of estate pur autre vie.**—An estate during the life of a third person, whether limited to his heirs or otherwise, is a freehold only during the life of the grantee or devisee; but after his death it is a chattel real.

4247 (1951) (2280) (1916) (1595). **Who may bequeath personal property.**—All persons over the age of eighteen years, of sound mind, and no others, may also, by their last will, dispose of all their personal property.

Daniel v. Hill, 52 Ala. 430; Banks v. Sherrod, 52 Ala. 267; Allen v. Watts, 98 Ala. 384.

4248 (1952) (2281) (1917) (1596). **Property not disposed of distributed as in case of intestacy.**—All property not disposed of by will must be administered and distributed, as in case of intestacy, by the executor or the administrator with the will annexed.

McLeod v. McDonnell, 6 Ala. 236; Bell v. Mason, 10 Ala. 334; Eddings v. Long, Ib. 203; Denson v. Autrey, 21 Ala. 205; Wheat v. Wheat, 24 Ala. 429; Bryan v. Weems, 25 Ala. 195; Green v. Speer, 37 Ala. 532; Banks v. Sherrod, 52 Ala. 267; Johnson v. Holifield, 82 Ala. 123; Skeggs v. Horton, 82 Ala. 352; Wolffe v. Loeb, 98 Ala. 426, 432.

4249 (1953) (2282) (1918) (1597). **When will revoked by marriage and issue.**—If, after making any will disposing of his whole estate, the testator marry and have issue of such marriage, born either in his lifetime, or after his death, and the wife or such issue is living at his death, such will must be deemed revoked, unless provision has been made for such issue by some gift or settlement, or unless such issue has been provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence can be received for the purpose of rebutting the presumption of such revocation.

Gay v. Gay, 84 Ala. 38.

4250 (1954) (2283) (1919) (1598). **Woman's marriage revokes her will.**—If, after the making of a will by an unmarried woman, she marries, the marriage operates as a revocation of the will.

4251 (1955) (2284) (1920) (1599). **When child born after will takes as in case of intestacy.**—Whenever a testator has a child, born after the making of his will, either in his lifetime or after his death, and no provision is made in the will in any way for such a contingency, such birth operates as a revocation of the will, so far as to allow such child to take the same share of the estate of the testator as if he had died intestate.

Wolffe v. Loeb, 98 Ala. 426.

4252 (1956) (2285) (1921) (1600). **Manner of setting apart such child's portion.**—The portion which such child is entitled to recover and receive, under the provisions of the preceding section, shall be taken and recovered from the estate of the testator, and from the parts of devisees and legatees, as follows:

1. If there be any real or personal estate of the testator, which has not been devised or bequeathed by his will, and there are other children, or the descendants of other children, capable of taking the same by descent, and a widow, or any of them, the share of such

child, which it would take by descent or by distribution, with such widow and other heirs, or any of them, must be applied towards the payment of the portion of such child; and if there are no other children, or the descendants of other children, the whole of such part of the real or personal estate, or so much thereof as may be necessary, must be applied to the payment and discharge of such portion.

2. If the same is insufficient to pay and discharge such portion, then any part of such estate which would have gone to the residuary legatees of the testator, other than the widow, or any of his children, or so much of such part of the estate as may be necessary, must be taken and applied to the payment of such portion.

3. If such portion be not thus paid and satisfied, the same, or the balance thereof, must be taken from the devisees and legatees of the testator, in proportion to the value of what they would respectively be entitled to receive under the will.

4253 (1957) (2286) (1922) (1601). **If child die before receiving its portion, it passes by will.**—If any such child die before receiving its portion, without descendants, such portion, or so much thereof as has not been received, passes by the will, as if such child had not been born.

4254 (1958) (2287) (1923) (1602). **When devise not revoked by contract for conveyance of property devised.**—When any testator, after making his will, makes any contract for the conveyance of any property devised in such will, and the whole or any part of the purchase-money remains unpaid to such testator at his death, the disposition of the property by such contract is not a revocation of the devise, at law or in equity, unless it clearly appears by the contract, or some other instrument in writing, to be intended as a revocation; and such property passes to such devisee, subject to the same remedies for a specific performance thereof, in favor of the persons entitled thereto, against the person to whom such devise was made, as might be had at law or in equity against the heirs of the testator, had the same descended to them; and the purchase-money, when recovered by the executor of the testator, must be paid to the devisee of such property.

Powell v. Powell, 30 Ala. 697; Taylor v. Kelly, 31 Ala. 59; Stubbs v. Houston, 33 Ala. 555; Welch v. Pounders, 36 Ala. 668; Moore v. Spier, 80 Ala. 129; Slaughter v. Stephens, 81 Ala. 418.

4255 (1959) (2288) (1924) (1603). **When devise not revoked by subsequent charge or incumbrance.**—A charge or incumbrance on any real or personal property, to secure any money, or the performance of any contract, does not operate as a revocation of any devise or bequest of such property previously executed, unless it appears from the will, or the instrument creating such charge or incumbrance, that such was the intention of the testator.

See citations to preceding section.

4256 (1960) (2289) (1925) (1604). **When after-acquired interest passes under devise.**—When any testator, after having executed a will devising any real property, afterwards makes a conveyance of

his interest, and acquires a new estate therein, such new estate passes by his will to the person to whom the original estate or interest was devised, unless it appears from the will, or the instrument conveying the estate, or by which the new estate was acquired, that the testator intended such conveyance to operate as a revocation.

4257 (1961) (2290) (1926) (1605). **Effect of death on devise or legacy to child or descendant.**—When any estate, real or personal, is devised or bequeathed to a child or other descendant of the testator, and such devisee or legatee dies in the lifetime of the testator, leaving a child or other descendant surviving the testator, such legacy does not lapse, but vests in such child or other descendant, as if such devisee or legatee had survived the testator, and died intestate.

Jones v. Jones, 37 Ala. 646.

4258 (1962) (2291) (1927) (1606). **When debtor not released by being appointed executor.**—The appointment of a debtor as an executor is not a discharge of the debt, unless it is so directed in the will.

4259 (1963) (2292) (1928) (1609). **Dissent by widow; her rights on; when dissent unnecessary.**—The widow may, in all cases, dissent from the will of her deceased husband, and, in lieu of the provision made for her by such will, take her dower in the lands and such portion of the personal estate as she would have been entitled to in case of intestacy. If the will makes no provision for her she may claim her dower and distributive share without dissenting from the will.

Right of dissent personal to the widow.—Donald v. Portis, 42 Ala. 29; Crenshaw v. Carpenter, 69 Ala. 572. **Effect of dissent, etc.**—Gaunt v. Tucker, 18 Ala. 27; Kirkman v. Mason, 17 Ala. 134; Vaughan v. Vaughan, 30 Ala. 329; Adams v. Adams, 39 Ala. 274; Dean v. Hart, 62 Ala. 308; Steele v. Steele, 64 Ala. 438. **Change effected by statute.**—McLeod v. McDonald, 6 Ala. 236.

4260 (1964) (2293) (1929) (1610). **Dissent; when to be made.** Such dissent must be made in writing, and deposited, within eighteen months from the probate of the will, with the judge of probate of the county in which the will is probated; and an entry must be made of record, specifying the day on which the dissent was made.

McGrath v. McGrath, 38 Ala. 246.

4261. Widow eighteen years of age has capacity to dissent.—If the widow is of the age of eighteen years at the time the will is admitted to probate, she has capacity to dissent as if she were twenty-one.

4262 (1965). **How dissent made if widow insane, or minor under eighteen, or dead.**—If the widow is insane, or if she be under the age of eighteen years at the time the will is admitted to probate, or if she be dead, upon a petition filed by her guardian or next friend, or, if dead, by her personal representative, within the time prescribed in the second preceding section, alleging that it would be to her interest, or, in case of her death, to the interest of her estate, to dissent from the will of her husband, the probate court of the county in which the will is probated has authority to declare dissent from such will for her; and upon the filing of such petition, the court

must appoint a day for the hearing, not more than twenty days from the filing thereof, and if the widow is insane, or was under the age of eighteen years at the time the will was admitted to probate, a guardian ad litem must be appointed for her. If upon the hearing the court is satisfied, from the testimony of at least two disinterested witnesses, taken by deposition upon interrogatories as in chancery cases, that it is to the interest of such widow, or, in case of her death, of her estate, to dissent from the will, an order shall be made declaring such dissent. The costs of the proceeding must be paid by the person filing the application.

ARTICLE 2.

EXECUTION AND PROBATE OF WILLS.

4263 (1966) (2294) (1930) (1611). **Wills to be in writing; how signed and attested.**—No will is effectual to pass real or personal property, except in the cases hereinafter provided for, unless the same is in writing, signed by the testator or some person in his presence, and by his direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator.

Signature to will.—Armstrong v. Armstrong, 29 Ala. 538; Woodcock v. McDonald, 30 Ala. 411; Bailey v. Bailey, 35 Ala. 687; Riley v. Riley, 36 Ala. 496. **Testator's name may be signed for him by another, in his presence and by his direction.**—Riley v. Riley, 36 Ala. 496; Garrett v. Heflin, 98 Ala. 615. **Attesting witness may subscribe by mark.**—Garrett v. Heflin, 98 Ala. 615. **Testator need not inform the witnesses that the instrument is his will, or give them any information of its contents.**—Barnewall v. Murrell, 108 Ala. 366; Garrett v. Heflin, 98 Ala. 615; Leverett v. Carlisle, 19 Ala. 80. **Witnesses must sign in the presence of the testator, but need not sign in the presence of each other.**—Hoffman v. Hoffman, 26 Ala. 535; Woodcock v. McDonald, 30 Ala. 411; Moore v. Spier, 80 Ala. 129; Barnewall v. Murrell, 108 Ala. 366. **In the presence of the testator, is within his view**; where he may see the witnesses attest the will if he thinks proper.—Hill v. Barge, 12 Ala. 687. **A legatee or a devisee is a competent attesting witness.**—Kumpe v. Coons, 63 Ala. 448; Snider v. Burks, 84 Ala. 53; Henry v. Hall, 106 Ala. 84. **And testator's attorney.**—Mosser v. Mosser, 32 Ala. 551. **Will on detached sheets**; on proof of due execution, signature referred to all the sheets.—Barnewall v. Murrell, 108 Ala. 366. **Will unaffected by alterations not made as required by law,** or unexecuted intention to alter.—Barnewall v. Murrell, 108 Ala. 366. **Unexecuted codicil, never probated, void.**—Newsom v. Guy, 109 Ala. 305. **Republication must be made with all the formalities** requisite to the due execution in the first instance.—Barker v. Bell, 46 Ala. 216; s. c., 49 Ala. 284. **Will attested by one witness only, not open to collateral attack after probate.** Leatherwood v. Sullivan, 81 Ala. 458; Sullivan v. Rabb, 86 Ala. 433. **Lost will may be established by the testimony of one witness.**—Skeggs v. Horton, 82 Ala. 352. **Supplying or contradicting testimony of subscribing witnesses.** Barnewall v. Murrell, 108 Ala. 366; Snider v. Burks, 84 Ala. 53; Hall v. Hall, 38 Ala. 131. **By what law validity of will determined.**—Hoffman v. Hoffman, 26 Ala. 535; Powell v. Powell, 30 Ala. 697; Daniel v. Hill, 52 Ala. 430; Dickey v. Vann, 81 Ala. 425.

4264 (1967) (2295) (1931) (1612). **Subsequent incompetency of witnesses; effect of.**—If the witnesses attesting the execution of any will are competent at the time of their attestation, their subsequent incompetency, from whatever cause it may arise, must not prevent the probate of such will, if otherwise satisfactorily proved.

4265 (1968) (2296) (1932) (1613). **Revocation of wills; how made.**—Except in the cases provided in the preceding article, a will

in writing can only be revoked by burning, tearing, canceling, or obliterating the same, with the intention of revoking it, by the testator himself, or by some person in his presence, and by his direction, or by some other will in writing, or some other writing, subscribed by the testator, and attested as prescribed in the first section of this article; and when any will is burned, torn, canceled, or obliterated by any other person than the testator, his direction and consent thereto, and the fact of such burning, canceling, tearing, or obliteration, must be proved by at least two witnesses.

Weeks v. McBeth, 14 Ala. 474; Taylor v. Kelly, 31 Ala. 59; Stubbs v. Houston, 33 Ala. 555; Welsh v. Pounders, 36 Ala. 668; Barker v. Bell, 46 Ala. 216; s. c., 49 Ala. 284; Slaughter v. Stephens, 81 Ala. 418; Law v. Law, 83 Ala. 432; Barnewall v. Murrell, 108 Ala. 366.

4266 (1969) (2297) (1933) (1614). **Former will not revived by revocation; exceptions.**—The making of any subsequent will or writing, and the cancellation, destruction, or revocation thereof do not revive any will previously executed, unless it appear, by the terms of such revocation, that it was the intention of the testator to revive and give effect to the first will; or unless, after such cancellation or destruction, he duly republish the previous will.

4267 (1970) (2298) (1934) (1615). **Unwritten wills of personal property; when valid.**—An unwritten will of personal property is valid only when the property bequeathed thereby does not exceed in value five hundred dollars.

Erwin v. Hamner, 27 Ala. 296.

4268 (1971) (2299) (1935) (1616). **Circumstances under which such will may be made.**—Such unwritten will, to be valid, must be made during the last sickness of the deceased, and at his dwelling, or where he had resided ten days or more, except when he was taken sick from home and died before his return; and it must be proved that the testator, at the time of making the same, called upon the persons present, or some of them, to take notice, or bear witness, or to that effect, that such was his will.

Sykes v. Sykes, 2 Stew. 364; Johnson v. Glasscock, 2 Ala. 218.

4269 (1972) (2300) (1936) (1617). **Soldiers, seamen and mariners may make wills as heretofore.**—No provision in this article must be construed to prevent soldiers in actual military service, or mariners or seamen at sea, from disposing of their personal property as they might have done before the adoption of this Code.

4270 (1973) (2301) (1937) (1618). **When and on what notice unwritten wills probated.**—No unwritten will can be probated, or letters testamentary granted thereon, until after fourteen days from the death of the testator, nor until a citation has been served on the widow and next of kin to appear and contest such will, unless it is shown that such widow and next of kin are out of the state, in which case notice must be given by publication, once a week for three successive weeks, in some newspaper published in the county, or if none is published therein, in the one nearest to the court-house thereof; and no such will must be established until it is proved that such notice has been given.

Gilbert v. Gilbert, 22 Ala. 529; Bradley v. Andress 27 Ala. 596; Kirby v. Kirby, 40 Ala. 492.

4271 (1974) (2302) (1938) (1619). **When must not be proved.** After the expiration of six months from the time of making an unwritten will, no testimony must be received to prove the same, unless the words, or the substance thereof, was reduced to writing within six days after making of the same.

4272 (1975) (2303) (1939) (1620). **Who may have will probated.** Upon the death of a testator, any executor, devisee, or legatee named in the will, or any person interested in the estate, may have the will proved before the proper probate court.

McGrews v. McGrews, 1 Stew. & Port. 30.

4273 (1976) (2304) (1940) (1621). **In what court will to be proved.**—Wills must be proved in the several probate courts as follows:

1. When the testator, at the time of his death, was an inhabitant of the county, in the probate court of such county.

2. When the testator, not being an inhabitant of the state, dies in the county, leaving assets therein, in the probate court of such county.

3. When the testator, not being an inhabitant of the state, dies out of the county, leaving assets therein, in the probate court of the county in which such assets, or any part thereof, are.

4. When the testator, not being an inhabitant of the state, dies, not leaving assets therein, and assets thereafter come into any county, in the probate court of any county into which such assets are brought.

Subdivision 1.—Herbert v. Hanrick, 16 Ala. 581; Merrill v. Morrissett, 76 Ala. 433. **Subdivision 2.**—Jaques v. Horton, 76 Ala. 238. **Nature of jurisdiction.**—Herbert v. Hanrick, 16 Ala. 581; Hall v. Hall, 47 Ala. 290; Goodman v. Winter, 64 Ala. 410; Acklen v. Goodman, 77 Ala. 521. **Necessity of probate.**—Hawkins v. Dumas, 41 Ala. 391; Goodman v. Winter, 64 Ala. 410; Jordan v. Jordan, 65 Ala. 301; Desribes v. Wilmer, 69 Ala. 25. **Conclusiveness of probate.**—Matthews v. McDade, 72 Ala. 377; Goodman v. Winter, 64 Ala. 410; Brock v. Frank, 51 Ala. 85; Leatherwood v. Sullivan, 81 Ala. 458; Sullivan v. Rabb, 86 Ala. 433. **Probate of lost or destroyed will.**—McBeth v. McBeth, 11 Ala. 596; Apperson v. Cottrell, 3 Port. 51; Jaques v. Horton, 76 Ala. 238; Skeggs v. Horton, 82 Ala. 352. **Probate of foreign will.**—Pope v. Pickett, 51 Ala. 584; Goodman v. Winter, 64 Ala. 410; Varner v. Bevil, 17 Ala. 286; Dickey v. Vann, 81 Ala. 425; Keith v. Proctor, Ala. (21 So. 502). **Effect of foreign probate.**—Moore v. Lewis, 21 Ala. 580. **Meaning of "inhabitant."** Merrill v. Morrissett, 76 Ala. 433. **Nature of proceedings.**—Deslonde v. Darrington, 29 Ala. 92. **Written application, though proper, not necessary.** Deslonde v. Darrington, 29 Ala. 92. **Probate of codicil after probate of will.** Watson v. Turner, 89 Ala. 220. **Practice suggested as to probate of will of minor disposing of personalty.**—Banks v. Sherrod, 52 Ala. 267.

4274 (1977) (2305) (1941) (1622). **Proceedings to compel production of will; penalty.**—On application to the probate court of the proper county by any person interested, duly verified by affidavit, the judge of such court must issue a citation to any person alleged to have the custody or possession of any last will, requiring such person to produce the same before such judge on a certain day, to be specified in such citation; and any person who, after service of such citation upon him, fails to produce such will, or to make an affidavit according to the provisions of the next section, by the day

specified in such citation, may be committed to jail until he produces such will, makes such affidavit, or is otherwise discharged by law; and he is also liable to all persons interested for all damages caused by withholding such will.

4275 (1978) (2306) (1942) (1623). **When party proceeded against, discharged.**—Such person must not be committed to jail, if he makes and files an affidavit that such will was never in his possession, or that he parted with the same before the service of such citation, to some person whose name he must state, entitled to the custody thereof, in good faith, and without any intention to delay or defeat the probate thereof; or that he has casually lost or mislaid the same, and has made diligent search therefor without success.

4276 (1979) (2307) (1943) (1624). **Mode of proving wills not nuncupative.**—Wills offered for probate, except nuncupative wills, must be proved by one or more of the subscribing witnesses, or if they be dead, insane, or out of the state, or have become incompetent since the attestation, then by the proof of the handwriting of the testator, and that of at least one of the witnesses to the will.

Supplying or contradicting testimony of subscribing witnesses.—Barnewall v. Murrell, 108 Ala. 366; Snider v. Burks, 84 Ala. 53; Hall v. Hall, 38 Ala. 131.

4277 (1980) (2308) (1944) (1625). **What necessary to probate by proof of handwriting.**—If none of the subscribing witnesses to such will are produced, their insanity, death, subsequent incompetency, or absence from the state must be satisfactorily shown, before proof of the handwriting of the testator, or of any of the subscribing witnesses can be received.

See citations to preceding section.

4278 (1981) (2309) (1945) (1626). **When proof taken by deposition.**—When the subscribing witnesses, or any of them, reside out of the state, the judge of probate may issue a commission to take the testimony of such witnesses in proof of such will.

4279 (1982) (2310) (1946) (1627). **Testimony to be recorded with will.**—If it appears, on the proof taken before the judge of probate, that the will was duly executed, the testimony of the witnesses must be reduced to writing by him, signed by the witnesses, and, with the will, recorded in a book provided and kept for that purpose.

Reese v. Nolan, 99 Ala. 203.

4280 (1983) (2311) (1947) (1628). **Certificate indorsed on will; contents.**—Every will so proved must have a certificate indorsed thereon, setting forth, in substance, that such will has been duly proved and recorded, with the proof; specifying, also, the date of the probate, the book in, and page or pages on which it is recorded; which indorsement must be signed by such judge of probate.

Hall v. Hall, 47 Ala. 290.

4281 (1984) (2312) (1948) (1629). **When may be read in evidence.**—Every will, so proved and indorsed, may be read in evidence in any court of the state, without further proof thereof; and the record of such will and proof, or a transcript thereof, certified by the

judge of probate, must be received as evidence to the same extent as if the original will was produced, and the same proof made.

Newsom v. Holesapple, 101 Ala. 682.

4282 (1985) (2313) (1949) (1630). **How will proved out of, probated in this state.**—When the testator was not, at the time of his death, an inhabitant of this state, and his will has been duly proved in any other state or country, it may be admitted to probate in the proper court of this state, in the manner following:

1. If the will has been admitted to probate out of this state, but within the United States, such will, or a copy of the same, and the probate thereof, must be certified by the clerk of the court in which the same is proved, with the certificate of the judge, or one of the judges of such court, that the attestation is genuine, and by the proper officer; and if the will is proved before a court not having a clerk, or before an officer who is his own clerk, the certificate of the judge of such court or officer, stating such fact, is sufficient.

2. If the will has been admitted to probate out of the United States, such will, or a copy of the same, with the probate thereof, must be certified by the clerk, or other officer, by whatever name called, of the court in which the will was proved, with the certificate of the judge, or one of the judges of such court, that the attestation is genuine; and if the will is proved before a court having no clerk, or an officer who is his own clerk, the judge of such court or officer must so certify, and in that case the attestation must be certified to be genuine by the judge of any court of record, or the mayor or chief magistrate of any town, city, county, or borough, or by any diplomatic, consular, or commercial agent of the United States.

Puryear v. Beard, 14 Ala. 121; Broughton v. Bradley, 34 Ala. 694; Ward v. Oates, 43 Ala. 515; Brock v. Frank, 51 Ala. 85; Goodman v. Winter, 64 Ala. 410; Leatherwood v. Sullivan, 81 Ala. 458; Sullivan v. Rabb, 86 Ala. 433; Dickey v. Vann, 86 Ala. 425; Keith v. Proctor, Ala. (21 So. 502).

4283 (1986) (2314) (1950) (1631). **When will may be withdrawn for proof out of state.**—Whenever any will has been proved and recorded for six months in any county of this state, as required by this article, and such will is required to be proved out of this state, the judge of probate may, on the application of the executor, duly sworn to, allow him to withdraw the will.

4284 (1987) (2315) (1951) (1632). **Notice of application to prove will.**—Whenever an application is made to prove a will in this state, at least ten days' notice must be given to the widow and next of kin, or to either of them, residing and being within the state, before such application is heard.

Shields v. Alston, 4 Ala. 248; Hilliard v. Binford, 10 Ala. 977; Lees v. Browning, 15 Ala. 495; Roy v. Segrist, 19 Ala. 811; Stapleton v. Stapleton, 21 Ala. 587; Walker v. Jones, 23 Ala. 448; Blakley v. Blakley, 33 Ala. 611; Leslie v. Sims, 39 Ala. 161; Clemens v. Patterson, 38 Ala. 721; Allen v. Prater, 35 Ala. 169; Sowell v. Sowell, 41 Ala. 359; Hall v. Hall, 47 Ala. 290; Dickey v. Vann, 81 Ala. 425; Reese v. Nolan, 99 Ala. 203; Herring v. Ricketts, 101 Ala. 340.

4285. Minors; how served.—If any of the next of kin are minors, such notice may be served as provided by rule 20(23) of chancery

practice, the judge of probate being vested with the authority conferred by such rule upon the register or chancellor.

4286 (1988) (2316) (1952) (1633). **Notice by publication.**—If either the widow or next of kin reside and are without the state, notice of such application must be given by publication once a week for three successive weeks in a newspaper published in the county in which application is made, and if no paper is published therein, by posting notice of the same at the court-house three weeks before such application is heard.

ARTICLE 3.

CONTESTING THE VALIDITY OF WILLS.

4287 (1989) (2317) (1953) (1634). **Contest; grounds, and by whom instituted; how issue made up and tried.**—A will, before the probate thereof, may be contested by any person interested therein, or by any person who, if the testator had died intestate, would have been an heir or distributee of his estate, by filing in the court where it is offered for probate allegations in writing that the will was not duly executed, or of the unsoundness of mind of the testator, or of any other valid objections thereto; and thereupon an issue must be made up, under the direction of the court, between the person making the application, as plaintiff, and the person contesting the validity of the will, as defendant; and such issue must, on application of either party, be tried by a jury.

Petition for contest must state facts showing right to contest; creditor of decedent has no such right.—Montgomery v. Foster, 91 Ala. 613. **Married woman contestant; improper to join husband.**—Blake v. Blake, 80 Ala. 37. **Proponent should produce or account for all attesting witnesses.**—Barnewall v. Murrell, 108 Ala. 366. **Contested probate of lost will;** how tried and decision revised.—Jacques v. Horton, 76 Ala. 238; Skeggs v. Horton, 82 Ala. 352. **Presumption that every person of full age has testamentary capacity.**—Cotton v. Ulmer, 45 Ala. 378; Daniel v. Hill, 52 Ala. 430; O'Donnell v. Rodiger, 76 Ala. 222; Knox v. Knox, 95 Ala. 495; Barnewall v. Murrell, 108 Ala. 366. **Burden on contestant to show mental incapacity at time will executed.** Stubbs v. Houston, 33 Ala. 555; Eastis v. Montgomery, 95 Ala. 486; Murphree v. Senn, 107 Ala. 424; Barnewall v. Murrell, 108 Ala. 366. **Prior insanity not presumed to exist at time will executed, unless habitual and fixed.**—Johnson v. Armstrong, 97 Ala. 731; Murphree v. Senn, 107 Ala. 424. **Insane delusion; mistaken notion.**—Florey v. Florey, 24 Ala. 241; Mosser v. Mosser, 32 Ala. 551; Hall v. Hall, 38 Ala. 131. **Mental incapacity produced by use of medicine.** Stedham v. Stedham, 32 Ala. 525. **Unequal or unnatural disposition of property among next of kin raises no presumption of mental incapacity.**—Knox v. Knox, 95 Ala. 495; Chandler v. Jost, 96 Ala. 596; Henry v. Hall, 106 Ala. 84. **Undue influence; what constitutes; burden of proof.**—Leverett v. Carlisle, 19 Ala. 80; Pool v. Pool, 35 Ala. 12; Hall v. Hall, 38 Ala. 131; Leeper v. Taylor, 47 Ala. 221; Daniel v. Hill, 52 Ala. 430; Moore v. Spier, 80 Ala. 129; Lyons v. Campbell, 88 Ala. 462; Eastis v. Montgomery, 93 Ala. 293; Knox v. Knox, 95 Ala. 495; Bulger v. Ross, 98 Ala. 267; Chandler v. Jost, 106 Ala. 84; Higginbotham v. Higginbotham, 106 Ala. 314; Estes v. Broadfoot, Ala. (21 So. 512). **Former declarations of testator; former will; when admissible.** Seals v. Chambliss, 35 Ala. 19. **Confidential relations between principal beneficiary and testator;** burden of proof.—Bancroft v. Otis, 91 Ala. 279; Eastis v. Montgomery, 93 Ala. 293. **When will written by person intended to be benefited;** presumption and onus against the instrument.—Garrett v. Heflin, 98 Ala. 615. **When will partly valid and partly void for undue influence.**—Henry v. Hall, 106 Ala. 84. **Partial contest when only specific legacies are objected to.**—Lyons v. Campbell, 88 Ala. 462. **Partial probate of lost will when certain legacies not proved.**—Skeggs v. Horton, 82 Ala. 352.

4288 (1990) (2318, 2319, 2323) (1954, 1955, 1959) (1635, 1636, 1640). **Day fixed for trial; continuance; witnesses.**—Upon the institution of such contest, a day must be appointed for the trial thereof, and the trial may, on good cause shown by either party, be continued to any other day; and the judge of probate must, on application of either party, issue subpœnas for witnesses to appear on the day fixed for such trial, and may resummon them to any day to which the same may be continued.

4289 (1991) (2320, 2322) (1956, 1958) (1637, 1639). **Jury; how drawn, summoned, etc.**—The judge of probate must also, when trial by jury is demanded, direct the sheriff to summon such number of persons as a jury, to sit upon such trial, as may be necessary; or he must, if either party require it, cause fifteen persons to be drawn and summoned in the same manner as jurors are drawn and summoned for the circuit court; and if, out of the number summoned, a jury is not completed from any cause, it may be completed from the bystanders or other persons summoned.

Jaques v. Horton, 76 Ala. 239.

4290 (1992) (2321) (1957) (1638). **Fine for default by juror.**—If any of the persons summoned as jurors fail to attend, the judge must enter a conditional fine of twenty-five dollars against him, which must be made absolute, unless such person appears within thirty days after being served with a notice of such fine, and renders a good excuse for failing to attend.

4291 (1993) (2325) (1961) (1642). **Proceedings against defaulting witness.**—If any witness, being duly summoned, fails to attend, the judge of probate shall enter up a conditional fine against him, not exceeding fifty dollars, and shall thereupon issue a notice to such witness to appear at a term of said court, not more than thirty days from the date of such notice, and show cause why such fine should not be made absolute; and the proceedings thereafter shall be governed by the same rules, and such witness shall be subject to the same liabilities, except as to the amount of the fine, as are provided by law in cases of defaulting witnesses in the circuit court.

4292 (1994) (2324, 2326) (1960, 1962) (1641, 1643). **Depositions; rules of procedure.**—For the trial of such contest, depositions of witnesses may be taken in the like cases, for the same causes, and in the same manner, as depositions are taken in civil actions in the circuit court; and in all matters relating to the organization and impaneling of the jury, to the evidence, mode of proceeding, and investigation and determination of such contest, not specially provided for by this article, the court must proceed and be governed by the same rules and regulations, so far as applicable, as prevail in courts of law in civil cases.

McElroy v. McElroy, 5 Ala. 81; Roberts v. Trawick, 13 Ala. 68; Walker v. Jones, 23 Ala. 448; Ex parte Henry, 24 Ala. 638; Deslonde v. Darrington, 29 Ala. 92; Crow v. Blakey, 31 Ala. 728; Taylor v. Kelly, Ib. 59; Blakey v. Blakey, 33 Ala. 611; Seale v. Chambliss, 35 Ala. 19; Fountain v. Brown, 38 Ala. 72; Leslie v. Sims, 39 Ala. 161; Matthews v. McDade, 72 Ala. 378; Jaques v. Horton, 76 Ala. 238; Mathews v. Forniss, 91 Ala. 157.

4293 (1995) (2329) (1965) (1647). **Judgment on such contest.** When the judgment of the probate court is against the validity of the will, the probate thereof must be rejected; otherwise, the will must be admitted to probate.

4294 (1996) (2331, 2332, 2335) (1967, 1968, 1971) (1649, 1650, 1653). **Costs of contest; how taxed and enforced.**—The costs of any contest under the provisions of this article must be paid by the party contesting, if he fails; otherwise, it must be paid by the plaintiff, or out of the estate, or in such proportion by the plaintiff, or out of the estate, as the court may direct; and for the costs directed to be paid by the plaintiff or defendant, execution may be issued as in other cases; and the costs directed to be paid out of the estate may be collected as other claims against an estate are collected.

Bradley v. Andress, 30 Ala. 80; Henderson v. Simmons, 33 Ala. 291.

4295 (1997) (2327, 2328) (1963, 1964) (1644). **Change of venue; proceedings and trial when granted.**—At any time before the trial of such contest, either party may remove the same to another county by proceeding as is required in civil actions in the circuit court; and when an order for the removal of the trial of such contest is made, the judge of probate must transmit the will, subpœnas, and all other papers belonging, and a transcript of all the entries of record relating thereto, to the judge of the probate court of the county to which the trial is ordered to be removed; and such judge of probate must proceed to try the case in the same manner as prescribed for the judge of probate of the county from which it has been removed.

4296 (1998) (2330) (1966). **Judgment when change of venue granted.**—If the judgment is rendered in the probate court to which it has been removed, and no appeal is taken within thirty days thereafter, such judgment must be certified by the judge of such probate court, and the will and other papers be returned to the probate court from which the trial was removed; and the will must be probated or rejected in such probate court as such judgment may be for or against the validity of the will.

4297 (1999) (2333, 2334) (1969, 1970) (1651, 1652). **Costs certified and taxed, on change of venue.**—If, on the removal of the trial, the costs are directed to be paid out of the estate, a bill of costs must be made out by the judge of probate trying the same, and certified to the judge of probate of the county from which the trial was removed; and such bill of costs may be taxed by motion in the court in which the trial was had, and the same may be re-certified to such judge of probate.

4298 (2000) (2336) (1972) (1654). **Contest in chancery within eighteen months.**—Any person interested in any will, who has not contested the same under the provisions of this article, may, at any time within eighteen months after the admission of such will to probate in this state, contest the validity of the same by bill in chancery, in the district in which such will was probated, or in the district in which a material defendant resides.

Johnston v. Glasscock, 2 Ala. 218; Kennedy v. Kennedy, Ib. 571; Johnston v.

Hainesworth, 6 Ala. 443; Hill v. Barge, 12 Ala. 687; Hardy v. Hardy, 26 Ala. 524; Hunt v. Acree, 28 Ala. 580; Woodcock v. McDonald, 30 Ala. 411; Copeland v. Copeland, 32 Ala. 512; McCartney v. Bone, 33 Ala. 601; Kumpe v. Coons, 63 Ala. 448; Lyons v. Campbell, 88 Ala. 462; Watson v. Turner, 89 Ala. 220; Mathews v. Forniss, 91 Ala. 157; Knox v. Knox, 95 Ala. 505; Garrett v. Heflin, 98 Ala. 615; McCutchen v. Loggins, 109 Ala. 457.

4299 (2002) (2338) (1974) (1656). **Infants and lunatics allowed longer time to contest.**—After the expiration of such eighteen months, the validity of the will can only be contested by infants and persons of unsound mind who had no legal guardian at the time the will was admitted to probate, who are allowed eighteen months after the appointment of a guardian, or, if none be appointed, eighteen months from the termination of their respective disabilities in which to contest such will, but in no case to exceed twenty years from the time the will was admitted to probate.

Watson v. Turner, 89 Ala. 220.

4300 (2001) (2337) (1973) (1655). **Trial by jury; evidence taken on probate of will admissible.**—The chancery court may, in such case, direct an issue to be tried by a jury, and on the trial before the jury, or hearing before the chancellor, the testimony of the witnesses reduced to writing by the judge of probate, according to section 4279 (1982), is evidence to be considered by the chancellor or jury.

Mathews v. Forniss, 91 Ala. 157; McCutchen v. Loggins, 109 Ala. 457.

RULES OF COURT AND PRACTICE

ADOPTED BY

THE SUPREME COURT OF ALABAMA.*

GENERAL RULES.

1. Appearances, how entered; leading counsel and notices.—The clerk of every court of record in this state shall keep in court in term time, and in his office in vacation, a book to be called the "Book of Appearances." Any attorney or solicitor, desiring to appear in any civil cause, shall make in said book, or cause to be made therein by the clerk, an entry of his name, stating the cause in which he appears, and, if there be several of the same name, its number, or other mark of identity, the party or person for whom he appears, and the date of such entry. Such entry shall be considered an appearance of record. The counsel whose name shall be so first entered shall be considered the leading counsel in the cause, for the party or person for whom he so appears, until he abandons the cause, and then the counsel whose appearance shall be next in date, and so on. Such notices, etc., as are authorized to be served on the attorney of a party, shall be served on his leading counsel.

Method here prescribed **rarely pursued**—entry of name on margin of docket sufficient.—Grigg v. Gilmer, 54 Ala. 425. **What constitutes general appearance**; effect of.—Baker v. Pope, 49 Ala. 415; Parker v. Abrams, 50 Ala. 35; Pool v. Minge, 50 Ala. 100; McCaskey v. Pollock, 82 Ala. 174; Beckert v. Whitlock, 83 Ala. 123; Ex parte Henderson, 84 Ala. 36; B'ham Flooring Mills v. Wilder, 85 Ala. 593; Stamphill v. Franklin Co., 86 Ala. 392; Stephens v. Adams, 93 Ala. 117; Rosenberg v. Claflin, 95 Ala. 249; McCreary v. Jones, 96 Ala. 592; Carter v. O'Bryan Bros., 105 Ala. 305; Ward v. Manley, Ala. (21 So. 307). **Special appearance,** nature and effect of.—Lampley v. Beavers, 25 Ala. 534; Moore v. Dickerson, 44 Ala. 485; Grigg v. Gilmer, 54 Ala. 425; Exchange Nat. Bank v. Clement, 109 Ala. 270. **Appearance by counsel may be withdrawn.**—Harrison v. Holley, 46 Ala. 84. **Appearance by attorney not shown to be special or limited,** taken to be general.—Collier v. Falk, 66 Ala. 223.

2. Who may appear.—No one shall be permitted to appear in a cause as counsel or attorney, unless he has been employed therein, and his appearance has been entered as aforesaid, or unless he represent other counsel whose appearance has been so entered, or may have the special leave of the court.

3. Abandonment of cause.—Counsel shall be considered as having abandoned a cause by entry to that effect, by failing, at two successive terms of the court, to appear or be represented therein, by removal from the state, by quitting the practice, or by death; in any

*Adopted December 5, 1876, to take effect January 1, 1877.

of which, and in such other cases as the court may direct, the clerk may enter such abandonment on the book of appearances.

4. Pleadings and briefs signed by counsel.—All declarations, pleas, briefs, etc., must be signed by counsel where counsel is employed.

Complaint must be signed.—Browder v. Gaston, 30 Ala. 677. When amendment to complaint need not be.—Payne v. Crawford, 97 Ala. 604.

5. Solicitors and attorneys receipt for and keep papers twenty-four hours.—It shall be the duty of the several clerks and registers of courts in vacation to permit the attorney or solicitor of record for either party, in any suit pending in their courts, to take from the office the papers in any cause, and retain them for the space of twenty-four hours at any one time, he executing a receipt therefor, specifying the title of the cause, the pleadings, and process on file, and, if an attachment cause, the bonds and affidavits on file; the papers not to be carried beyond the limits of the town in which the office of the register or clerk is located, and the clerk or register shall at all times have access to them.

6. Substitution of lost records or papers; compelling production of written evidence in aid of.—Whenever a party to a pending suit or motion shall make or desire to make a motion to substitute a paper or record, or part thereof, which has been lost or destroyed, and such party, or his attorney, shall suppose that a party to the suit, motion, or record, or his attorney, or any other person, has a paper, book, memorandum, or record, relevant to such motion in his possession, or under his control, such party, or his attorney, or other person, may be compelled to produce the same, as evidence on such motion, after one day's notice to do so; and, on failure to do so, may be dealt with as for a contempt of court; and the court before which the motion is made may make such order or decree, or render such judgment on the motion, as, in its discretion, may seem just and proper.

7. When motion considered pending.—For the purposes of such motion, the suit or motion shall be considered as pending until a final disposition and record have been made of it.

8. When notice of motion necessary.—No notice of such motion shall be necessary, when the party against whom the motion is made is plaintiff, or is in court by personal service, appearance, or publication. If the party be not thus in court, notice of the motion may be given either by personal service, as provided by section 649 of the Revised Code, or by publication, as provided by section 653 of the Revised Code.*

*The provisions as to notice, here referred to, are embodied in section 2648 of this Code.

RULES OF PRACTICE IN THE SUPREME COURT.

1. Assignment of errors and joinder therein.—In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. The words "There is no error in the record" shall be a sufficient joinder in error.

In civil cases, **errors, except for want of jurisdiction, not considered unless assigned.**—Erwin v. Reese, 54 Ala. 589; Haney v. Conoly, 57 Ala. 179; Lehman v. Meyer, 67 Ala. 396; Tuscaloosa Cottonseed Oil Co. v. Perry, 85 Ala. 158; McNeill v. Kyle, 86 Ala. 338; West v. Thomas, 97 Ala. 622; Cottingham v. Armour Packing Co., 109 Ala. 421. **Definiteness and precision required in assigning errors.**—Napier v. Jones, 47 Ala. 90; Sonneborn v. Bernstein, 49 Ala. 168; Morris v. Poillon, 50 Ala. 403; Alexander v. Rea, 50 Ala. 450; Glover v. Lyon, 57 Ala. 365; Robinson v. Murphy, 69 Ala. 543; Smith v. Freeman, 75 Ala. 285; Glover v. Hill, 85 Ala. 41; White v. Craft, 91 Ala. 139; Dillard v. Savage, 98 Ala. 598; Claflin v. Rodenberg, 101 Ala. 213; Nat. Fertilizer Co. v. Holland, 107 Ala. 412. In civil cases, **assignments of error not urged in brief or argument treated as abandoned.**—Waller v. Sultzbacher, 38 Ala. 318; Doe v. McDougal, 48 Ala. 383; Sharp v. Robertson, 76 Ala. 343; Taylor v. Smith, 104 Ala. 537; Carter v. O'Bryan, 105 Ala. 305; Henry v. Hall, 106 Ala. 97; Ala. M. Ry. Co. v. McDonald, 112 Ala. 216; So. Ry. Co. v. Cunningham, 112 Ala. 496; L. & N. R. Co. v. Morgan, Ala. (22 So. 20). **What not sufficient urging to secure consideration of assignment.**—Williams v. Spragins, 102 Ala. 424; Sylacauga Land Co. v. Hendrix, 103 Ala. 254. **On joint appeal by several, joint assignment not available unless error injurious to all; rule as to severance.**—Kimbrell v. Rogers, 90 Ala. 339; Rudulph v. Brewer, 96 Ala. 189; Beachman v. Mfg. Co. 110 Ala. 555; Lillich v. Moore, 112 Ala. 532; Hillens v. Brinsfield, Ala. (21 So. 208). **Joinder in error; effect of as waiver.**—Turnly v. Stinson, 1 Ala. 456; Thompson v. Lea, 28 Ala. 453; Magruder v. Campbell, 40 Ala. 611; Myers v. Segars, 41 Ala. 383; Alexander v. Nelson, 42 Ala. 462; Killam v. Costley, 52 Ala. 32; McDonald v. McMahon, 66 Ala. 115; Bolling v. Jones, 67 Ala. 508; Robinson v. Murphy, 69 Ala. 543; Mobile Mut. Ins. Co. v. Cleveland, 76 Ala. 321. **Not waiver, where supreme court has not jurisdiction.**—Johnston v. Fort, 30 Ala. 78; Mabry v. Dickens, 31 Ala. 243; Parish v. Galloway, 34 Ala. 163.

2. Additional assignments.—On application to the court, additional assignments may be filed at any time before joinder, but after joinder, such only as will affect the merits of the controversy.

Myrick v. Chamberlain, Minor, 357; McDonald v. Elliott, 1 Stew. 219; Stowe v. Sewall, 3 S. & P. 67.

3. Cross-assignment of errors.—When there are cross-appeals in the same cause, there shall be but one transcript, upon which each appellant may assign errors. If the appeal be taken by the party or parties on one side only, the appellee can only assign errors upon the record brought up by the appellant, by consent of the appellant in writing indorsed on the transcript, or a joinder by the appellant in such assignment of errors. When such assignment and joinder are made, the clerk shall docket the case, as if an appeal had been taken by such appellee; and the transcript shall be a part of the record in the case wherein errors are thus assigned by the appellee, as well as in the original case; and the case in which the appellee thus assigns errors shall, in all respects, be regarded as a case on appeal taken by him. As amended Dec. 17, 1884.

Cross-assignments **not considered without joinder or written consent.** Kirksey v. Hardaway, 41 Ala. 330; Ketchum v. Creagh, 53 Ala. 224; Page v. Francis, 97 Ala. 379; Golden v. Golden, 102 Ala. 353. **What necessary to support cross-assignment.**—Leslie v. Langham, 40 Ala. 524; Wright v. Evans, 53 Ala. 103; Holdsombeck v. Fancher, 112 Ala. 469.

4. Order of calling and trying cases.—Each case, not being within the rule concerning delay cases, nor within the exceptions hereinafter expressed, must be called and tried according to its order on the docket, unless, for good cause shown, it be continued or passed over.

5. Authorities furnished opposing counsel one day before trial; penalty for failure.—A list of the authorities to be used in the argument of any cause shall, if applied for, be furnished to the counsel for the adverse party, one day before the trial; otherwise, they shall not be read or commented on in the argument on behalf of the party so in default, but they may be cited.

Adopted Dec. 11, 1884.

6. Opening and conclusion of argument.—The appellant in this court shall be entitled, ordinarily, to open and conclude the case; but when there are cross-appeals, they shall be argued together as one case; and the plaintiff or complainant in the court below shall be entitled to open and conclude the argument.

7 (6). Authorities read in opening argument.—No authority which was not read in the opening argument shall be read in the conclusion, unless by leave of the court, or to rebut authority introduced by the adverse counsel.

8 (32). Arguments limited to one hour.—No argument of counsel shall extend beyond the period of one hour, unless by consent of the court, obtained before the argument of the cause is commenced.

Adopted June 28, 1890.

9. Briefs to be printed in certain cases.—All briefs and arguments of counsel, other than such as are oral, in civil cases, shall be printed on a typewriter or otherwise, when they are more than eight average pages of legal-cap paper, and the amount in controversy is three hundred dollars, or in excess of that sum.

10. Appellant's brief; how to be prepared.—The appellant, in order to prepare a case properly for submission when called, shall have filed a brief of the points relied on, in accordance with, and confined to the distinct specifications contained in his assignments of error, each ground of error insisted on being separately presented and numbered in proper order. Each point shall be stated in the form of a proposition, unless the assignment of error is itself in this form, and then it will be sufficient to copy the assignment.

11. Appellee's brief.—The appellee, in like manner, shall furnish a brief setting forth the points of the defense.

12. Succinct statement of points and authorities.—There shall be annexed to such statement of each proposition contained in the brief, at the end of it, without argument or comment, a reference simply to the authorities relied on, if any, in support of it, whether statutes, adjudged cases, or elementary authorities. Cases most nearly in point should for convenience be cited first, and citations need not be unnecessarily numerous, so as to require a waste of time in their examination.

Adopted Dec. 20, 1895.

13. Briefs of both parties to be filed on submission of cause; additional briefs; service.—Counsel for both parties at the time of submission of any civil cause shall file their briefs and arguments,

printed or written as now required by the rules on that subject. If appellant's counsel is in default for failing to comply with this rule, the case shall not be submitted or heard on his motion, and may be dismissed on motion of the appellee; and when counsel for appellee is in default, he will not be heard on the merits of the appeal except by the consent of his adversary and upon the request of the court. After a cause has been submitted or heard, no brief will be allowed to be filed or furnished except on the consent of a judge of the court upon satisfactory proof that a copy thereof has been furnished to the other side, and in such case the opposite party may reply to any new matter presented by such brief.

14 (10) (7). **Roll of attorneys.**—The clerk shall keep a list or roll of all attorneys of this court, entering their names in the order in which they were admitted.

15 (11) (8). **Special motions on Thursday, and call of roll.**—Special motions shall be heard on each Thursday of the term; and for this purpose the clerk shall call over the names of the attorneys, beginning with the attorney-general, and proceeding with the others according to their order on the roll.

16 (12) (9). **Motion-docket; notices of motions.**—The clerk shall keep a motion-docket, in which shall be entered all motions for argument which are not ex parte, or of course. In such entry the nature and particular grounds of the motion shall be designated, and, at least one day before the hearing of the motion, the entry shall be shown to the counsel for the adverse party, or he shall have such written notice as will enable him to refer to it.

When **motion not entered on docket not considered.**—Capehart v. Granite Mills, 97 Ala. 353. **Extraordinary writs, such as mandamus, etc., obtainable by motion entered on docket** supported by transcript of proceedings in lower court.—Ex parte Garland, 42 Ala. 559; Ex parte Tower Mfg. Co., 103 Ala. 415.

17 (13) (10). **Order of business on Thursday.**—On each Thursday, after the ex parte motions have been heard, the criminal cases must be called, and shall be in order until they are disposed of, unless continued or postponed by the court; after the criminal cases have been disposed of, motions requiring argument, and applications for mandamus, prohibition, or other remedial writ, will be heard, and next, appeals belonging to the division from orders or decrees dissolving or refusing to dissolve injunctions, appointing or refusing to appoint receivers, sustaining or overruling a demurrer to a bill in equity, or sustaining or overruling a motion to dismiss such bill for want of equity, or sustaining or overruling a plea to such bill, shall be called, and stand for trial as preferred causes, in the order in which they stand on the docket.

18 (14) (11). **Delay cases.**—On any motion-day, if the counsel for the defendant in error or appellee state that it is his belief that the case is brought into this court merely for delay, the record shall be submitted to the court without argument on either side. If the court, on examining the record, consider it a delay case, the judgment shall be affirmed; but if it appear to be doubtful or difficult, or if, when so offered to be submitted, or at any time during the

term, the counsel for the plaintiff in error or appellant state to the court that it is his opinion that, on more full examination, the judgment will be reversed or corrected, it shall not be so affirmed; or if such judgment of affirmance has been entered, it shall be set aside, and the case shall stand over for argument in its regular order.

19 (15) (12). **Certiorari.**—A certiorari to perfect or bring up a complete record may be awarded at the first term, on motion of either party, if its object be to sustain a judgment, without a showing; but if to reverse a judgment, a sufficient showing must be made.

Office of certiorari.—Montevallo Coal Co. v. Reynolds, 44 Ala. 252; Stroud v. State, 55 Ala. 77; Hightower v. Crow, 102 Ala. 584. **Return to certiorari treated as the true and correct record.**—Pearce v. Clements, 73 Ala. 256; Gady v. State, 83 Ala. 51; A. G. S. R. Co. v. Dobbs, 101 Ala. 219. **When awarded to support jurisdiction.**—Morgan v. Jones, 48 Ala. 250. And to affirm judgment.—Judson v. Eslava, Minor, 71; McDonald v. Gayle, Ib. 98. **In case of surprise to appellant.**—Quigley v. Campbell, 12 Ala. 58. **When will not be awarded.**—Looney v. Bush, Minor, 413; Eades v. Duncan, Minor, 389; State v. Shelton, 3 Stew. 343; Townsend v. Jeffries, 24 Ala. 329; Curry v. Woodward, 50 Ala. 258; Tuscaloosa Co. v. Logan, 50 Ala. 503.

20 (16) (13). **Restrictions upon use of papers by attorneys.**—The clerk may permit either of the attorneys concerned in a cause to take the record and papers thereof from the clerk's office, to be returned at such time as by the rules of the office may be directed; but no transcript or other papers (except briefs), after being filed in this court, or being submitted to the court shall be delivered to the bar, except for use and examination within the capitol; and all members of the bar are positively forbidden to take any such record or paper from the capitol.

21 (17) (14). **Time of examination for license.**—The examinations for licenses must be on any Thursday of the term.

22 (18) (15). **Examination of applicants for license.**—The examination of applicants under the eye of the court must be thorough, and well calculated to test the extent of the applicant's professional attainments; and when these are defective, the court must not hesitate to withhold a license.

23 (19) (16). **Graduates of law department of University of Alabama.**—Whenever the president and professors of the law department of the University of Alabama shall officially certify to this court, that the university has conferred the degree of Bachelor of Laws upon a graduate in that department, it shall be the duty of the clerk to enter the name of such graduate upon the roll of attorneys of this court, and to issue to him a license, upon application and payment of the usual fees, authorizing him to practice law in any court of the State of Alabama, on taking the oath prescribed by statute.

24 (20). **Admission of attorneys.**—Attorneys of the age of twenty-one years, licensed by the circuit courts, or courts of chancery of this state, and who have, for two years thereafter, practiced in the courts of this state, will be admitted to the bar of this court during term time, upon application and payment of the usual fees, on filing with the clerk of this court, in writing, the oath of an attorney as prescribed by the statute; and the certificate of the chancellor of

the division, or judge of the circuit, in which he resides, that he is of good moral character and has so practiced for such length of time.

25 (21).(17). **Agreements in writing.**—No private agreement or consent between the parties or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing, and signed by the party to be bound thereby.

Verbal agreements of no force; courts of equity will not relieve against their violation.—Collier v. Falk, 66 Ala. 223; Norman v. Burns, 67 Ala. 248. See also Wright v. Evans, 53 Ala. 103; Prestwood v. Watson, 111 Ala. 604.

26 (22) (19). **Paper of transcripts.**—All transcripts of records must be on paper of uniform size, according to the sample furnished by the clerk of the supreme court, with a blank margin, at the top, bottom and sides of each page, of an inch and a half, exactly conforming to those marked on the sample.

27 (23) (20). **Original paper sent by order of judge or chancellor.**—Whenever it shall, in the opinion of the judge of any court, or of any chancellor, be necessary or proper that original papers of any kind should be inspected in the supreme court, such judge or chancellor may make such rule or order for the safe-keeping, transporting and return of such original papers as to him may seem proper; and such papers will be considered by the supreme court in connection with the transcript of the proceedings. This rule shall apply as well to cases heretofore tried as to those which may hereafter be tried.

Prior to this rule, original papers disregarded, although sent up by order of trial-judge.—Butler v. State, 22 Ala. 43. **Sending up original paper does not authorize its omission from transcript.**—Pruitt v. McWhorter, 74 Ala. 315; Wright v. Dunklin, 83 Ala. 317. **What papers within rule.**—Wright v. Dunklin, 83 Ala. 317. **Must be identified as an original paper.**—Gardner v. State, 96 Ala. 12. **Order of trial-judge essential.**—Gardner v. State, 96 Ala. 12; Frieder v. Mfg. Co., 101 Ala. 242.

28 (24) (21). **Original papers not sent, but copied in transcript, except as directed in the preceding rule.**—No original bill of exceptions, or paper read or offered in evidence, shall be sent to this court. Copies of bills of exceptions, and of papers therein referred to, shall be inserted in their proper places in the transcripts.

Crawford v. Bank, 7 Ala. 383.

29 (25) (22). **Mode of preparing transcript.**—The pages of the transcript shall be numbered. Each transcript shall be prefaced by an index of its contents, specifying the pages at which the various matters (as the writ, declaration, pleas, bill of exceptions, judgment, bill in chancery, answer of each defendant, deposition of each witness, each interlocutory order or decree, final decree, etc.) are to be found. The several answers of witnesses, as made in depositions, shall each follow consecutively the particular interrogatory to which it is responsive. Marginal references to the several matters, as above, shall be made throughout the transcript. The transcript must be fastened together on the left side of the page by ribbon or tape, so that the same may be secure, and every part conveniently read, and must be written in a fair, legible hand; and each paper or order com-

posing such transcript must constitute at least one paragraph. No paper less than the sample furnished must form a part of such transcript, and the space within the margin must be filled with writing or printing, leaving appropriate spaces between the paragraphs, with lines drawn along such spaces.

General directions for preparing transcripts.—Foster v. Napier, 74 Ala. 393. **Notes or comments of clerk should not be incorporated.**—Frieder v. Mfg. Co., 101 Ala. 242; Baker v. Swift, 87 Ala. 530; Weaver v. Cooper, 73 Ala. 318; Ice v. Manning, 3 Ala. 121. **Mode of copying depositions;** costs disallowed when rule violated.—Rovelsky v. Brown, 92 Ala. 522. **Dates of filing of pleadings, etc., should be given.**—Murphy v. Wood, 103 Ala. 638.

Adopted Feb. 22, 1887.

30 (26). **Papers to be omitted from transcript.**—In making out transcripts in cases brought to this court by appeal or writ of error, the clerks and registers of the primary courts must not insert any subpœnas or summons for any witness, nor for any defendant, where there is an appearance by such defendant; nor any orders of continuance, as to any of which proceedings or matters no question is raised; nor any commission to examine a witness, nor certificate of a commissioner to a deposition, nor any affidavit made to obtain such commission, except where a question as to the sufficiency or legality thereof appears from the record to have been decided in the primary court.

Adopted April 25, 1878.

31 (27). **Abridgement of record by agreement.**—When an appeal is taken to the supreme court from any of the courts of record of this state, the parties, their solicitors, or attorneys, may make an agreement in writing, specifying what part of the proceedings shall be inserted in the transcript; and it shall be the duty of registers, clerks and judges of probate, when such agreement is filed, to include in the transcript only such part of the proceedings as shall be specified in such agreement; and the agreement itself shall be made a part of the transcript.

32 (28) (23). **Seal, how placed; papers otherwise attached not parts of transcript.**—The clerk's seal shall be so placed across the fastening of the cord with which the sheets are stitched that no part of the transcript can be detached without separating the seal, cord, or paper. No paper attached by wafer, paste, or in any other manner than as above, shall be considered as part of the transcript.

33 (29) (24). **Certificate of appeal, citation, bond, security for costs.**—All transcripts must contain a certificate of the fact that an appeal was taken, and the time when, and a copy of the appeal bond, or certificate of the names of the sureties for costs, and a copy of the citation and its service, but if a copy of such citation and service cannot be inserted in the transcript, the original may be sent to the clerk of the supreme court.

Certificate of appeal; what it should show; its necessity.—Caldwell v. Baldwin, 43 Ala. 617; Portis v. Newman, 43 Ala. 506; Shulman v. Brantly, 48 Ala. 193; Killam v. Costley, 52 Ala. 32; Winn v. Dillard, 57 Ala. 167; Armstrong v. Nelson, 57 Ala. 556. **Motion to dismiss for want of certificate too late after joinder in error.**—Myers v. Segars, 41 Ala. 383; Killam v. Costley, 52 Ala. 32.

34 (30) (25). **Clerk furnishes sample, and must not docket case unless transcript conforms to rules.**—The clerk of the supreme

court furnishes samples of paper, and must not receive any transcript, or docket the cause, unless such transcript is conformable to the foregoing rules.

35 (31) (26). Affirmance on certificate.—On the fourth day of each annual term, and every Thursday afterwards when the court is in session, if an appeal to this court has been taken, and no transcript has been filed according to the rule therefor this day adopted, a motion for affirmance on certificate will be in order; but no such motion shall be entertained on any day earlier than the motion-day of the division to which the case belongs, which first occurs after the proper return-day of the appeal. It may be made, however, on any subsequent motion-day during the term.

Formerly affirmance obtainable after first three days of term.—Cowles v. Frear, 43 Ala. 642; Jones v. Matthews, 48 Ala. 558. **When denied.**—Tardy v. Murry, 17 Ala. 585; Shulman v. Brantly, 48 Ala. 193; Armstrong v. Nelson, 57 Ala. 556. **Such a judgment may be rendered against sureties on supersedeas bond also.**—Ex parte Weissinger, 7 Ala. 710. **Right waived by failure to assert.**—Webb v. Robbins, 77 Ala. 176.

36 (32) (27). Affirmance on certificate set aside on filing transcript.—Whenever a judgment shall be taken before a call of the division to which the case properly belongs, it will be deemed a sufficient cause to reinstate the case and to set aside the judgment, if the transcript is filed at any time before the first motion-day after the call of the division.

37 (33) (28). Setting aside affirmances in other cases.—In all other cases where a motion is submitted to set aside a judgment rendered on certificate or citation, affidavits must be produced showing satisfactory reasons why the transcript was not filed within the first three days after the call of the division to which the cause belongs. If the transcript offered is defective, the transcript must show either that application has been made for a correct transcript, or that there was not sufficient time after the defect was discovered to procure one before the adjournment of the court. And, in either event, the deficient matter must be stated with sufficient certainty to enable the defendant in error to admit the existence of the same, and to proceed as if the record was complete.

When satisfactory reasons not shown.—Jones v. Matthews, 48 Ala. 558.

38 (34) (29). Certificate when no proceedings at return-term. When an appeal has been taken, or shall hereafter be taken to this court from any court, and the term of this court to which such appeal is taken shall close its session, or cease to hear arguments, if the record in such case shall not have been filed, and no order made in this court, either continuing said cause or disposing of the same, it shall be the duty of the clerk of this court, at the request of an attorney thereof, to certify such failure to file the record, or have such order made in the cause, to the register, clerk, or probate judge of the court from which it is represented that such appeal has been prosecuted; and the certificate made pursuant to this rule shall be a full authority to the register, clerk, or probate judge to proceed in said cause as if no appeal had been prosecuted.

See rules 45 and 46, and citations thereto.

39 (35) (30). Paper of applications for bail, mandamus, etc., must correspond with transcript.—All applications to this court to admit to bail, or for the writ of habeas corpus, mandamus, or other writ or process depending on motion in this court, together with all papers and proceedings touching the same, shall be presented on folio paper, of the pattern now required by the rule for ordinary transcripts, so that the same may be in suitable form for binding; and no application shall be heard that is not so presented.

40 (36) (31). Abatement on failure to revive by next term after suggestion of death.—When the death of a party has been suggested, and an order made to revive in the name of or against the heirs or personal representatives of the deceased, and this is not done by the next term of the court, the suit shall abate, unless, for sufficient cause shown, the court shall extend the time.

When time will be extended.—Clancy v. Stephens, 92 Ala. 577.

Adopted June 25, 1896.

41. Rehearings; regulations as to.—All applications for a rehearing must be filed with the secretary of the chief justice, within fifteen days after the rendition of the judgment; no such application will be received or filed unless accompanied by a brief or argument in support thereof. If the term at which judgment is rendered expires before the ten days have elapsed, the application may be filed in vacation within the fifteen days, and may be considered and granted or overruled at the succeeding term. Without the order of the court, or a judge thereof, the pendency of an application for a rehearing, shall not stay or suspend the execution of the judgment of this court.

Ib.

42. Briefs on rehearing; service of.—Wherever application for a rehearing shall be made, the counsel making the application shall, before filing his argument in support thereof, serve a copy of the argument upon the leading counsel of record for the opposite party.

Adopted July 3, 1884.

43 (38). Duty of clerk as to sending copies of opinions.—It shall be the duty of the clerk of this court to send a copy of the opinion of the court to the court below, in all cases decided on appeal, except when the judgment or decree of the lower court is simply affirmed without more; and for this he shall be allowed the usual fees for copying.

Adopted Feb. 8, 1884.

44 (39). Establishing bills of exceptions.—When it is proposed to establish a bill of exceptions under section 3111 of the Code of 1876 (section 621 of this Code), the testimony for and against such motion must be taken and certified under the following regulations: The opposing parties may agree in writing on one or more commissioners; or any competent justice of the peace, or other judicial officer, at the option of the party desiring to take testimony, may act as commissioner, with authority, in either case, to administer oaths to witnesses, and to take, reduce to writing and certify the testimony. The party desiring to examine a witness, or witnesses, under this rule, shall cause reasonable notice in writing to be served

on adverse counsel, in no case to be less than five days, giving notice of the time and place of examination, and of the witnesses proposed to be examined. Such notice, with the service thereon, shall be made part of the deposition, unless the commissioner certifies that the adversary party, by himself or counsel, was present at the examination. In taking such testimony, no commission or written interrogatories shall be necessary; but interrogatories, cross-interrogatories and rebutting interrogatories may be allowed; and the whole must be taken and certified, pursuing substantially the rules and forms required in the matter of depositions in chancery. Testimony thus taken must be sealed up, directed and forwarded to the clerk of this court, with a memorandum on the envelope as follows: "Deposition in case of ——— vs. ———, pending in supreme court"; and the commissioner must sign his name thereto as commissioner.

45. Failing to file transcript by time case subject to call.—In all cases of appeal to this court taken in vacation, except those subject to call during the first week of the term, and in all cases appealed during the term, unless the transcript is filed with the clerk of this court by twelve o'clock noon of the first day of the first week during which such case is subject to call in this court, it shall be within the power of this court to tax the appellant with all, or any part of the costs of the appeal; and, in addition, such appeal may, in the discretion of the court, be dismissed on motion of appellee, if made not later than the next Thursday. The court may, however, consider any affidavit or affidavits offered in excuse of non-compliance with this rule, and may, in its discretion, decline to impose all, or any part of the foregoing penalties. Adopted June 28, 1890.

Construed.—Street v. Street, Ala. (21 So. 138).

46. Filing transcript after adjournment of term.—Upon satisfactory excuse being shown for the delay, the court may, in its discretion, permit the transcript to be filed and the cause docketed, for the first time, after the adjournment of the term to, or during which the appeal is returnable, upon such terms as the court may impose. Adopted Feb. 10, 1894.

Rule modified law as previously declared in Sears v. Kirksey, 81 Ala. 98; Winthrow v. Iron Co., 81 Ala. 100; Bayzer v. Mill Co., 13 So. 144 (not officially reported). This rule construed.—Collier v. Coggins, 103 Ala. 281; see also Street v. Street, Ala. (21 So. 138).

RULES OF PRACTICE IN THE CIRCUIT AND INFERIOR COURTS OF COMMON-LAW JURISDICTION.

1. Order of causes on docket.—The clerk must enter all causes on the proper docket according to the order in which the process commencing the same was received by the sheriff.

2. Motion-docket.—He shall keep a separate docket, in which

shall be entered all motions made during the term (not incidental to the cause), in the order of time in which they are made, and they shall be called in the same order.

Motion-docket no part of record—bill of exceptions or enrollment necessary.—Waring v. Gilbert, 25 Ala. 295; T. & C. R. R. Co. v. Ry. Co., 81 Ala. 94; Wiggins v. Witherington, 96 Ala. 535; Leinkauff v. Advancing Co., 99 Ala. 619; Frieder v. Mfg. Co., 101 Ala. 242; R. & D. R. Co., v. Jones, 102 Ala. 212; Ex parte H. A. & B. R. Co., 105 Ala. 221; A. G. S. R. Co. v. Bailey, 112 Ala. 167.

3. Order-book.—He shall keep on his table, when the court is sitting, and at all other times, in his office, a memorandum-book, in which the attorneys may respectively enter precipes and other directions to him.

4. Executions, when issued.—On every final judgment rendered during the term (unless the party to be benefited thereby, or his attorney, shall, in writing, otherwise direct), the clerk shall issue execution as soon after the adjournment as the law will permit.

5. Attorneys, security for cost, but not bail.—An attorney may be surety for cost, but shall not be bail for his client, either in a civil or a criminal case.

6. Scire facias, time of pleading to, and trial of.—To every scire facias returned "made known," the defendant shall plead within the first two days of the term to which the same is returned; the plaintiff shall reply on the day next thereafter, and so on from day to day, until issue in fact or in law be joined; but either party may demand a trial at the return-term, although the court may not continue in session three days.

7. Oyer of letters testamentary, or letters of administration. When oyer of letters testamentary, or letters of administration, is demanded, it shall be granted on or before the first day of the term next after the return of the summons or writ, but the trial shall not on that account be delayed.

8. Papers; production of, and penalty.—When the action is on any instrument purporting to have been signed by the defendant, and, within the time prescribed for pleading, he shall give notice to produce it, it shall, within one day thereafter, be produced for his inspection. In default thereof, nonsuit may be entered, unless sufficient excuse be shown.

9. Defaults, at what time entered and taken advantage of. Defaults may be entered on the docket in vacation, which shall relate to the preceding term, and advantage thereof may be claimed at the next term.

Rule cited.—Hudson v. Wood, 102 Ala. 631. Defendant need not be formally called.—Home Protection of N. A. v. Caldwell, 85 Ala. 607. **Default in attachment suits** not grantable without general appearance or levy on property.—Jennings v. Pearce, 101 Ala. 538; Byers v. Baker, 104 Ala. 173. Effective only on property attached.—Soulard v. Oil Co., 109 Ala. 387; Ex. Bank v. Clement, 109 Ala. 270.

10. Party entering default not bound to receive plea.—After a default has been duly entered, the party claiming the benefit thereof shall not be bound to receive any plea or pleading of the party so in default.

Rule cited.—Hudson v. Wood, 102 Ala. 631. Defendant may plead at any time before default entered.—Woosley v. R. Co., 28 Ala. 536; Rhodes v. McFarland, 43 Ala. 95; Wagnon v. Turner, 73 Ala. 197. Rule different under special acts.—Reed Lumber Co. v. Lewis, 94 Ala. 626; Hudson v. Wood, 102 Ala. 631.

11. Default set aside on affidavit.—On timely application, on affidavit showing merits and sufficient matter of excuse, a default may be set aside on such terms as the court may impose.

Setting aside default discretionary and ruling irrevisable.—Goodwin v. Harrison, 6 Ala. 438; Allen v. Lumber Co., 90 Ala. 490; Truss v. R. Co., 96 Ala. 316; Ledbetter v. Vinton, 108 Ala. 644. **Court may impose terms,** as condition of setting aside default.—Sawyer v. Patterson, 12 Ala. 295.

12. Plea in abatement must appear by indorsement to have been filed in time.—No plea in abatement shall be received, if objected to, unless by the indorsement of the clerk it appear to have been filed within the time allowed for pleading.

Plea in abatement **may not be filed with or after plea in bar.**—Hart v. Turk, 15 Ala. 675; Strouse v. Leipf, 101 Ala. 433. **Oral plea in abatement not receivable.**—Crawford v. State, 112 Ala. 1. **Rule strictly applicable only in civil cases.**—Nixon v. State, 68 Ala. 535. **Such pleas disfavored—must be seasonably filed in all cases.**—Beck v. Glenn, 69 Ala. 121; Grimes v. State, 105 Ala. 86; Moorer v. State, Ala. (22 So. 592). **When in time.**—Lawrence v. State, 59 Ala. 61. **When too late.**—Noles v. Marable, 50 Ala. 366; Perry v. Hurt, 54 Ala. 285. **When allowance after time prescribed is and is not discretionary with court.**—Cobb v. Miller, 9 Ala. 499; Massey v. Steele, 11 Ala. 340; Vaughan v. Robinson, 22 Ala. 519; Hawkins v. Packing Co., 105 Ala. 545. **Such plea waived by demurrer or plea in bar.**—Brown v. Powell, 45 Ala. 149; Haley v. State, 63 Ala. 89. **Discretionary with court to allow withdrawal of plea of not guilty and filing of plea in abatement.**—Hubbard v. State, 72 Ala. 164. **Objection that plea not in time to be made by motion to strike,** not demurrer.—Cobb v. Miller, 9 Ala. 499; Hart v. Turk, 15 Ala. 675; Holley v. Younge, 27 Ala. 203.

13. Motions to quash, when made.—A motion to quash an attachment, appeal, or process, must be made at the first term at which it can be made, and not afterwards.

14. Agreements must be written.—No private agreement or consent between the parties or their attorneys, relating to the proceedings in any cause, shall be alleged or suggested by either against the other, unless the same be in writing, and signed by the party to be bound thereby.

Verbal agreements of no force.—Wright v. Evans, 53 Ala. 103; Collier v. Falk, 66 Ala. 223; Norman v. Burns, 67 Ala. 248. **Rule not applicable to agreements in open court.**—Prestwood v. Watson, 111 Ala. 604.

15. Regulations as to call of docket and trial of cases.—The docket of civil causes for trial shall be called absolutely on the first day of the term, unless the presiding judge shall order otherwise. Each cause shall be taken up according to its priority on the docket, and tried or continued. If passed over, it shall not be called again during the term until the other causes for trial have been disposed of.

Womack v. Bookman, 34 Ala. 38.

16. Rules of continuance.—The party applying for the continuance of any civil action must state in the affidavit the names and places of residence of the absent witness or witnesses, what diligence he has used to obtain his or their testimony, and what he expects to prove thereby. If the adverse party will admit what it is so alleged such absent witness will swear, the cause shall not be continued by

reason of the absence of such testimony. After the first continuance, such other showing must be made, and such terms may be imposed, as to the court shall seem proper.

Force accorded admission as to testimony of absent witness.—M. & W. Road Co. v. Webb, 27 Ala. 618; Crawford v. State, 44 Ala. 382; Peterson v. State, 63 Ala. 113; Ryan v. Beard, 74 Ala. 306; Woolsey v. Jones, 84 Ala. 88; Dean v. State, 89 Ala. 46. **When ruling excluding showing conclusive.** Johnson v. State, 102 Ala. 1. **When showing admitted, trial should proceed.** Childress v. State, 86 Ala. 77. **When rule not complied with, trial should proceed.**—White v. State, 86 Ala. 69. **Imposition of costs as a condition.** Waller v. Sultzbacher, 38 Ala. 318; Dunlap v. Horton, 49 Ala. 412; Rhea v. Tucker, 56 Ala. 450; Maund v. Loeb, 87 Ala. 374; Torrey v. Bishop, 104 Ala. 548; Torrey v. Slaughter, 104 Ala. 552; Alexander v. Moore, 111 Ala. 410. **Granting or refusal of continuance discretionary and irrevisable.**—Ex parte Jones, 66 Ala. 202; DeArman v. State, 77 Ala. 10; White v. State, 86 Ala. 69; Walker v. State, 91 Ala. 76; Carr v. State, 104 Ala. 4; Wimberly v. Windham, 104 Ala. 409; Torrey v. Bishop, 104 Ala. 548. So also of motion to postpone to later day.—A. G. S. R. Co. v. Hill, 93 Ala. 514. In criminal cases **when court without authority ex mero motu to order continuance.**—Johnson v. State, 102 Ala. 1.

17. Second continuance by consent.—No cause shall be continued twice in succession by consent of parties.

18. One counsel examines witness.—On trial, only one counsel on each side shall examine a witness.

19. Right of concluding argument.—If the counsel for the plaintiff waives the right of opening the argument, he shall not have the right of concluding.

Enforcement of rule **discretionary with court.**—M. & M. Ry. Co. v. Yeates, 67 Ala. 164. **Plaintiff entitled to open and conclude.**—Grady v. Hammond, 21 Ala. 427; Chamberlain v. Gaillard, 26 Ala. 504. **Proponent of will is the plaintiff.**—Mathews v. Forniss, 91 Ala. 157. **So also is a defendant in judgment, applying for supersedeas** of execution.—Pearsall v. McCartney, 28 Ala. 110. **Right not lost by failure of defendant to offer evidence.**—Worsham v. Goar, 4 Port. 441. **Waiver of argument, when right not revived.**—Cotten v. Rutledge, 33 Ala. 110.

20. Papers, how prepared and transmitted on change of venue. On change of venue, the papers must be prepared, enveloped, delivered, or transmitted, and compensation must be paid as prescribed in chapter 12, title 1, part 3, and article 2, chapter 10, title 2, part 4, of the Revised Code.

21. Motion-day.—A particular day in each term shall be set apart for hearing motions, but they may be heard at any earlier day by leave of the court.

22. Notice of motions in arrest and for new trials; grounds and affidavit.—Reasons in arrest of judgment, and reasons for new trial, and the affidavits in support thereof, if any are relied on, shall be filed with the clerk, and notice thereof be given to the adverse party, one day before the argument. If the cause is tried on the last day of the term, the notice shall be given when the motion is entered. The party making such motion is entitled to the opening and conclusion of the argument. All such motions not acted on, or continued by order of the court, are to be considered as discharged of course on the last day of the term.

Grant of new trials on conditions.—Stephenson v. Mansony, 4 Ala. 317; Ex parte Lowe, 20 Ala. 330; Screws v. Upshaw, 34 Ala. 496; Ex parte Dillard, 68 Ala. 594; Hundley v. Yonge, 69 Ala. 89. **Imposition of terms on refusal of new trial.**—Walker v. Blassingame, 17 Ala. 810. **Rulings on motions for new**

trials in criminal cases not revisable.—See section 434 of this Code, and citations thereto. **When granting new trial not discretionary.**—McLeod v. Improvement Co., 108 Ala. 81. **Motion should specifically point out ground relied on.**—Winter v. Judkins, 106 Ala. 259. **Motion for new trial too late after appeal taken.**—Hudson v. Grocer Co., 105 Ala. 200. **Hearing of motion may be continued.**—Walker v. Hale, 16 Ala. 26; Lee v. Iron Co., 102 Ala. 628. **Discharge of motion not acted on.**—Gunnells v. Bank, 18 Ala. 676; Ex parte H. A. & B. R. Co., 105 Ala. 221. **Not continued by mere general order.**—Hundley v. Yonge, 69 Ala. 89. **Motion for new trial suspends judgment and enlarges time for appeal.**—Florence C. & I. Co. v. Field, 104 Ala. 471. **Motions in arrest and rulings thereon must be shown by record proper,** not bill of exceptions.—Taylor v. State, 112 Ala. 69.

23. Rules of practice on appeals.—In cases on error or appeal, the circuit court is governed by the rules of the supreme court, as far as applicable.

24. Ejectment; consent rule.—In every action of ejectment the defendant shall specify, in the consent rule, for what premises he intends to defend, and shall consent in such rule to confess upon the trial that the defendant (if he defends as tenant, or in case he defends as landlord, that his tenant) was, at the time of the service of the declaration, in possession of such premises, and that if, upon the trial, the defendant shall not confess such possession, as well as lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the said defendant, then no costs shall be allowed for not further prosecuting the same, but the said defendant shall pay cost to the plaintiff, in that case to be taxed.

Sledge v. Doe, 51 Ala. 386; Alexander v. Wheeler, 69 Ala. 332.

25. Plaintiff in one action of ejectment may notify plaintiff in another for same premises to defend.—Where several actions of ejectment have been commenced for the same premises on the demises of different lessors, it may be lawful for the plaintiff in either of the cases, during the pendency of his suit, to serve a copy of his declaration on the lessors of the plaintiff or his attorney in the other case or cases, with a notice of the pendency of his action, and to require him or them to defend against the same; and in the event of a recovery by the plaintiff giving the notice, it shall not be lawful for the plaintiff, notified as aforesaid, to proceed in the action for the recovery of the tenements sued for, but only for the costs and damages; *Provided*, that sixty days' notice shall be given before the said plaintiff shall be required to join the consent rule.

26. Plaintiff having recovered may notify plaintiff in pending ejectment for same premises.—Whenever a recovery has been had in any action of ejectment, and there has been, and then is, pending an action for the recovery of the same tenements, which action was commenced before the recovery of the lessors of the plaintiff in the former suit, it shall be lawful for the plaintiff in the suit pending to serve a copy of his declaration upon the parties in possession, or who claim interest under the recovery as aforesaid, notifying the said parties of the pendency of the action, and requiring them to defend against the same; and the parties so notified may defend with, or in lieu of the tenants in possession; *Provided*, that the notice hereby contemplated shall be given sixty days before the trial of the cause.

27. May be admitted to defend pending ejectment.—After a recovery by a plaintiff in any action of ejectment as aforesaid, it shall be lawful for the circuit court to admit his lessor to defend in any action of ejectment which may be pending at the time of his recovery, upon a motion to the court for this purpose; and it is made the duty of the court to set forth, in the order admitting parties under either of these rules, the facts that entitle them to admission.

28. Remanded cause, not continued of course.—Where a judgment is reversed, either by the circuit or supreme court, and the cause remanded, the case shall not be continued, as a matter of course, at the next succeeding term of the court to which it is sent back, but the party desiring a continuance shall show cause thereof, as in other cases.

29. Actions by transferee.—When an action is brought by the assignee, transferee, or indorsee of a contract, verbal or written, for the payment of money, or by a plaintiff averring he is the party really interested in such contract, the interest of the plaintiff in such contract, and his right to maintain such action shall not be disputed except by plea verified by affidavit.

Rule **not applicable to suits in equity.**—McGhee v. Bank, 93 Ala. 192. **But see** Paige v. Broadfoot, 100 Ala. 610. **Plaintiff's ownership of interest to be denied by sworn plea.**—Finnegan v. Frank, 67 Ala. 21; Mobile Life Ins. Co. v. Egger, 67 Ala. 134; Manning v. Maroney, 87 Ala. 563; Hanna v. Ingram, 93 Ala. 482; K. C. M. & B. R. Co. v. Cobb, 100 Ala. 228; Scottish Un. & Nat. Ins. Co. v. Dangaix, 103 Ala. 388; Howle v. Edwards, 113 Ala. **When sworn plea filed, onus on plaintiff.**—Cobb v. Bryant, 86 Ala. 316. **In suit by assignee of insurance policy,** sworn plea not necessary to denial of insurable interest. A. G. L. Ins. Co. v. Ins. Co., 81 Ala. 329.

30. Bills of exception, when signed.—In all circuit and inferior courts of common-law jurisdiction, bills of exception may be signed by the presiding judge at any time during the term at which the trial or proceeding is had, or, by written consent of the parties, or their counsel, filed in the cause, at any time before the next succeeding term of such court, and not afterwards.

Ladd v. State, 92 Ala. 58. See citations to sections 616 and 617 of this Code.

Adopted Dec. 13, 1887.

31. Former acquittal or conviction; special venire.—A former acquittal or conviction shall be specially pleaded. And in capital cases, in which, on any former trial, a verdict of conviction has been rendered for any grade of the offense charged less than the highest, when the court calls the case for the purpose of making the usual order fixing the day for trial, the defendant shall be required by the court to announce his election to file or to waive his plea of former acquittal; and if the record of the former trial sustains such plea, its truth may be confessed by the solicitor, of which facts the court shall enter a memorandum on its docket; and in such case, the truth of the plea being admitted, no order shall be made for a special venire for the trial of the case.

Special plea necessary.—DeArman v. State, 77 Ala. 10; Burton v. State, Ala. (22 So. 585). **Not improper for solicitor to explain effect of plea.**—McQueen v. State, 103 Ala. 12.

Adopted June 21, 1889.

32. Severance in criminal cases.—Where two or more persons, charged with a capital offense, are jointly indicted, either of them is

entitled to demand a severance; but such right shall be considered as waived, unless claimed at or before the time of arraignment, or, at latest, when the court, at any term, sets a day for the trial of the case, and makes an order to summon a special venire. In other than capital offenses, a severance may be demanded at any time before the case regularly goes to the jury.

After one severance allowed two defendants, another motion is addressed to the court's discretion.—Malachi v. State, 89 Ala. 134. **If no demand for separate trial,** whether trial shall be joint or several rests in court's discretion.—Jackson v. State, 104 Ala. 1; Wright v. State, 108 Ala. 60; Wilkins v. State, 112 Ala. 55. **When some defendants plead not guilty and another pleads guilty,** this operates a severance as to the latter.—Calloway v. State, 103 Ala. 27; Woodley v. State, 103 Ala. 23; Yarbrough v. State, 105 Ala. 43. **Severance by reason of adjudged insanity** of one defendant.—Marler v. State, 67 Ala. 55.

33. Bills of exceptions; how framed.—Bills of exceptions taken in trials before a jury shall not contain a statement of the testimony, nor of any portion thereof, in extenso, except in one of the following cases: Adopted June 28, 1890.

1. When the general charge is asked in good faith, to be judged of by this court.

2. When the inquiry questions the legality or pertinency of a question to a witness, or his answer; in which case, enough of the testimony, or the tendencies of the testimony, may be stated, to show the legality or pertinency of the question or answer, or to show the contrary.

3. When a charge is asked and refused, the tendency of the testimony may be stated to an extent sufficient to show the charge is not abstract.

4. In all cases, when necessary to a proper understanding of the question sought to be raised by a charge given or refused, there may be stated, either that there was no testimony as to any given point or points, or enough of the testimony, or its tendencies, may be stated, as the case may be, to make it appear to this court, that the charge does or does not ignore the bearing of any conflicting or qualifying testimony, or does or does not tend to mislead, and is or is not a proper charge to be given in the case on trial; and this rule shall apply, whether the question raised be one of general application, or of special application, to the facts of the case before the court.

5. In no case shall the bill of exceptions contain that which is a mere repetition of what has already been stated. The substance or tendency of any additional testimony given by another witness may be stated, when necessary; and it is no violation of this rule, if the names and number of witnesses who testify to a given statement of fact, or tendency of testimony, be stated, if deemed material.

Any bill of exceptions brought before us which violates any of the regulations stated in the foregoing rule, shall subject the party reserving the exception to a penalty, not exceeding the whole cost of the appeal, at the discretion of this court; and, in addition, this court reserves the power to disallow such paper as not a bill of exceptions, and as no part of the record.

Adopted April 13, 1891.

34. Exceptions to rulings on the introduction of testimony; how to be reserved.—When, in the progress of the trial of any cause in a court of original jurisdiction, objection and exception are reserved to the introduction of testimony that is not patently illegal, or irrelevant, such exception will not be considered an error, unless the record shows that the grounds of objection were specified. In all cases, the presiding judge, before ruling on any objection to testimony, may call on counsel to specify the grounds on which it is rested; and the appellate court, in revising such decision, must consider only the grounds of objection which are shown to have been clearly specified.

General objection may be overruled.—Bates v. Morris, 101 Ala. 282; Montgomery F. Co. v. Hardaway, 104 Ala. 100; Loeb v. Huddleston, 105 Ala. 257; Washington v. State, 106 Ala. 58; Miller v. State, 107 Ala. 40; Williams v. Gallyon, 107 Ala. 439; L. & N. R. Co. v. Binion, 107 Ala. 645; Larkin v. Baty, 111 Ala. 303. **A specification of objections waives all others.**—McDaniel v. State, 97 Ala. 14; Steiner v. Tranum, 98 Ala. 319; Ellis v. State, 105 Ala. 72; A. G. S. R. Co. v. Bailey, 112 Ala. 167.

RULES OF CHANCERY PRACTICE.

GENERAL INFORMATION.

1. Court always open for certain purposes; notice of hearing appeals from register.—The courts of chancery shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning original and mesne process and commissions by the register; and for making by and before the chancellor all interlocutory motions, orders, decrees, and other proceedings not affecting the merits of causes, but preparatory to their hearing upon the merits; and, also, for carrying into execution the decrees and orders of such chancery courts and chancellors. This rule includes the hearing of appeals from the register; which motions and appeals can be heard in vacation, at any time or place (within the state), upon ten days' notice of the time and place of making the same, and the decree or order made and forwarded to the register from that or any other place.

Chancellor in vacation may confirm report of sale.—Ex parte Branch, 63 Ala. 383.

2. Powers of register in vacation; appeal to chancellor, how certified.—Registers in chancery, during the vacation of their respective courts, may make and direct all such interlocutory orders, decrees, and other proceedings not affecting the merits, nor extending to the decision of demurrers, or testing the equity of the bill, the granting or dissolving of injunctions, or the setting aside of writs of ne exeat, or equitable attachments, or to any other order which is required by statute to be made by the chancellor in court, but preparatory to the hearing of all causes upon their merits. Such orders and decrees shall have the same effect as if made by the chancellor; subject, however, in all cases, to the control of the latter, by appeal, to be heard and decided by him, either in vacation or term time. When an ap-

peal shall be taken from the register to the chancellor or court, he shall certify the appeal in the nature of a report.

3. Register keeps book; solicitor draws up application, which is transcribed with indorsement.—The register shall keep a book, in which shall be entered all decrees and orders taken before him. The solicitor of the party applying to the register for any decree or order shall draw the same out with care, describing the cause, the date of the application, and the notice given to the adverse party. If such decree or order shall be granted, the register shall indorse thereon "granted," and date and sign the same, and cause the said order, application and grant to be transcribed on said book; which book shall be one of record of his office.

4. When register grants orders.—Decrees and orders may be applied for before the register every Monday. This rule shall not apply to orders for the issuing of writs of ne exeat and equitable attachments, and for the sale of personal property levied on, in granting which registers shall not be restricted to Mondays. If the register should not get through with the business before him on any rule-day, he may continue his sittings from day to day until such business is disposed of. As amended Dec. 9, 1890.

5. Notice, when necessary.—No notice shall be necessary to obtain an order of publication against a defendant, a decree pro confesso, an order appointing a guardian ad litem, an attachment against the body or effects, a writ of sequestration, or to examine as a witness a party defendant, subject to all legal exceptions; but in all other cases, not otherwise directed by statute, or in these rules, decrees and orders shall only be made by the register upon five days' notice to the adverse party; which notice must be in writing, and must set forth the nature of the decree or order applied for, a copy of which shall be filed with the register.

6. The register being interested, special register acts.—In all cases when the register is interested or related to the parties within the fourth degree of consanguinity or affinity, it shall be the duty of the chancellor, on the motion of either party, to appoint a special register, who shall perform all the duties, and have all the powers and jurisdiction in the cause which are devolved by law upon the register. The general register shall, however, issue process, make the records, and keep the files, unless otherwise ordered by the court. As amended Dec. 11, 1882.

7. Rules of English chancery.—In all cases where the statutes of this state, the decisions of this court, or the rules prescribed by it, do not apply, the practice in chancery shall be regulated by the rules, orders, and practice of the English court of chancery (prior to and including those of May, 1845, but not afterwards), so far as the same may reasonably be applied, consistently with the institutions of this country, not as positive rules, but as furnishing proper analogies to regulate the practice.

This rule cited.—Dixon v. Higgins, 82 Ala. 284. English rules not peremptory, only advisory, furnishing analogies.—Goodrich v. Goodrich, 44 Ala. 670; Childress v. Harrison, 47 Ala. 556.

8. Stating part, divided and numbered.—The stating part of all bills must be divided into sections, and numbered consecutively, 1, 2, etc.

9. Interrogatories, divided and numbered.—The interrogatories contained in the interrogating part of such bill shall be divided from each other as conveniently as may be, and numbered consecutively, 1, 2, 3, etc.

McKenzie v. Baldridge, 49 Ala. 564.

10. Containing blanks, defective.—Bills which contain blanks shall be considered defective, and may be ordered to be taken off the file.

Blanks, unless relating to matter of substance, not cause of demurrer, McKenzie v. Baldridge, 49 Ala. 564.

11. Complainant prescribes matters to be answered by note. The complainant shall make a note in writing, at the bottom of the bill, as to the particular statements or interrogatories, by number, which he desires each defendant to answer; and the answer need not go beyond such requisition, except for such defendant's own protection.

What sufficient compliance with rule.—McKenzie v. Baldridge, 49 Ala. 564; Paige v. Broadfoot, 100 Ala. 610. **When foot-note unnecessary in case of amendment.**—Ala. Warehouse Co. v. Jones, 62 Ala. 550; Werborn v. Austin, 82 Ala. 498; Ladd v. Smith, 107 Ala. 506; Prestwood v. Fertilizer Co., Ala. (22 So. 77). **Omission of foot-note matter of substance.**—Sprague v. Tyson, 44 Ala. 338; Winter v. Quarles, 43 Ala. 692; O'Neal v. Robinson, 45 Ala. 526. **The omission curable by amendment.**—Martin v. Hewitt, 44 Ala. 418; Ala. Warehouse Co. v. Jones, 62 Ala. 550. **Oath to answer usually waived in foot-note.**—Russell v. Garrett, 75 Ala. 348.

12. Foot-note specifying matters to be answered, part of bill. The note at the foot of such bill, specifying the statement or interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill; and the addition of any such note to such bill, or any alteration in, or addition to such note, after the bill is filed, shall be treated as an amendment to the bill.

13. Form of interrogating part.—Instead of the words heretofore in use, preceding the interrogating part of the bill, and beginning with the words "To the end, therefore," such interrogating part in such bills shall be to the effect following: "To the end, therefore, that the said defendants may show why your orator should not have the relief hereby prayed, and may, upon their respective oaths, and according to the best and utmost of their knowledge, remembrance, information and belief, respectively, full, true, direct and perfect answer make to such of the statements, or the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer—that is to say: 1. Whether, etc. 2. Whether, etc."

Rule **not applicable to bills containing no interrogating part.**—Thornton v. S. & B. R. Co., 84 Ala. 109. **Answer under oath may be waived in interrogating part of bill.**—Russell v. Garrett, 75 Ala. 348. **When bill may not be amended as matter of right** by adding interrogatories required to be sworn to.—McCaw v. Barker, Ala. (22 So. 131).

14. **Bill, etc., how signed.**—All bills and petitions shall be signed by a solicitor of the court, except where a party prosecutes in his own proper person; and then it shall be signed by such complainant or petitioner; and where there is a note at the foot of the bill, as directed under the foregoing rules, the same shall be signed in like manner.

15 (16). **Bills, how sworn to.**—In all injunction and other bills and petitions required to be sworn to, the oath or affirmation may be administered and certified by any of the officers thereto authorized by law. A bill may be sworn to by an agent or attorney, but the affidavit must set forth a sufficient reason why it is not verified by the complainant himself.

16 (17). **Exhibits part of bill, and admissions of them dispenses with proof.**—The copies of all documents appended as exhibits to bills, petitions and answers shall be deemed and taken and held as parts of bills, petitions and answers; and the admission of such exhibits in the answer dispenses with proof thereof.

Minter v. Bank, 23 Ala. 762; Wynn v. Rosette, 66 Ala. 517; Dawson v. Burrus, 73 Ala. 111; Baker v. Young, 90 Ala. 426.

17 (18). **Prayer, requisites of.**—The prayer for process or publication to answer a bill shall contain the names of all the defendants. If an injunction, ne exeat, or any other special order, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

The **prayer an essential part** of bill.—Driver v. Fortner, 5 Port. 9. **Prayer for process necessary.**—McDonald v. McMahon, 66 Ala. 115. **What sufficient prayer for process.**—McKenzie v. Baldridge, 49 Ala. 564.

18 (19). **Non-resident or insolvent parties may be dispensed with.**—In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, reside out of the jurisdiction of the court, or are insolvent, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases, the decree shall be without prejudice to the rights of the absent parties.

19 (20). **When parties are numerous, court may proceed, having before it parties to represent adverse interests.**—When the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court, in its discretion, may dispense with the making of all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiff and the defendant in the suit. But in such cases the decree shall be without prejudice to the rights and claims of the absent parties.

Morton v. N. O. & S. Ry. Co., 79 Ala. 590, 610; State el rel Sanche v. Webb, 97 Ala. 111; Lebeck v. Bank, Ala. (22 So. 75).

20 (23). **Infants, how served.**—Summons to answer bills issuing against infants may be served upon their parents, or either of them, if in life, or, in case they are dead, upon the general guardian of such infant; *Provided*, such parent or guardian has not an interest adverse to such infant. When there is no parent or guardian, or

the interest is adverse to the infant, if the infant is over fourteen years of age, then the service shall be upon such infant personally; and if the infant is under the age of fourteen, then the summons must be served upon such person as may have the maintenance or charge of such infant, unless opposed in interest. And should there be any case not provided for by statute, or by this or some other rule, and proof be made before the chancellor or register, he may direct the mode of service, or appoint a guardian ad litem for such infant without service.

To support a decree against infant defendants, when assailed on error, record must disclose compliance with rule.—Levystein v. O'Bryan, 106 Ala. 352; Woods v. Transportation Co., 107 Ala. 364; Wells v. Mortgage Co., 109 Ala. 430; Estes v. Bridgeforth, Ala. (21 So. 512). See also Hodges v. Wise, 16 Ala. 509; Coster v. Bank, 24 Ala. 37; Bondurant v. Sibley, 37 Ala. 565; Carter v. Ingraham, 43 Ala. 78; Rhett v. Mastin, 43 Ala. 86; Irwin v. Irwin, 57 Ala. 614; Rowland v. Jones, 62 Ala. 322; McIntosh v. Atkinson, 63 Ala. 241; Cook v. Rogers, 64 Ala. 406; McCall v. McCurdy, 69 Ala. 65; Hibbler v. Sprowl, 71 Ala. 50; Gayle v. Johnston, 80 Ala. 395; Herring v. Ricketts, 101 Ala. 340.

21 (24). **Corporation, service of.**—Domestic corporations may be served with process by executing it upon the president, or other head thereof, secretary, cashier, or managing agent thereof. If affidavit is made that the officers named in the preceding part of this rule are unknown, absent from, or reside out of the state, the process may be served upon any white person in the employ of such corporation, or doing business for it. Process may be served on foreign corporations by executing it upon any agent of such corporation, or white person in its employ in this state, or by publication, a copy of which may be sent to any of the officers named in the first part of this rule. If a summons to answer a bill is personally served on the agent or person in the employ of such foreign corporation, such agent or employe may be required to answer on oath, as in case of other defendants to bills, and under like penalties.

To bills of discovery against corporation, officers necessary parties.—V. & A. M. & M. Co. v. Hale, 93 Ala. 542; LeGrand v. McKenzie, 110 Ala. 493. For rules of law as to service of corporations, see citations to section 3274 of this Code.

22 (25). **Service of non-residents.**—Where a defendant is shown by affidavit of the complainant or his agent, appended to the bill, or otherwise, to be, in the belief of such affiant, either a non-resident, or that his residence is unknown, or, if a resident, that he has been absent from the state more than six months from the filing of the bill, or that he conceals himself so that process cannot be served upon him; and such affidavit further states the belief of the affiant as to the age of the defendant, being over or under twenty-one years, or, if the residence and age of the defendant are unknown to the person making the affidavit, states that they are unknown, or, if the bill sets forth the facts required to be stated in said affidavits, and is sworn to, it shall be the duty of the register, in vacation, or chancellor, in term time, to make an order against such defendant, requiring him to answer or demur to said bill before a day to be therein named, not less than thirty days, nor more than fifty days from the

making thereof. The register shall have all orders of publication against defendants, whether made by the chancellor or himself, published, with as little delay as may be, in such newspaper as may be designated in the order, once a week for four consecutive weeks; a copy of which order he must post up at the door of the court-house of the county, or other place where the court sits, and shall send by mail another copy thereof to the defendant, where his residence is shown by the bill or affidavit, as aforesaid; which copies shall be posted up and sent by mail, within twenty days from the making of said order.

Mailing notice to defendant.—Butler v. Butler, 11 Ala. 668; Cullum v. Bank, 23 Ala. 797; Clark v. Gilmer, 28 Ala. 265; Curry v. Falkner, 51 Ala. 564; Holly v. Bass, 63 Ala. 387. **Posting at court-house door.**—Batre v. Auze, 5 Ala. 173; Butler v. Butler, 11 Ala. 668. **Record should show with particularity that rule was observed.**—Hartley v. Bloodgood, 16 Ala. 233; Hanson v. Patterson, 17 Ala. 738; Clark v. Gilmer, 28 Ala. 265; Keiffer v. Barney, 31 Ala. 192; Paulling v. Creagh, 63 Ala. 398. See also citations to section 686 of this Code.

23 (26). Appointment of guardian ad litem, and affidavit of infancy.—If an infant of fourteen years of age fails to name a guardian ad litem, within thirty days after the summons, or after perfecting publication, the chancellor or register, in vacation, or the chancellor, in term time, shall appoint such guardian, who may be superseded by the infant appearing either before the chancellor or register, in vacation, or the chancellor, in term time, and making choice of another, or having such choice certified by a justice of the peace to the court, chancellor, or register, and on the guardian ad litem so appointed, if necessary, putting in an answer for such infant forthwith. In all cases, a minor fourteen years of age may have his or her choice of a guardian ad litem certified by a justice of the peace. No one shall be appointed guardian ad litem, unless he consent in writing to act as such. No testimony shall be required of the infancy of a party suing or being sued as such; but, before a guardian ad litem can be appointed for an infant defendant, an affidavit must be made as to the fact of infancy, and that the infant is believed to be under or over fourteen years of age; or, if the facts are stated in a sworn bill, it will be sufficient, without any separate affidavit.

Decree against infant, not supportable without appointment of guardian ad litem.—Roach v. Hix, 57 Ala. 576; Daily v. Reid, 74 Ala. 415; Levystein v. O'Bryan, 106 Ala. 352; Woods v. Transportation Co., 107 Ala. 364. **The same guardian ad litem should not be appointed to represent adverse interests.** Estes v. Bridgforth, Ala. (21 So. 512). **Decree on admission of guardian ad litem only, erroneous.**—Hooper v. Hardie, 80 Ala. 114; Mitchel v. Hardie, 84 Ala. 349. See also cases cited under rule 20 (23).

24 (27). Attachment against defendant failing to answer.—If a resident defendant of full age, as to whom an answer on oath is not waived, fails to answer, and the complainant or his solicitor wishes to enforce one, he may, after the summons to answer has been served for more than thirty days, apply in writing to the register for the issue of an attachment against the body of such defendant; and the register shall issue the same accordingly, without waiting for any order of the chancellor.

25 (28). Sequestration against defendant evading attachment.

If a defendant, against whose body an attachment has been issued to enforce an answer, eludes the service thereof, upon affidavit of the fact by the sheriff or his deputy, and by the complainant or his solicitor, of the necessity for an answer to the bill, the register shall issue a writ of sequestration against the estate of such defendant, directed to any sheriff of the State of Alabama.

26 (29). **Alias and pluries process without order.**—An alias, pluries, or other summons, attachment, or other writ, can issue without any order therefor.

27 (30). **Bill dismissed for neglect to bring in defendant.**—If the complainant shall not, before the second term after the filing of the bill, have taken measures to bring in the defendant, his bill may be dismissed.

28 (31). **Dismissal, when equivalent to dismissal on merits.**—If the complainant, after the cause is set down to be heard, cause the bill to be dismissed on his application, or if the cause is called on to be heard in court, and complainant makes default, and by reason thereof the bill is dismissed, then, and in such case, such dismissal, unless the court otherwise orders, is equivalent to a dismissal on the merits, and may be pleaded in bar to another suit for the same matter.

Strang v. Moog, 72 Ala. 460.

29 (32). **Certificate requisite to decree pro confesso.**—When an application is made to the chancellor, in term time or vacation, for a decree pro confesso against a defendant, as to whom publication has been made, the register, before the decree pro confesso shall be entered, must certify that publication has been made, and therein state when and how, and whether the notice was posted up or forwarded by mail to the defendant, and when; which certificate shall be prima facie evidence of the facts therein stated.

30 (33). **Demurrer being overruled, answer filed, or decree pro confesso, or attachment.**—When a demurrer is overruled, the defendant shall forthwith put in sufficient answer, unless the chancellor gives further time; and on failure to comply with the order to answer, a decree pro confesso may be entered, or an attachment against the body taken, to be followed, if need be, with a writ of sequestration, where a sworn answer is required.

31 (34). **Commission to take non-resident's answer.**—When a defendant resides out of the state, and an answer on oath is not waived, the register, on application of the solicitor of such defendant, shall issue a commission to one person or more to take and certify his answer. The affidavit to the answer shall be attached thereto, and be sworn to and subscribed by the defendant before such commissioners, or one of them, and be so certified by him or them, and that such defendant is known to such commissioner. Where an affidavit to a bill or petition of a party residing out of the state is necessary, it may be taken and certified in like manner, or by a commissioner appointed under section 65 of Revised Code (section 968 of this Code). The answer of a foreign corporation, taken accord-

ing to law, may be certified by commissioners appointed in like manner.

Blank commission invalid.—Guice v. Parker, 46 Ala. 616.

32 (35). **Injunction dissolved on answer only when sworn to.** Before a motion can be entertained to dissolve an injunction upon the denials in the answer of the equity of the bill, the answer must be sworn to, whether an answer on oath is waived in the bill or not. A similar course must be taken to authorize a motion to discharge a ne exeat on the answer.

Griffin v. Bank, 17 Ala. 258; Rainey v. Rainey, 35 Ala. 282; Hart v. Clark, 54 Ala. 490.

33 (36). **Defendant failing to answer not in contempt, until his exceptions are decided.**—A defendant, who has excepted to a bill for scandal or impertinence, shall not be placed in contempt for want of an answer, until a decision on the exceptions.

34 (37). **If oath waived, no exception to answer for insufficiency.**—An answer to which the oath of the defendant is waived cannot be excepted to for insufficiency.

35 (38). **Proceedings on exceptions to bill or answer.**—Whenever exceptions are filed to a bill or answer in vacation, the register shall forthwith issue and cause a notice thereof to be served on the opposite party, or his solicitor; and if such party does not submit to the allowance of such exceptions, or fails, for the space of five days after service of such notice, to apply to the register to fix a day for hearing said exceptions, the register shall proceed without delay to notify both parties of the time when said exceptions will be heard by him, of which five days' notice must be given to the parties; and upon such notice being given, he shall, at the time appointed, proceed to decide on such exceptions, from which decision an appeal may be taken to the chancellor, as in other cases.

36 (39). **Proceedings, if exceptions for insufficiency to answer allowed.**—Should the register decide, on exceptions to an answer for insufficiency, that the exceptions be allowed, he shall in his order name a day when a further answer must be filed; and if the defendant fails to answer by that day, or puts in an insufficient answer, the register must enter a decree pro confesso, or, at the election of the complainant, issue an attachment, to be followed, if need be, by a writ of sequestration, to coerce a sufficient answer.

37 (40). **If exceptions for scandal or impertinence allowed.** Should the register allow an exception for scandal or impertinence, he shall draw black lines around such scandalous or impertinent matter, and write across the face thereof with red ink, "expunged"; *Provided*, that in all cases where a party appeals to the chancellor, all proceedings to obtain a decree pro confesso, or to coerce an answer, or to expunge improper matter, shall be suspended until the decision of the chancellor is announced.

38 (41). **Exceptions; time of hearing.**—When exceptions to a bill or answer are filed so near to a term of the court that the proper notice cannot be given, they shall be heard at as early a day as prac-

ticable during the term, on one day's notice; and if the decision of the register is appealed from during term time, no notice of the hearing upon the appeal shall be required.

39 (42). **Amendments; mode of making.**—Amendments of bills and answers shall be made on a separate piece of paper, unless the amendment be of a brief character, when it may be made by an interlineation or erasure, with ink of a different color from the body of the bill or answer; and the amendment shall be made in such a manner that it may be ascertained in what it consists.

Ala. Warehouse Co. v. Jones, 62 Ala. 550; Werborn v. Austin, 82 Ala. 498; Ladd v. Smith, 107 Ala. 506.

40 (43). **Amendments to bill and answer; notice.**—When amendments are proposed under sections 706 (3449) or 707 (3450) of the Code, the opposite party shall be served with a copy of the proposed amendment, with notice of the time when the application will be made. When the application will be before the register, under section 707 (3450) of the Code, the notice shall be five days before the hearing of the application, unless waived; when to the chancellor in vacation, either under that section, or under section 706 (3449) of Code, ten days' notice shall be given before the hearing of the application, unless waived; but when the application is made in term time, one day's notice shall be sufficient; and when the motion to amend is made at the hearing in term time, no notice shall be necessary, but the chancellor may postpone the hearing of the motion, as justice may require. Where a defendant is in default for want of an answer, the notice will be sufficient if entered on the order-book of the register, as directed by section 713 (3456) of the Code, for the number of days required by this rule.*

41 (44). **Amendments after demurrer and argument thereof.** Amendments to bills may be made after the demurrer and argument thereof, in the same manner as is provided for amendments after answer.

42 (45). **After answer, order to amend bill generally not allowed.**—In all cases where the original bill has been answered, no order can be obtained to amend the bill generally, but the amendments must be prepared and proposed as above directed.

43 (46). **Amendments of bills considered as introduced from allowance.**—When an amendment to a bill is allowed, it shall be considered as introduced into the bill from the time of its allowance.

44 (47). **Notice of the allowance of amendments, how given.** Notice of the allowance of amendments to bills shall be given in the following manner—that is to say:

1. Where the defendants who have answered are actually present in court, either in person or by their solicitors or guardians ad litem, at the allowance of the amendment, they shall be deemed to have notice thereof.

2. After the allowance of an amendment to the bill the complainant shall cause a notice that his bill has been amended to be served

*Numbers changed to conform to the numbers of sections of this Code.

upon all defendants who shall have been served with summons to answer the original bill, and who were not in court, either in person or by solicitor, or guardian ad litem, at the allowance thereof; unless the defendant is a non-resident, in which event the court shall direct in what manner he shall be notified.

3. All parties who, at the allowance of an amendment, shall be in default, shall be deemed to have notice thereof, after a notice that the bill has been amended shall have been entered on the order-book for such time as the chancellor or register may direct.

When notice presumed.—Berney Nat. Bank v. Guyon, 111 Ala. 491. **Notice necessary to perfect amendment.**—Alston v. Alston, 34 Ala. 15, 23. **Notice of amendment to defendant in default by entry on order-book necessary.** Holly v. Bass, 63 Ala. 387; McClenny v. Ward, 80 Ala. 243.

45 (48). **Supplemental matter introduced by way of amendment.**—New facts occurring since the filing of a bill may be introduced by way of amendment, without a supplemental bill.

P. & M. Ins. Co. v. Selma S. Bank, 63 Ala. 595.

46 (49). **Decree pro confesso not set aside by amendment, and effect of decree pro confesso on amendment.**—An amendment to a bill, or the filing of an amended bill, shall not set aside a decree pro confesso as to any defendant to the original or any other bill; nor shall a decree pro confesso for want of an answer to an amendment or an amended bill operate as a decree pro confesso on the original or any other amended bill already answered.

47 (49a). **Submission of cause; time of filing amendment when dismissed in vacation.**—When a cause is submitted in term time, or in vacation, on the pleadings and evidence for a final decree in vacation, and the bill is dismissed in vacation on account of defects in the pleadings, or a variance between the proof and the allegations of the bill, if the complainant desire to amend the pleadings, he must apply to the chancellor for leave to amend on or before the second day of the next ensuing term of the said chancery court. Adopted Feb. 2, 1887.

48 (50). **Decree pro confesso after thirty days.**—A decree pro confesso may be entered upon amendments, against each defendant who fails to answer the same within thirty days after notice thereof, as above provided, unless the matter of the amendment has been denied in some previous answer of such defendant. When the justice of the case requires it, the chancellor or register allowing the amendment may enlarge the time for answer.

TESTIMONY.

49 (51). **Testimony taken after cause is at issue.**—Testimony cannot be taken by either party until the cause is at issue by sufficient answer, or decree pro confesso, as to all the defendants.

Testimony taken before issue as to material defendant inadmissible against him for any purpose.—Harris v. Moore, 72 Ala. 507. **In such case when defendant is an infant motion to suppress unnecessary.**—Daily v. Reid, 74 Ala. 415. **When such testimony admissible against new defendant,** claiming through former parties to the suit.—Wells v. Mortgage Co., 109 Ala. 430.

50 (52). **Interrogatories filed and copies served.**—When a cause is at issue, as laid down in the last rule, either party desiring to take testimony, must file his interrogatories in the office of the register, a copy of which must be served upon the opposite party, as directed in sections 731 (3471) and 732 (3472) of the Code.*

51 (53). **Party desiring to be present gives notice.**—When a party desires to be present at the examination of a witness against him, he shall give notice to the adverse party, by filing a notice with his cross-interrogatories; whereupon, it shall be the duty of the register to prescribe the notice which he shall receive of the time and place of the execution of the commission.

Motion to suppress for want of notice addressed to chancellor's discretion. Nelms v. Kennon, 88 Ala. 329.

52 (54). **Re-examination.**—A party against whom a witness has been examined, may re-examine such witness, provided he did not file cross-interrogatories upon the first examination. The examination, under this rule, shall operate as a cross-examination of such witness. Both parties shall have the liberty of being present at such re-examination, but the party wishing to re-examine such witness shall give such notice to the opposite party of the time and place of such re-examination as the register shall prescribe.

53 (55). **By parties filing cross-interrogatories.**—When a party who has filed cross-interrogatories afterwards learns that the witness has a knowledge of facts which he did not know at the time of filing his cross-interrogatories, it shall be the duty of the register, on affidavit made, setting forth such facts, to order a re-examination, as in the preceding rule.

54 (56). **Examinations de bene esse.**—When a bill is filed, and, either before or after the same is at issue as to all the defendants, upon affidavit made that any witness of the complainant is over sixty years of age, or so infirm that affiant fears that injury will result from delay owing to such infirmity, or that he is about to remove permanently from the state, or that he is a single witness to a material fact, the chancellor or register, in vacation, or the chancellor, in term time, shall make an order to take the testimony of such witness de bene esse. Such order may be made for the examination of such witness or witnesses upon interrogatories, after three days' service of a copy of the same upon the opposite party or his solicitor, and upon cross-interrogatories, which may be submitted at any time before the examination. Or the court, chancellor, or register, may fix the time and place of the examination of such witness or witnesses, and the notice of the same to be given to the opposite party, and such examination may be upon interrogatories propounded orally or in writing. In either case, the register may take such examination, or may issue a commission to one or more suitable persons to take the same.

55 (57). After the examination of a witness de bene esse, the party shall not be required to make further examination, but may

*Numbers changed to conform to the numbers of sections of this Code.

use testimony so taken on the hearing; the opposite party, however, shall have the right to retake the testimony of such witness. A defendant, who has answered the bill when the cause is not at issue as to other defendants, may, in like manner, and for like causes, examine any of his witnesses de bene esse.

56 (58). **Testimony in interpleader.**—The complainant in a bill of interpleader, intending to take testimony, must give notice and serve interrogatories upon the parties required to interplead; and if either of the defendants desires to take testimony, he must serve interrogatories as well upon the complainant as upon the adverse defendant; but after a decree of interpleader, it shall not be necessary for either defendant taking testimony to serve the complainant with interrogatories or notice.

57 (59). **Mode of impeaching testimony.**—The testimony of witnesses may be impeached by deposition, taken according to the Code and the foregoing rules, and no articles of impeachment shall, in any case, be filed.

58 (60). **Notice accompanies interrogatories; objection to commissioner.**—A notice shall accompany interrogatories to take the deposition of a witness, giving the names of the commissioner or commissioners. If the opposite party has any objection to such commissioner or commissioners, he shall file his objections within the time prescribed for filing exceptions to interrogatories; and the same shall be heard by the register and decided, and the decision reviewed, as in case of interrogatories. If the register overrules the objection, the commission shall issue to the person or persons proposed; if he allows the same, he shall appoint some other person or persons, free from objection, to execute the commission.

When no objection interposed, register must issue commission to person suggested.—Merlette v. State, 100 Ala. 42.

59 (61). **Chancellors appoint examiners; qualification and duty.** The several chancellors in this state shall, within their respective divisions, have power to appoint one or more examiners in each county, to take and certify the depositions of witnesses, who shall be officers of the chancery court, and sworn faithfully to discharge the duties of their office; and if, upon filing interrogatories, no commissioner shall be named by the complainant or his solicitor, nor any other person than the examiner suggested by the defendant or his solicitor, the deposition shall be taken by such examiner, without any commission from the register; but either party may, by writing indorsed on the interrogatories or cross-interrogatories, require the examiner to give him notice of the time and place of taking the testimony. Such examiners shall have the like power to compel the attendance of witnesses, and shall be entitled to the same fees as are allowed to commissioners by the existing laws.

60 (62). **Names and residences of witnesses given.**—Hereafter, when a party files interrogatories to examine a witness or witnesses, he shall give the name or names of the witnesses, and place or places of their residence, or make affidavit that the same is unknown; and,

on failure to do so, no commission shall issue, nor proceedings be had on said interrogatories, except by consent of the opposite party, or his solicitor.

61 (63). No interrogatories or notice to party in contempt; waiver of notice.—A defendant, against whom a decree pro confesso shall be in force, shall not be served with a copy of the interrogatories, or any notice of the taking of the testimony; nor shall it be necessary in such case that the interrogatories shall be filed in the register's office any number of days before a commission issues. In all cases the parties can waive the ten days' service of interrogatories, and a consent in writing to the issue of a commission shall be deemed a waiver.

Objection that residence not given, how waived.—Aicardi v. Strang, 38 Ala. 326; Farmer v. Farmer, 86 Ala. 322.

62 (64). Inclosure and direction of depositions; publication; after publication testimony not taken without consent or order. Deposition shall be sealed up with the commission by the commissioner, with the title of the case and the names of the witnesses indorsed on the envelope; and the package shall be directed to the register at the proper place. Publication of the testimony must be passed by the court, or before the chancellor or register, or it may be done, by consent of parties, in writing entered on the back of the deposition or depositions, or otherwise. After publication passed, no testimony shall be taken except by consent, or by special application to the chancellor and allowance by him.

Rules as to taking additional testimony after publication passed or remandment of cause.—Johnston v. Glasscock, 2 Ala. 218, 251; Harrell v. Mitchell, 61 Ala. 270; Nunn v. Nunn, 66 Ala. 35; Gordon v. Tweedy, 74 Ala. 232; Eureka Co. v. Edwards, 80 Ala. 250; Dixon v. Higgins, 82 Ala. 284. **When rehearing granted, discretionary with chancellor to allow additional testimony.**—Stein v. Dahm, 96 Ala. 481. **Irregular to re-examine witness without order of court.**—Meyer v. Mitchell, 77 Ala. 312. **Publication without prejudice; effect of.**—Dixon v. Higgins, 82 Ala. 284. **As to duty of commissioner.**—See citations to sections 723 and 1841 of this Code.

63 (65). Register's duty on publication of testimony.—When testimony is published, the register shall withdraw the same from the envelopes, and indorse the title of the cause with the names of the witnesses, and by which party examined, upon the back of the depositions, and that the same was published by order of the court, chancellor, or register, or by consent of parties, and then file the same with the papers of the cause.

64 (66). Proof of exhibits and documents.—No order shall be necessary to prove exhibits viva voce; but where there is not a decree pro confesso, or the proof of exhibits, or notice waived, the opposite solicitor must be served with one day's notice before the hearing that such exhibits will be proved at the hearing. Other documentary testimony may be proved on like notice. The court can put off the hearing to give time to prove or rebut documentary testimony.

Proof of exhibits, etc., at hearing; practice.—LeVert v. Redwood, 9 Port. 79; Judson v. Emanuel, 1 Ala. 598; Pierce v. Prude, 3 Ala. 65; Martin v. Bank, 10 Ala. 182; Wynn v. Rosette, 66 Ala. 517; Dawson v. Burrus, 73 Ala.

111. **Ex parte affidavits not within rule.**—Am. F. L. Mtge. Co. v. Dykes, 111 Ala. 178.

65. Rules for taking the oral examination of witnesses in chancery cases.—1. Every notice required to be given under the following rules, must be given in writing by the party desiring it to the adverse party, or to his solicitor of record, if either resides in the chancery district; but if neither resides therein, the notice may be given by an entry on the order-book of the register. Adopted Dec. 10, 1889.

2. Any party to a cause who may require the examination of any witness to be taken orally, shall file such request with the register, and give notice thereof to the adverse party at least three days before the examination is taken.

3. In case interrogatories in writing to a witness are filed, and any party to the cause shall require the examination of such witness to be taken orally, he shall give the other parties to the cause, or their solicitors, notice of such requirement within five days after notice of the filing of such interrogatories, or on failure to give such notice shall be held to have waived the right to any oral examination.

4. Notice shall be given by the solicitor of the party calling the witness to the opposing party or parties of the time and place of the examination, for such reasonable time as the register or examiner or special commissioner may fix by order in each case.

5. The examination of witnesses shall take place in the presence of the parties or their agents by their solicitors, and the witnesses shall be subject to cross-examination and re-examination, which shall be conducted, as near as may be, in the mode in use in the common-law courts; but in case either party or his solicitor shall fail to attend at the time and place of such examination after notice, the officer taking such examination may proceed therewith in his or their absence.

6. The depositions taken upon oral examinations shall be taken down in writing by the examiner in the form of a narrative, unless some question is raised on the legality or pertinency of the interrogatory, or on the legality or sufficiency of the answer. Questions arising under this exception must be noted and fully set forth by the examiner, if requested by either party. When completed, the deposition shall be read over to the witness, and shall be signed by him in the presence of the parties or counsel, or such of them as may attend; *Provided*, that if the witness shall refuse to sign the same, then the officer taking such deposition shall state that fact in his certificate.

7. The officer taking such examination may state to the court therein any special matters he may think fit; and any question or questions which may be objected to shall be noted upon the deposition, as stated in rule 6, by the officer taking the examination, but he shall not have power to decide on the competency, materiality or relevancy of the questions or answers; and the chancellor shall have power to deal with the costs of incompetent, immaterial, or irrele-

vant depositions, or parts of them, as may place the costs unnecessarily incurred on the offending party.

8. The officer taking such examination may adjourn the same from time to time, but no adjournment for any longer time than two days shall be made except upon the consent of the parties, or on pressing necessity, which consent or necessity shall be noted in the deposition by the officer taking the same.

9. The deposition when taken shall be transmitted to the register in the same manner as is now provided for the transmission of depositions taken on interrogatories.

Adopted June 25, 1891.

10. The word "party," in the foregoing rules, shall be construed to mean not only all the complainants, or all the defendants, but any individual, material party, whether complainant or defendant.

11. Adverse party, to whom notice is required to be given under these rules, embraces not only those on the adverse side, as shown by the docket, but those on the same side of the mover, if representing an interest adverse to him, and if the testimony propounded to be taken affects that interest.

Duty of commissioner; may not rule on evidence.—Elyton Land Co. v. Denny, 108 Ala. 553. **When mistake in name of witness** no ground for suppressing oral examination.—McCutchen v. Loggins, 109 Ala. 457.

DOCKETS, SPECIAL TERMS, HEARINGS, DECREES, AND APPEALS.

66 (67). Docket; what it must contain; filed with papers.—The register of each court shall prepare a docket, for each term, of all the causes not finally disposed of at the previous term, and of the suits since commenced, in which shall be entered the name of each complainant and defendant. This docket must be laid off with appropriate columns; one with names of the solicitors and the number of the cause; one with the names of the parties; in another must be entered the time when each pleading was filed, and, opposite to the names of the respective defendants, the state of the cause as to such defendants, as thus: "Answer filed," "answer filed by guardian ad litem," "decree pro confesso on publication," as the case may be; and where the cause is not at issue as to any defendant, a vacant space must be left opposite the name of such defendant. In another column must be entered, in regular order as to time, a short note of the several orders and decrees made in the cause by the court, chancellor, or register, in one place, and those by the register in another; with the note of the orders made by the register shall be noted the date of the issue and return of all summons and other process, orders and rules. This docket will contain one other distinct column, left blank for the entries of the chancellor during the term. The register will file in the papers of each cause on the docket an exact copy of the docket of said cause, and the entries thereon, for the use of the chancellor, which paper is part of the record. The causes will be placed on the docket in the order in which the origi-

nal bills are filed; and the number placed on the bill when filed must not be changed, and all the papers of the cause must be so numbered.

Failure of register to docket cause not a discontinuance.—Presley v. McLean, 80 Ala. 309.

67 (68). **Caption of minutes; form of.**—The caption of the minutes of a regular term of the court of chancery must be in the following form, to wit:

"At a court of chancery held for the —— district, composed of the county of ——, in the State of Alabama, at the court-house thereof, in the town of ——, on the —— Monday of ——, being the —— day of said month, in the year of our Lord one thousand eight hundred and ——; present, the Honorable —— ——, chancellor of the —— chancery division of said state" (as the case may be).

Where the court is held at a different place than the county-site, or there are more counties in the district than one, the proper changes will be made.

68 (69). **Special or extra terms; proceedings in reference to.** When a special or extra term of a court of chancery is ordered by a chancellor, he will transmit the order therefor to the register, who must enter the same on the minute-book of the court immediately after the minutes of the previous term, file the order in his office, and have the same published as directed by the chancellor, and certify to such chancellor, who is to hold said extra term, that publication has been made in pursuance of said order. When a special or extra term is held, the caption of the minutes of the courts shall be so varied as to show the time when the order therefor was made, and the length of time it was published, certified as above.

69 (70). **Hearing; failure of parties to appear; setting aside default.**—When a cause is called for hearing, if the complainant does not appear, it shall be dismissed; if he appears, and the defendant does not, it shall be heard and decree rendered according to the claim and proof. Either party, on timely application, may set aside his default, on such terms as the court may impose.

70 (71). **Continuance.**—Application for continuance for want of testimony must be in writing, and conform to the rule in regard to the continuance of trials in the courts of law.

Granting or refusal of continuance in chancery, as at law, **discretionary and irrevisable.**—Evans v. Bolling, 5 Ala. 550; P. & M. Bank v. Walker, 7 Ala. 926; Dudley v. Witter, 46 Ala. 664; Thorington v. City Council, 94 Ala. 266. **May be granted on terms, such as execution of bond by defendant.**—Dudley v. Witter, 51 Ala. 456. Or payment of costs.—Rhea v. Tucker, 56 Ala. 450. See also citations to rule 16 of circuit-court practice.

71 (72). **No continuance without disposition of the question of equity.**—No application for a continuance for want of testimony must be considered, unless the equity of the bill is admitted, until the question of equity is disposed of, by way of motion to dismiss for want of equity, or, if there is a demurrer to the bill, by decision on the demurrer.

72 (73). **Demurrers and pleas; when filed.**—All demurrers,

whether contained in the answer or not, are to be disposed of on the calling of the cause, without waiting for the cause to be ready on the proof; but when the cause is ready for hearing on the pleadings and proofs, it must be heard, without waiting for a separate decision on a demurrer contained in the answer. This rule must also apply where a plea is interposed, the truth of which is admitted.

73 (74). Exceptions and demurrer; when heard.—All exceptions to bills, answers, reports, or testimony, whether coming before the court in the first place for consideration, or by way of appeal or review, must be heard in connection with the equity of the bill, unless that question has been previously decided or admitted; also, if there is a demurrer undisposed of in the case, it must be considered by the court at the same time with the exceptions.

74 (75). Pleas, demurrers, or motions to dismiss for want of equity, may be heard in vacation.—When a plea or a demurrer is interposed to a bill, either party may set the same down for hearing in vacation, whether it is filed without answer, or incorporated in the answer; the hearing to be had on ten days' notice to the adverse party of the time and place, and the same shall be decided by the chancellor as if the hearing was had in term time. Any material defendant may, on ten days' notice to the complainant or his solicitor of record, before answer, and before the first term after the filing of a bill, move to dismiss the bill for want of equity, and such motion shall be heard and determined by the chancellor as if made in term time. Decrees of the chancellor rendered under this rule shall be filed with the register, and by him enrolled as if made in term time. The hearings to be had on copy of bill, and of plea or demurrer, certified by the register and furnished by the party applying for the hearing.

75 (76). Motion to dismiss for want of equity; when heard.—A defendant may, at any stage of the cause, move to dismiss a bill for want of equity, unless a similar motion has been previously made and determined. If the cause is ready for hearing on bill and answer, or pleadings and proofs, such motion may be made and heard in connection with the final hearing.

Decree pro confesso no bar to motion.—Madden v. Floyd, 69 Ala. 221. **Motion to dismiss; its office; when and when not granted.**—Hooper v. S. & M. R. Co., 69 Ala. 529; Seals v. Robinson, 75 Ala. 363; Harland v. Person, 93 Ala. 273; Scholze v. Steiner, 100 Ala. 148; Bell v. Light Co., 103 Ala. 275; Pate v. Hinson, 104 Ala. 599; Sherer v. Garrison, 111 Ala. 228; Holt v. Pickett, 111 Ala. 362; Kyle v. Ry. Co., 112 Ala. 606.

76 (77). Proceedings on hearing.—On the hearing of a cause, the court can dispense with the reading of the pleadings and proofs; and in that case, the complainant's counsel must state the case made by the bill, and the defendant's counsel the defense made by the answer. The complainant's counsel must then offer his testimony in chief, naming the witnesses and other testimony, of which the register must take a note; and then that of the defendant must be offered, and noted by the register; to which the complainant, in like manner, must offer his rebutting testimony. Any testimony not offered in

this way, and noted by the register on the minutes, must not be considered as any part of the record, nor be considered by the chancellor. Counsel on either side, in the course of their arguments, can read any portion of the pleadings or proofs. A hearing on bill and answer, motion, demurrer, exceptions, or appeal, shall conform, as far as applicable, to this rule.

Testimony not noted not considered.—Carter v. Thompson, 41 Ala. 375; Rice v. Tobias, 83 Ala. 348; Reese v. Barker, 85 Ala. 474; Harn v. Common Council, 100 Ala. 199. **Answer when offered in evidence should be noted.** Goodloe v. Dean, 81 Ala. 479. **If submission on decree pro confesso, note unnecessary.**—Jones v. Beverly, 45 Ala. 161. **Setting aside submission discretionary with chancellor.**—Magruder v. Campbell, 40 Ala. 611; Dixon v. Higgins, 82 Ala. 284; Ex parte Ashhurst, 100 Ala. 573; Yeend v. Weeks, 104 Ala. 331; Jones v. White, 112 Ala. 449. **Erroneous to allow plea, without notice after submission.**—Wilkinson v. Buster, Ala. (22 So. 34). **Or verification of answer.**—McMinn v. Karter, Ala. (22 So. 517).

77 (78). **Memorandum of testimony entered and copy filed.** The register shall enter on the minutes of the court a memorandum of the testimony offered by each party on the hearing of a cause, a copy of which shall be filed with the papers for the use of the chancellor.

78 (79). **Submission at call for motions.**—At the call for motions, each morning, any cause can be submitted for decree without argument, unless objection is made; and when a cause is submitted for decree without argument, the testimony must be offered and noted, as directed in the two foregoing rules.

79 (80). **Decrees in vacation; proceedings and process on.** When a cause is submitted during term time for a decree or order, such decree shall be valid if rendered during any vacation. When any decree or order is made by a chancellor in vacation, it shall be the duty of the register, as soon as the same is filed in his office, to enter the same at length on the minute-book of the court immediately after the minutes of the previous term, and the same shall be considered as enrolled from and after such entry, which shall be dated; but if said decree be other than for the payment of money, no process for its execution shall issue thereon until the next ensuing term of the court, unless the complainant, or his solicitor, shall have given to the defendant, or his solicitor, ten days' notice in writing of his or their intention to have execution of the decree, which notice shall be served by the sheriff, and filed with the register, as a paper in said cause. When the decree is rendered in vacation, either party may apply for a rehearing by the second day of the next ensuing term of said court.

Decree in vacation valid.—Forrest v. Luddington, 68 Ala. 1 (in effect overruling Rogers v. Torbut, 58 Ala. 523); Hooper v. Strahan, 71 Ala. 75. **Rehearings at next term.**—Ex parte Gresham, 82 Ala. 359; Ga. Pac. Ry. Co. v. Gaines, 88 Ala. 377; Stein v. Dahm, 96 Ala. 481. **On subject of decrees in vacation,** see Ga. Pac. Ry. Co. v. Gaines, 88 Ala. 377; also citations to sections 845 and 847 of this Code.

80 (80a). **Consents to orders and decrees entered into in vacation.**—Consents entered into in vacation, that chancellors shall make orders and render interlocutory or final decrees in vacation, shall be in writing, signed by the parties, or their counsel, and filed in the

Adopted Feb. 2, 1887.

cause in which made; when made for an infant party to the cause, such consent shall be signed by the guardian ad litem of such infant, or by such other party as may be the duly authorized representative of such infant in the case, or by the counsel of such guardian ad litem or other representative.

Rehearing of consent decree, when allowed.—Ex parte Gresham, 82 Ala. 359.

81 (81). **Decrees in term time; chancellor's reasons, transcript.** All decrees and orders made by the court in term time, with the exception of their captions, shall be entered at length on the minutes of the court. The chancellor's reasons, however, for such decree or order shall not be entered. If an appeal should be taken, the register shall not include in the transcript both the original order of decree on file, and the entry on the minutes; nor shall they both be included in the final record.

82 (82). **Rehearing.**—A party desiring a rehearing of a decree must apply to the chancellor at chambers, by petition, during the term in which the decree is rendered. The petition need not state any of the proceedings anterior to the decree sought to be reheard, but must state the special matter or cause on which the rehearing is applied for, and the principal points in which the decree is alleged to be erroneous; and the facts, if they do not appear from the records of the court, must be verified by the affidavit of the party, or some other person. The petition must be confined to the case made by the record. On this petition the chancellor must determine, without argument, whether the cause ought to be reheard; and, if he concludes to grant a rehearing, order accordingly, but if he declines to do so, no order must be made on said petition.

Rehearings discretionary.—Ex parte Gresham, 82 Ala. 359; Brown v. Weaver, Ala. (20 So. 964). **Also, allowing additional testimony.** Stein v. Dahm, 96 Ala. 481. **Pleading and practice.**—Ex parte Gresham, 82 Ala. 359.

83 (83). **Orders, and opening of them.**—An order of reference, or to take and state an account, or make inquiry by the register, or any other order preparatory of a cause, whether made by the chancellor or register in vacation, or by the court, may, at any subsequent time before final decree, be opened, varied, or discharged, on motion of either party, or the court may, without motion, revoke any order previously made.

84 (84). **Questioning final decree after adjournment.**—A final decree shall not be called in question, before the court rendering it, after the adjournment of the term when rendered, except by bill of review, and shall never be impeached by original bill, unless on the ground of fraud.

85 (85). **Transcript on appeal.**—When an appeal is taken from a decision of the chancellor on any matter decided by him, the transcript sent to the supreme court must contain, as well a copy of the opinion filed by the chancellor, if any, as of the decree or order appealed from.

86 (86). **Appeal; in whose name taken.**—Any complainant or defendant, in a cause in which a decree or order final may have been

rendered, may appeal to the supreme court in the name of himself and all the other complainants or defendants to the decree.

Summons and severance in assignment of errors.—Beachman v. Mfg. Co., 110 Ala. 555.

87 (87). **Appeal bond for restoration of injunction; ne exeat or writ of seizure.**—The chancellor shall, upon making any final or interlocutory decree which has the effect of dissolving an injunction, or discharging a ne exeat or attachment in chancery authorizing the seizure of property, prescribe the penalty and condition of the bond to be given by the appellant, should he thereafter appeal from such decree; and the appeal in such cases, when taken before the register, and the bond executed as prescribed by the chancellor, and approved by the register, shall operate to restore the injunction, ne exeat, or writ of seizure in the nature of an attachment, until the same shall be reviewed in the supreme court.

Condition, how determined; bond not summarily enforceable.—Halsey v. Murray, 112 Ala. 185.

PROCEEDINGS BEFORE THE REGISTER AS MASTER.

88 (88). **Sessions of register, place of.**—The sessions of the register, as master in chancery, shall be held at his office, unless the chancellor or court otherwise directs, or he himself appoints a different place by consent of parties.

89 (89). **Testimony, how taken.**—Testimony offered before the register must be noted by him, and nothing not so offered shall be considered. Oral testimony taken before him shall be reduced to writing, paged severally, and the name of the witness and the subject of the testimony noted in the margin. Such testimony shall be properly attached, and is part of the file. Exceptions to rulings of the register on testimony, admitted or rejected by him, must be noted by him; and if not so taken, the exception is waived.

Taking down testimony.—Mahone v. Williams, 39 Ala. 202; Weaver v. Cooper, 73 Ala. 318. See also citations to section 741 of this Code.

90 (90). **Accounts before register, form of.**—All accounts taken by the register shall be in the form of debtor and creditor, and the vouchers must be so numbered as to correspond with the numbers on the account. A reference, however, to ascertain the amount due from one party to another, where a statement of an account is not necessary, need not be in this form.

O'Neill v. Perryman, 102 Ala. 522.

91 (90 a). **Accounting before register.**—All parties accounting before a register shall bring in their respective accounts in the form of debtor and creditor, verified by affidavit; and any of the other parties, who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the accounting party, viva voce or upon interrogatories, in the register's office, or by deposition, as the register shall direct. Adopted April 7, 1888.

92 (91). **Notice of taking account.**—The register shall not be required to give notice of the taking of an account to any defendant who has failed to answer the bill. Where a reference is executed during term time, one day's notice must be given to the parties entitled, unless waived, and, when executed in vacation, at least five days.

93 (92). **Objections to report, exceptions heard by chancellor.** No notice to the parties to bring in objections to the draft of a report shall be necessary, nor can any exceptions be taken before the register to such draft; nor shall any exceptions to a report be referred to the register, but the same shall be heard and decided, in the first instance, by the chancellor or court.

Clark v. Knox, 70 Ala. 607.

94 (93). **Exceptions, how taken.**—In filing exceptions to the report of the register, or any part thereof, it shall be the duty of the solicitor filing the same to note at the foot of each exception to conclusions of facts, drawn by the register, the evidence, or parts of evidence he relies on in support of the exceptions, with such designation and marks of reference as to direct the attention of the court to the same; and if the opposing solicitor desires to do so, he can note in writing such other parts of the evidence as he may deem material to the inquiry. In considering such exceptions, the chancellor need not examine testimony not thus noted. To enable the opposing solicitor to file such additional note under this rule, he shall be allowed one day after the exceptions are filed, within which to do the same, if he state his belief that the testimony referred to by the party excepting does not fairly and fully present the question for decision.

Evidence to support exception must be noted.—Stewart v. Cross, 66 Ala. 22; Jones v. White, 112 Ala. 449; and cases cited under section 745 of this Code. **Register sustained unless conclusion palpably wrong.**—Anniston L. & T. Co. v. Ward, 108 Ala. 85; Jones v. White, 112 Ala. 449. See also citations to section 745 of this Code.

95 (94). **Report, confirmation of; exceptions to.**—Reports of the register, read in open court on one day, may be confirmed the next, unless excepted to; and when that is the case, exceptions can be heard and determined without further postponement. The chancellor may extend the time for excepting to reports, and for hearing exceptions, to such day or days as he may deem proper; but a defendant against whom a decree pro confesso has been entered, and who has not appeared before the register on the reference, shall not be allowed to except to the report, but, as to such defendant, the report shall be confirmed when read. Any defendant who failed to appear before the register on the reference, or is otherwise in contempt, or who has not submitted to the jurisdiction of the court, shall not be allowed to except to the report of the register, but, as to such defendant, the same shall be confirmed when read. A defendant against whom a decree pro confesso is in force, and who appeared before the register on a reference, may except to the report; and any defendant in contempt for want of an answer may except to

the report of the register as to the sufficiency of an answer proposed to be filed by him.

Clark v. Knox, 70 Ala. 607.

PETITIONS AND MOTIONS.

96 (95). **Motions every morning.**—Each morning of the term, after the first day, before the regular calls of the docket shall be commenced, motions shall be called for, when any motion or petition, not affecting the merits of a cause in court, but preparatory of the same for hearing, or in regard to other matters necessary to be brought before the court, can be submitted; and, at the calling of a cause, any incidental motion can be submitted.

97 (96). **Motions to dissolve injunctions; hearing of.**—Motions to dissolve injunctions, when made in term time, may be submitted during the call for motions, on one day's notice, or at the regular call of the docket; but if the cause is then ready for hearing on the merits, the court must proceed with the hearing, without taking up the motion separately. When there is a demurrer for want of equity or other cause, and the motion to dissolve the injunction is made in term time, the demurrer must be heard in connection with the motion; but if there is no demurrer, or motion to dismiss for want of equity, the equity of the bill must, nevertheless, be considered by the court, and if it wants equity, it must be dismissed; but no motion shall be made to dissolve an injunction on the denials of the answer, unless the answer has been filed at least twenty-four hours. When a motion is made to dissolve an injunction, and exceptions to the answer have been filed and remain undecided, they shall be decided by the chancellor in connection with the motion, without being in the first instance passed on by the register.

Trump v. McDonnell, 112 Ala. 256.

98 (97). **Notice of motions.**—All special motions and petitions, which are not, by the practice of the court, considered ex parte, must be made and heard upon one day's notice in writing, unless notice is waived.

Notice to the complainant who prosecutes general creditor's bill **sufficient.** Parker v. Wheel Co., 108 Ala. 140. **Notice of petition.**—Thornton v. H. A. & B. R. Co., 94 Ala. 353.

INJUNCTIONS; REVIVOR; SUPPLEMENTAL BILLS.

99 (98). **Where exceptions to answer overruled, chancellor may dissolve injunction.**—Where exceptions have been filed to an answer for insufficiency, and decided by the chancellor to be not well taken, it shall be in his discretion to dissolve the injunction without motion or further argument.

100 (99). **Defendant not brought in before second term, injunction dissolved.**—When a complainant in an injunction bill takes no

steps to bring in a defendant before the second term after an injunction has been obtained, the same shall be dissolved of course.

101 (100). Applications to reinstate injunctions; appeals.—All applications to reinstate injunctions must be made, in the first instance, to the chancellor who pronounced the order of dissolution, and, when made in vacation, must be on petition, setting forth the grounds of the application; the facts of which petition must be verified by affidavit. A copy of this petition must be served, with a notice of the time and place of the application, on the defendant or his solicitor, at least ten days before the hearing of such application, unless the chancellor, for sufficient reasons, set forth in the petition, dispenses with notice to the opposite party, and then it can be heard ex parte on presentation. If the application is refused, the complainant can appeal to a judge of the supreme court, if that court is not in session; but, should it be in session, the appeal must be to that court, and not to a judge thereof.

102 (101). No abatement on account of feme sole complainant's marriage.—No suit instituted by an unmarried woman, or in which she shall be complainant, shall abate by her intermarriage; but her husband may make himself a party on motion, of course, at or before the second term after such intermarriage.

M. & C. R. Co. v. Womack, 84 Ala. 149; Alexander v. Steele, 84 Ala. 332.

103 (102). Revivor upon death, marriage, or expiration of office.—Upon the death of a plaintiff, no bill of revivor shall be necessary to revive the suit, unless so directed by the chancellor; but his personal representatives or heirs, or both, as the case may require, shall be made parties, on motion ex parte, before the register in vacation, or the chancellor in term time. So, upon the death of a defendant, instead of proceeding by bill to revive against his personal representative or heirs, upon a verbal suggestion to the register or chancellor, an ex parte order shall be made for a summons to issue to his personal representatives or heirs, or both, if required, to appear at a day named, and defend in the place of the deceased; and, when such summons is served, the suit shall be considered as revived at the expiration of thirty days after service thereof, and be thereafter prosecuted against the new parties without any order of revivor. When the complainant or defendant is an executor or administrator, and his term of office expires by death, resignation, or otherwise, a similar course may be taken to make the administrator de bonis non, or other representative, of the original party in interest, a party to the suit. A legal representative or heir may come in voluntarily and make himself a party. No process or bill shall be required to bring in the husband of a female defendant when married pending the suit, but the same shall be prosecuted to a final termination in his absence; or the plaintiff can suggest the marriage, and have an order for a summons against such husband, as in case of a representative of a deceased defendant; or such husband may voluntarily make himself a party. When a plaintiff proceeds by suggestion to bring in a representative or heir, and makes affi-

davit as required by the twenty-fifth rule of chancery practice, publication can be made against such absent heir or representative as required by said rule; and when the time therein specified expires, and such absent heir or representative fails to make himself a party, the chancellor or register shall make an order declaring such person to be a party in lieu of the deceased party; and the cause shall proceed against such absent party, and, if necessary, a decree pro confesso be entered against him; or, if the defendant is a minor, a guardian ad litem be appointed for him. This rule is not intended to prevent the parties from proceeding by bill of revivor, as directed by the three following rules, or according to the English practice, if they so elect; nor to prevent the chancellor from directing the cause to be revived by bill, whenever he deems such course proper.

Practice as to revivor.—Paulling v. Creagh, 63 Ala. 398; Floyd v. Ritter, 65 Ala. 501; Fearn v. Ward, 80 Ala. 555; Wells v. Mortgage Co., 109 Ala. 430; LeGrand v. McKenzie, 110 Ala. 493.

104 (103). **Supplemental bills and bills of revivor; recitals and contents of.**—In filing supplemental bills, bills of revivor and supplement, it shall not be necessary to recite any part of the original bill, nor any part of the subsequent proceedings; but in supplemental bills it shall be sufficient to refer to the original bill, and state the new matter; and in bills of revivor, the cause requiring the revivor, with the appropriate prayer.

105 (104). **Proceedings and practice in relation to.**—Summons on supplemental bills, bills of revivor and supplement shall be returnable to a day certain, not less than thirty days from the time of its issue; and, on its being executed thirty days, the chancellor or register, in vacation, or the chancellor, in term time, may, if the supplemental matter be not answered, order the same to be taken pro confesso, subject to be set aside on filing sufficient answer, or, if it be a bill of revivor, order the suit to stand revived, or, if the bill calls for an answer to the original bill, decree that the same be taken pro confesso, or direct proceedings to enforce an answer, by attachment or sequestration, as directed in the foregoing rules, either as to the original or supplemental matter. No summons, however, to revive or to answer the original or supplemental matter, under this rule, shall be returnable to a day beyond the first day of the next term; but if thirty days do not intervene between the filing of the bill and the next term, the summons shall issue returnable to that term; and if executed five days before its commencement, the decree pro confesso, or order to revive, or to enforce an answer, shall be then made, unless good cause be shown to the contrary.

106 (105). **Publication, order of.**—Orders of publication against defendants who cannot be served shall be made on supplemental bills, bills of revivor, or bills of revivor and supplement, as upon original bills; and after the expiration of the time required to answer or show cause, supplemental matter may be taken pro confesso, or the suit revived, as to such defendant. Where the original bill has not been answered, service can be perfected under an order of

publication on the supplemental bill, or bill of revivor, and an answer required, followed by a decree pro confesso.

107 (106). **Costs in cases of abatement.**—Suits or decrees may be revived for costs; and whenever any suit in chancery is allowed to abate, in consequence of the death of any one or more of the parties, complainants or defendants, the court of chancery shall decree against the parties then alive such costs to be taxed by the register, as accrued at the instance of such living parties, and shall award a summons to the legal representative of such party as may be dead, to show cause why the costs which had accrued against such deceased party shall not be decreed against such representative, to be levied of the estate of said decedent in his hands to be administered; and upon service of said summons, or return of two successive writs of summons "not found," and no sufficient cause being shown, the court shall decree accordingly; but no decree can be rendered under this rule against the representative until eighteen months after the grant of letters, and if the estate be reported insolvent, the decree shall be certified as judgments at law against such estate.

MORTGAGE SUITS.

108 (107). **Allegation as to subsequent incumbrancers; decree as to sale and proceeds.**—In mortgage suits, it shall be sufficient to bring in subsequent incumbrancers to state that they claim some interest in the subject of the bill, and pray for a summons to them to answer; and the court shall have power to decree a sale, and direct the proceeds to be brought into court, without adjusting the priorities between such parties, unless there be some equity shown which makes it necessary; and any person, whether a party to the suit or otherwise, shall have the liberty to present his claim, by petition to the court, for the proceeds of the sale before distribution.

Rule limited to subsequent incumbrancers.—Wells v. Mortgage Co., 109 Ala. 430. **Parties claiming distinct titles, adversely to mortgagor and mortgagee, not proper parties.**—s. c.; Randle v. Boyd, 73 Ala. 282; Hambrick v. Russell, 86 Ala. 199; Bolling v. Pace, 99 Ala. 607; Mutual B. & L. Asso. v. Wyeth, 105 Ala. 639.

109 (108). **Proceedings when subsequent incumbrancers discovered before confirmation of sale.**—If it shall be discovered that there are subsequent incumbrancers, or parties in interest not parties to the cause, at any time before confirmation of the sale in any mortgage suit, the complainant or purchaser shall have liberty to bring them before the court at that stage of the proceedings; and if they make no opposition by answer, their interest may be foreclosed without a resale of the property.

COSTS.

110 (109). **Costs, decree as to.**—Upon the decision of any interlocutory motion or question, the court or chancellor may impose such portion of the costs of the suit upon either party as to the chancellor may seem proper.

Decree of divorce may not be suspended till costs paid.—Mickle v. State, Ala. (21 So. 66). As to costs in chancery, see citations to section 851 of this Code.

111 (110). **Proceedings, if execution for costs returned "no property."**—Whenever an execution out of chancery for costs shall be returned "no property," in whole or in part, the register may issue a summons to the party who was not decreed to pay costs, to show cause why he should not be decreed to pay such portion of the costs as were incurred at the instance of such party; and on the return of said summons "executed," or two consecutive summonses "not found," and such party not showing sufficient cause to the contrary, the court may decree that the party pay such portion of the costs as were incurred at his instance, or the court may decree any part of the costs which accrued at the instance of such party to be paid by him.

RECEIVERS.

112 (111). **One receiver for same property, though more than one suit.**—Where there are more suits than one in which a receiver is required, whether the suits be in the same or different courts or divisions, but one receiver shall be appointed for the same property; and should the receiver be appointed in a suit not entitled to priority, he shall hold the property, funds and proceeds subject to discharge the liens of the parties in their regular order of priority, and the chancellor who may have appointed him shall so decree, and the same shall be so applied.

Extension of receivership to another suit.—Scott v. Ware, 65 Ala. 174; Ala. Nat. Bank v. Mary Lee C. & R. Co., 108 Ala. 288; Mercantile T. & D. Co. v. Water Co., 111 Ala. 119.

113 (112). **Order, where there is one receiver and two or more suits.**—Where two or more bills are filed in different courts or divisions, and a receiver shall have been appointed in one of them, the complainants in the other suits, on producing a certified copy of the proceedings in their causes to the court where the receiver shall have been appointed, shall be entitled to an order that such receiver hold the property, or the funds and proceeds, to be applied according to the prior liens of the several cases, without regard to the first decree; and in such case the creditors or complainants in the suits in which the receiver was not appointed, if dissatisfied with the receiver appointed in the other suit, may move the court in which the receiver was appointed for his removal, and the appointment of another; and a sufficient cause being shown, the court must remove him and appoint some one else.

MISCELLANEOUS PROVISIONS.

114 (113). **Suit at law and in chancery for same claim.**—Where a suit at law and a bill in chancery are instituted for the same claim, the opposite party, on suggestion supported by affidavit, may

move the court, in term time, or the chancellor, in vacation, to inspect the records; and if it appear that the two suits are for one and the same cause of action, it shall be ordered that the plaintiff or claimant elect in which he will proceed, and that he dismiss the other.

Suits must have same scope and aim; cases in which rule not applicable. Duval v. McLoskey, 1 Ala. 708; Ex parte A. G. L. Ins. Co., 59 Ala. 192; Chapman v. Lee, 64 Ala. 483.

Adopted Feb. 18, 1885.

115 (113a). **Sales of personal property.**—The chancellor, in term time and in vacation, and the register, in vacation, may order the sale of any personal property in the hands of a receiver, executor, or administrator, over which the chancery court has taken jurisdiction. The application for such sale must be in writing, and, when made before the chancellor, the movant must give ten days' notice of the time and place of hearing to all parties in adverse interest, or their solicitors of record. When such application is to be heard before the register, such register must give the notice required above. From all rulings by the register on such motion, either party may appeal to the chancellor without giving bond; such appeal to be heard at such time as the register may appoint, not less than five days from the decision appealed from; and the costs of the appeal are to be taxed against the unsuccessful party. Sales under such orders shall be governed by the laws applicable to sales of personal property under orders of the probate court, and reports thereof shall be made to the chancery court.

Right of court to sell assigned property.—Louisville Mfg. Co. v. Brown, 101 Ala. 273.

116 (114). **Necessary papers laid before chancellor on motions and appeals.**—On the hearing of all motions, appeals, and other applications before the chancellor in vacation, certified copies of such of the papers on file as will enable him to decide the matters submitted understandingly, shall be laid before him.

117 (115). **Notice, length of.**—In all cases where, by the English orders of practice, two days' notice is required, one day shall be deemed sufficient, unless the chancellor shall otherwise direct.

118 (116). **Notice, upon whom served.**—Service of notice in relation to any supplemental bill, amendment, decree, motion, or other proceeding in the chancery court, on the guardian ad litem or next friend of any party, is a sufficient and valid service as to the party represented by such guardian ad litem or next friend.

119 (117). **Computation of time.**—In the computation of time under these rules, in the giving of notice and the making of motions and other applications, the day on which the notice is given shall be included, and that on which the motion or other application is to be heard shall be excluded. Where one day's notice shall be required, the motion or application may be heard the next day after the notice is served.

See section 11 of this Code and citations thereto.

INDEX TO VOL. I.

ABANDONMENT. SECTION

By husband, effect of on wife's power of alienation 2528
authorizes wife or minor child to interpose claim of exemption... 2063
entitles wife to sue or defend in his name 16
Divorce, when ground of 1485, 1492
Of homestead, what not 2065

ABATEMENT.

Appeal from judgment on plea of, to attachment 430
Attachments, of actions commenced by 563, 564
ancillary, on judgment and satisfaction 560
appeal from judgment on plea of, etc., to 430
Attorney, of proceedings to remove 609
Costs on abatement by defendant's death 1332
of proceedings to erect mill-dam 3435
Elections, no abatement in contest of, by death of contestant 1701
Executors and administrators, of actions against two or more, on death of one 334
Females, of actions by or against, not abated by marriage of 37
Justices of the peace, of actions before 2676
Nominal plaintiff, on death of, action not abated 30
None where cause of action survives 38
Of actions against two or more defendants, on death of one 43
Personal injuries, actions for, on death of defendant 27
Plea in, when to be verified by oath 3296
form and substance of 3294
how distinguished from plea in bar 3297
Remedial writs against officers, of applications for 2830–2833
Special administrator, of actions begun by 332
Trust estate, of proceedings in equity to enforce liability against 4184
Usurpation of office or franchise, of actions for 3427
Venue, of actions not commenced in proper 4205

Rules of Practice.

Costs in chancery on abatement ..... Ch. R. 107, p. 1226.
Of appeal in supreme court ..... S. C. R. 40, p. 1194.
Of suit in chancery by female on marriage ..... Ch. R. 102, p. 1224.
Plea in, indorsement of filing required ..... C. C. R. 12, p. 1197.

ABOLISHED COURTS.

Appeals from judgments or decrees of 435

ABSCONDING.

Absconding debtor, property of, may be attached 525
attachment against, may be issued and levied on Sunday.. 538
Wife or child of absconding defendant may interpose claim of exemption 2063

ABSENCE FROM STATE.

Not computed as part of time limited for bringing suits 2805
When not a forfeiture of residence ..... Const., Art. I., §32, p. 67.

ABSTRACT OF TITLE. SECTION

Right to demand in actions of ejectment 1531

ACCEPTANCE.

Authority of notary to demand, and payment of negotiable paper 3025
May be required to be written on the paper; effect of refusal 882
Refusal to return bill within twenty-four hours is an acceptance 884
To be in writing 880
Written promise to accept; when an acceptance 881

ACCOMMODATION.

Drawer, acceptor, or maker entitled to equitable attachment against principal, when 780

ACCOUNTS.

Against county, authority of county commissioners 958
state, to be itemized and sworn to 2008, 2009
Auditor, duty of, as to accounts public, and with officers 1995
authority of, to examine persons as to accounts audited by him 2003
County superintendent of education, to be kept by 3556
books and accounts of, liable to examination, etc 3558
County treasurer, accounts of, annually examined and recorded 1432
judge of probate to appoint expert accountant to examine books, etc., of 1433
proceedings on death of, or termination of term of 1434
form of accounts of 1436
Examiner and assistant examiners of public accounts 1876–1879
Executors and administrators, jurisdiction of probate court over 3363
settlements of 201–258
Entries or memoranda made by deceased representative, guardian or trustee, as evidence 1809
Forms of complaint in actions upon ..... Nos. 10, 11, pp. 944, 945; 3352
Guardians, accounts of, jurisdiction of probate court over 3363
settlements of 2338–2351
compelling settlements 2352–2361
In suit upon, defendant entitled to list of items 3290
Judge of probate, accounts of, as custodian of funds of minor 2390, 2391
Limitation of suits on stated account 2796
suits on open account 2799
does not apply to accounts current between merchants 2809
how time computed in suits on mutual accounts 2810
Physicians, books and accounts of, as evidence 1808
Register in chancery, accounts before ..... Ch. R. 90–92, pp. 1221, 1222.
taking of, before 741–745
Secretary of state, to be kept by 1974, 1981
State treasurer, duty as to 2018, 2020
Superintendent of education, to be kept by 3546, 3547
Sworn account, when admissible in evidence 1804
Trustee, of resigned 4190, 4191
express trust for payment or security of debts, accounts by. 4167–4169

ACCUMULATION.

Trusts for merely; limitation upon 1031

ACCUSED.

Rights of in criminal prosecutions ..... Const., Art. I., §7, p. 61.
In what cases, and according to what forms ..... Ib. §8, p. 62.

ACKNOWLEDGMENT. SECTION

Conveyances, of; who may take within the state 993, 2663, 3032, 3372
who may take without the state 994
dispenses with witness 984
form of 996
benefits of, when recorded 992, 998
record of, without acknowledgment, notice 991
Homestead, of; form of 2034
Instruments, of, relating to commerce and navigation 3025
Power of attorney, of 995
Relinquishment of dower, of 1509
Satisfaction, of, of mechanic's lien 2749
mortgage 1065, 1066
vendor's lien 1068
Tax deed, of, by judge of probate 4075
Waiver, of, of exemption 2106

ACQUITTANCE.

Effect of decree for 849

ACCORD AND SATISFACTION.

Effect of written releases and receipts as 1805
Written composition or settlement of debts as 1806

ACTIONS.

Abandonment by husband entitles wife to bring or defend suit in his name 16
or child to claim exemption 2063

Abatement—
for personal injuries, no, of, on death of defendant 27
where cause of action survive, no abatement of 38
death of nominal plaintiff does not abate 30
Administrator—Executors and administrators, *see, infra.*
on bond of, who may bring 14
Affidavit—
as to loss or destruction and contents of bond, note, bill of exchange, etc.. 31
effect of as evidence 31
before whom taken without state in commencement or progress of suit. 1799
Against maker of non-negotiable paper to charge indorser 892–896
officer for levying on exempt property, when does not lie 2066
Another's credit, etc., representation of, must be in writing to maintain 2155
Assignee, transferee or indorsee, right of, to maintain, cannot be disputed except by sworn plea ..... C. C. R. 29, p. 1200; 1801, 1802
Attorneys, for removal or suspension of 595–609
Attorney-general may institute and prosecute civil actions for the state 2029
Before justices of the peace 2666–2694
Bills of exchange and promissory notes—
on lost or destroyed; affidavit, etc.; exception 31, 32
on, in whose name brought 28
Bond, on, of officer, executor, administrator, or guardian, who may bring 14
note, bill of exchange, etc., lost or destroyed; affidavit, etc 31
execution, issue of, on judgment therein; when 32
promissory note, etc., in whose name brought 28
person aggrieved may bring, on, in his own name, when 14
of personal representative 341
refunding, on partial distribution of an estate 275, 276
or undertaking given to state or officer 14

ACTIONS—*Continued.* SECTION

Bond, on, given for issue of attachments ... 565
forthcoming, under writ of seizure in chancery ... 779
of licensee of ferry, etc ... 2507
of contractor for building bridge, by county ... 2513
Chattels in specie, for recovery of ... 1474–1484
Clerk of trial-court for failure to furnish, etc., transcript on appeal ... 453
Consolidation of suits, provision as to ... 3318
Contract or transaction, successive actions may be maintained on, when ... 34
when ratable recovery on, allowed ... 33
Corporations, to vacate charters of ... 3417–3419
Costs, defendant, against whom plaintiff fails, entitled to judgment for ... 44
County, against, what essential ... 13
may be brought on behalf of, for penalty, when ... 15
by, against relatives of poor supported by it ... 3233
Creditor, by, of insolvent estate against another receiving dividend ... 323, 324
Damages for injury to minor child ... 25
causing death ... 26
from wrongful act, omission, or negligence causing death ... 27
recovered not subject to debts, etc ... 27
to and against whom, for, to realty survive ... 36
for, on contracts, etc., which survive; to and against whom ... 35
by unmarried woman for her own seduction ... 23
parent for seduction of daughter ... 24
Death, for injuries, wrongful act, etc., causing ... 26, 27
Defendant, on death of, revivor of; proceedings ... 41
revivor of, on death of one of several joint ... 43
against whom plaintiff fails, entitled to judgment for costs ... 44
Discontinuance as to parties not served, or alias issued ... 42
Divorce, for ... 1488–1503
Effect of report of insolvency on pending action ... 317
Elections, for contesting ... 1667–1703
Employe or servant, by, against employer or master for personal injuries ... 1749
by personal representative of, if injuries result in death of ... 1751
Escheats, suits by state relative to ... 1759
Execution, what necessary to issue of, on judgment on lost note, bond, etc ... 32
Executors and administrators—
bond of, who may bring, on ... 14
ward, on death of, representative may be made sole plaintiff ... 20
minor, injury to, causing death, recovery of damages for, by ... 26
wrongful act, omission, etc., of another causing death, by, for ... 27
though there has not been prosecution, or conviction, or acquittal of defendant for ... 27
what, survive in favor of and against ... 35, 36
revivor of, at law, within twelve months against ... 38
on death of defendant pending suit, against ... 41
one of several joint defendants ... 43
beneficiary, in suit for use of another, when ... 30
joint written promises, on, may be instituted against, of those dead ... 39
contract, entire, ratable recovery on, by, when ... 33
by foreign ... 359–363
Executor de son tort only liable to representative; exception ... 340
Exempt property, when action does not lie against officer levying on ... 2066
Father or mother may sue for seduction of daughter ... 24
but suit by daughter a bar ... 24
for injury to minor child ... 25
in injury to minor child causing death ... 26
Felony, injury amounting to, action for, without prosecuting offender ... 22
Female, unmarried, may bring action for her own seduction ... 23
actions by or against, not abated by marriage of ... 37

ACTIONS—*Continued.* SECTION
For injuring or destroying trees on school lands ... 3632
cypress and other trees ... 4137
owner of trees owner of land within meaning of section ... 4138
ornamental or fruit trees, etc ... 4139
animal on lands not under lawful fence ... 2113
stock by certain dogs ... 421
gate at toll-bridge, etc ... 2510
injuries to persons or stock by railroad companies ... 3443
concealing, etc., property taken up adrift ... 3537
sinking or taking away canoe, etc ... 4217
Foreign executor or administrator, actions by ... 359–363
Governor, written direction of, sufficient authority, etc., for bringing ... 12
Guardian, on bond of; who may bring ... 14
person of unsound mind defended by ... 18
may be substituted for next friend in, when ... 19
may bring, for use of ward, when ... 20
of person of unsound mind subject to, for contract or tort of ... 21
Heirs and devisees—
ward, on death of, representative may be made party plaintiff ... 20
real actions survive to or against, or representative ... 36
Holder of mechanic's lien, against, for failing to satisfy record ... 2750
How commenced; by service of summons ... 3268
attachment ... 524
before justice; by summons ... 2667
attachment ... 571
in chancery; by filing bill ... 675
Husband, wife may sue or defend in name of ... 16
Infants must sue by next friend, and be defended by guardian ... 17
Insolvent estate, creditor of, against another receiving dividend ... 323, 324
effect of report of insolvency on pending suits ... 317
Interpleader at law ... 2633–2635
Joinder of actions, ex contractu ... 3292
of trover, trespass and case ... 3293
rent and advances recoverable in same or different actions 2707
Joint promises in writing; how construed ... 39
suits against partnership by firm name, or against one partner 40
revivor on death of defendant pending suit ... 41
discontinuance as to parties not served, or alias issued ... 42
death of one of several joint defendants does not abate; revivor 43
plaintiff suing several may recover against one; liability for costs ... 44
Jurisdiction over, of circuit court ... 918
chancery court ... 638, 639
justices of the peace ... 2662
notaries public ... 3038
Legatee may sue at law for legacy when ... 344
Liens of mechanics and material-men, to enforce ... 2723–2752
blacksmiths and wood-workmen ... 2753–2757
landlords ... 2703–2721
on ships, steamboats and other water-craft ... 2758, 2759
of tenants in common ... 2760, 2761
agricultural superintendents and laborers, and railroad employes 2762–2773
livery-stable keepers ... 2774, 2775
owners of stallions, jacks, bulls, etc ... 2776–2779
for stumpage ... 2780–2783
of owners of booms and bulkheads ... 2784–2787

ACTIONS—*Continued.* SECTION

Liens of public ginners 2788-2792
Limitation of, generally 2793-2802
for wrongful act, omission, or negligence causing death 27
Limited partnership, actions by and against 3221
Lost bonds, notes, bills of exchange, etc.; on; proceedings; execution 31, 32
Marriage, actions by or against woman not abated by 37
Mechanic's lien, against holder of, for failure to satisfy record 2750
Minors, by and against; by whom brought and defended 17
guardian of, may be substituted for next friend, when 19
sue for use of, when 20
injury to, father or mother may bring, for 25
causing death of, father or mother may bring, when 26
suit by father or mother bar to suit by personal representative 26
Money or property lost at gambling, action for recovery of; who may bring. 2163-2169
Official bonds, on, who may bring 14
Parties—
state, remedies, entitled to, may sue without bond or affidavit 12
governor of, written direction of, sufficient authority for bringing suit 12
county, against, what essential 13
bonds, on, of officers, executors, administrators and guardians 14
or undertakings given to state or officer 14
penalty, for, when no other remedy is provided 15
wife may sue or defend in name of husband, when 16
seduction of unmarried woman, she may sue for 23
daughter, father or mother may sue for 24
minor, personal injury to, father or mother may sue for 25
causing death, father or mother may sue for 26
suit by, bar to, by personal representative of 26
personal representative of, may bring, for, when 26
must sue by next friend and be defended by guardian 18
guardian of, may be substituted for next friend pending suit 19
sue for use of ward; on removal of disability suit proceeds in name of 20
person of unsound mind, subject to suit, for what 21
wrongful act, omission, or negligence causing death, personal representative may sue for 27
felonious injury, for, by party injured, without prosecution of offender 22
notes and other contracts for payment of money, on, brought in name of beneficial owner 28
bills of exchange and other commercial instruments, on, brought in name of holder of legal title 28
beneficiary considered as sole party to record, when 29
contracts, joint and several, on, maintained against representative of such as are dead 39
partnership, against, by firm name, or against one partner 40
contract or transaction, successive, on, when 34
Partnership, action against, by firm name; effect of judgment 40
or against one partner 40
Penalty imposed by law, when no remedy provided, who may sue for 15
Personal representative, for failure to give notice of appointment 124
by and against 330-344
or against, prosecuted by or against successor 333
on death of one, continued against other 334
by, of minor child, for injury causing death 26

ACTIONS—*Continued.* SECTION

Personal representative, by, when decedent's death caused by wrongful act, etc. 27
Person of unsound mind—
may sue by next friend, and must be defended by guardian 18
guardian appointed pending suit, may be substituted for next friend 19
may sue for use of 20
subject to suit for contract or tort of, when 21
Plaintiff—
death of nominal, does not abate 30
in, by, against several may recover against one or more; costs 44
Probate judge, against, for neglecting to record conveyance 989
failure to furnish, etc., transcript on appeal 453
Promises in writing, joint and several, suits on 39
Prosecution not necessary to maintain, for felonious injury 22
Railroad companies, against, for injuries to persons or stock 3443
Realty, for recovery of 983, 1530
Register in chancery, against, for failure to furnish transcript, etc., on appeal .. 453
Rent and advances recoverable in same or different actions 2707
Revivor of, on death of nominal plaintiff 30
when actions do not abate by death; revivor in twelve months 38
on death of one of several joint defendants 43
defendant pending suit 41
marriage of woman pending suit 37
School land, for injuring or destroying trees on 3632
Seduction, unmarried woman may sue for her own 23
of daughter, father or mother may maintain action for 24
but suit by daughter a bar, etc 24
Servant or employe, by, against master or employer for personal injuries 1749
by personal representative of, if injuries result in death of 1751
Sheriff, against, for failing to return bond in detinue case 1481
Special administrator, suits begun by, continued by successor 332
State may sue in its name, etc., without bond or affidavit 12
written directions of governor sufficient authority for bringing 12
who may sue on official bond, etc 14
suits by, for recovery of public moneys, etc 3755
for money wrongfully used, etc 3756
in equity 3757–3761
foreign jurisdiction 3762
against personal representatives in respect to escheats 1759
duty of auditor to proceed against defaulters ..... Subd. 13, 1995
superintendent of education to proceed against defaulters to school fund ..... Subd. 12, 3546
in name of, for usurpation of office or franchise 3420
Successive actions may be maintained on same contract, etc., when 34
Suing out summons is commencement of suit 2814
Suit for penalty imposed by law, etc.; who may maintain 15
Sureties, by, against principal and against each other 3880–3882
Time in which suits must be brought. See LIMITATION OF ACTIONS 2793–2802
Trespassing stock, against owner of 2115
Unmarried woman, by or against, not abated by her marriage 37
Use and occupation, actions for 2722
Usurpation of office or franchise, for 3420–3439
Warranty, on, implied from "grant," "bargain," or "sell" in deed 1035
What actions survive 27, 35, 36, 335
Where commenced. See VENUE 4205–4209
Wife may sue or defend for husband, when 16
Witness, against, for failing to appear before commissioner 1838
arbitrators 518
Words, for, imputing to woman a want of chastity 1440

ACTION ON THE CASE. SECTION
May be joined with trover and trespass ... 3293

ACTS, JOURNALS AND JOINT RESOLUTIONS.
Acts distributed to counties; custody and use of ... 927, 3365
Acts and resolutions; how and when prepared for publication ... 3402
how classed and printed ... 3386
index to, how must be prepared ... 3403
certificate required on title-page, etc.; marginal notes ... 3404
certified copies of; when furnished printer ... 3406
penalty for failure to furnish ... 3407
style of printing and quality of paper ... 3408
when to be printed and delivered ... 3410
to be bound, lettered and indexed ... 3410
Distribution and other disposition of ... 1984, 1985, 1987, 1988
Duplicate copies of, furnished judicial officers, when ... 1986
Journals; how prepared, indexed and bound ... 3405
Payment for printing laws and journals ... 3413
Private acts as evidence without being pleaded ... 1820
Publication of laws, etc., in newspaper ... 3399
maximum charge for ... 3399
secretary of state to furnish contractor with copies, etc ... 3400
contractor to furnish certain officers with copy of paper ... 3400
Quality of paper and style of printing ... 3408
Revenue laws to be also printed separately ... 3409
payment for printing ... 3414
Secretary of state, duty of, as to ... 1974
To be bound, lettered and indexed; marginal notes ... 3410

ACTS OF CONGRESS.
Governor obtains, for judges of probate ... 1970
To be sent to judges of probate; expense; how paid ... 1990
What sufficient evidence of; how and by whom certified ... 1821

ADDITIONAL BONDS.
Auditor, of, and treasurer or any officer whose bond is approved by governor ... 3110
Clerk, of, supreme court ... 3858
Coroner, of ... 1081
County officer, of; when and by whom required ... 3111, 3112
County superintendent, of, of education, when ... 3554
Effect of additional bond ... 3116
Executors and administrators, when, may be required to give ... 93
application for ... 94
citation and notice ... 95, 96
hearing of application ... 97
costs ... 98
order to give; penalty for failure ... 99
judge of probate may require, to give, when ... 100
removed unless given, when ... 100
First bond not discharged by ... 3117
General administrator, required of, when ... 102
Guardian of minor, may be required of, when ... 2278, 2279
person of unsound mind ... 2278, 2279
effect of new bond ... 2280
judge of probate liable for neglect or omission in taking bond of ... 2283
Judge of probate, liability of, in taking bond of executors, administrators and guardians ... 76, 2283
Keepers of ferries, etc., when, may be required of ... 2502
Penalty, etc., of additional bond ... 3115

ADDITIONAL BONDS—*Continued.* SECTION

Register in chancery, when, may be required of 655
Requisition to give, in writing; service of copy 3113
Sheriff or coroner acting as administrator, when, may be required of 103
of, while acting as guardian 2277
State printer, when new or additional bond may be required 3392
Sureties, right of on both bonds 3118
on bond of executor or administrator, when discharged by additional bond 104
when not discharged 105
rights of, on such bonds among themselves 106
actions by, against principal and against each other 3880-3882
When to be given; penalty for failure to give 3114

ADJUTANT-GENERAL.

Appointment, rank and duties of 2853, 2854
Alabama National Guard, *see* 2852

ADMINISTRATION OF ESTATES.

Additional bonds—
may be required of representative, when 93
application for, contents 94
citation and notice 95, 96
hearing of application 97
costs of, against whom taxed 98
order to give, effect of failure to comply with 99
judge of probate may require, of, when; effect of failure to give 100
general administrator may be required to give, when 102
sheriff or coroner, acting as administrator, may be required, when 103
sureties, on original bond, discharged by, when 104
when not 105
rights and remedies of, on either bond 106
Administrator ad litem—
when and by whom appointed 352
decree in favor of 353
how enforced 354-356
compensation of 358
costs of appeal, when paid by, may be reimbursed 469
Administrator de bonis non or cum testamento annexo—
appointment of 111
on death, resignation, etc., of one of two or more, no, to be appointed, survivor to act, exception 112
will, on proof of, after grant of administration, letters revoked, executor appointed 113
executor of, if, fails to apply, copy of will to be annexed to letters of administration 114
Appeal—
application to execute will, or administer estate, letters not to issue pending 78
Appraisers, compensation of 118
Appointment of representative—
notice of, contents 122
how to be given 123
penalty for failure to give 124
Letters of administration, *see, infra*, 53-61, 77-79.
Letters testamentary, *see, infra*, 45-52, 77-79.
General administrator, *see, infra*, 69-75, 101, 102.
Special administrator, *see, infra*, 62-65, 78.
Administrator de bonis non, etc., *see, supra*, 111-114.

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Appraisement, of personal property, when and how made 118–120
Appraisers, appointment of, duty; compensation 118–121
Arbitration—
of controversies on settlement of estates; when may be had by consent .. 251
guardian may consent for ward 252
arbitrators, number and qualification of 253
award of, to be in writing; return; if approved recorded, etc ... 254
when to have effect of judgment 255
when may be set aside 256
objections to, proceeding thereon 257
Code, what sections of, applicable 258
Blood, in administration, whole preferred to half 59
Bond—
must be given by representative 66
executor may be exempted from giving, by testator 67
in such case may be required to give, when 67
proceedings to require him to give 68
general administrator to give, conditions of 70
administration granted on application of third person, applicant to execute, when 74
summary decree against obligors on such bond 75
judge of probate, liability of, in taking 76
letters of administration, etc., and, to be recorded; transcript of, as evidence 79
Claims, order of payment of 126
no preference allowed among, of same class 127
payment of, barred by statute of limitations prohibited 128
of personal representative or assignee filed in probate court, verified .. 129
presentation of, when barred 130
minors and persons of unsound mind, what time allowed for 131
heir or legatees claiming as such exempt from 132
how made; affidavit, etc 133
suit, revival of, when a 134
cost against plaintiff on failure to prove 135
representative protected in payment of, when 136
payment of, not due; rule as to 137
bad or doubtful, sale or compromise of 138–140
representative may give note in settlement of 141
Compensation, of appraisers 118
executors and administrators 219, 220
Coroner—
administration granted to, when, attaches to office, bond 72
when not to be granted to 73
granted to, on application of third person, applicant to give bond 74
summary decree against obligors on such bond 75
additional bond may be required of, when; effect of failure to give 103
Costs—
application for additional bond or removal, in, against whom taxed 98
sale of lands of decedent in probate court 168
partnership lands in which decedent had an interest 195
distribution of decedent's estate 272
of contest on settlement of accounts of executors and administrators; by whom paid 213
on withdrawal of items on contest 214
against plaintiff on failure to prove presentation of claim sued on 135

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Costs—*Continued.*
of report of insolvency of decedent's estate, when dismissed 297
objections to claims against insolvent estate 313, 314
actions against creditors of insolvent estate under section 323 325
Damages—
probate judge failing to take or taking insufficient bond, liable for 76
Debts—
property charged with payment of 125
order of payment of 126
no preference allowed among, of same class 127
claims, payment of, barred by statute of limitations prohibited 128
of personal representative, or his assignee, etc., to be filed in probate court, verified 129
presentation of, when barred 130
minors and persons of unsound mind, what time allowed for 131
heirs or legatees claiming as such exempt from 132
how made, affidavit, etc 133
suit, revival of, when a 134
costs against plaintiff on failure to prove 135
representative protected in payment of, when 136
payment of, not due may be made; rule as to 137
claims, bad or doubtful, sale or compromise of 138-140
representative may give note in settlement of, when 141
statute of limitations suspended after death and before grant of letters not exceeding six months 2815
six months after grant of letters 2816
by presentation of claim, when 2817
notice to sue terminates suspension of .. 2817
bars action after six months 2818
Disqualified persons, as executors 46
Distribution—
to be made on final settlement 229
order of, by whom executed 230
mode of executing; return to be made 231
commissioner's report, when property cannot be divided 232
exceptions to, who may file, and when 233
court may set aside or confirm; when sale of property ordered 234
sale, how advertised and made 235
on confirmation of, property delivered to persons entitled 236
judgments or claims may be divided or sold for division 237
on division, or sale of, same to be assigned 238
indebtedness of distributees, when, set off against their shares; defense ... 239
no judgment against distributee for excess, balance collected by suit 240
partial, order for, before final settlement, how obtained 259
when no protection to representative in action against him 259
application, on, of distributee, may be obtained after twelve months 267
contents of 268
day fixed for hearing; citation to representative 269
costs of, when paid by applicant 272
when made 270
made only on applicant giving refunding bond; terms and conditions of 271
bond recorded, transcript, duly certified, as evidence 273
a security for whom 274

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Distribution—*Continued.*
partial, order for; bond, suits and recoveries on ... 275
rights of parties to such bonds among themselves 276
legacy, order for payment of, or for distribution, representative protected by, when ... 277
Evidence—
letters testamentary or of administration conclusive, of what ... 77
and bonds, transcript of, as ... 79
Executors de son tort—
liable only to personal representative ... 340
but creditor may subject property fraudulently conveyed ... 340
Foreign executor or administrator—
may sue for and recover, or receive property, when, proceedings ... 359–363
suit by not affected by appointment of resident representative; right to intervene ... 360
delivery of property or recovery of judgment protects defendant ... 363
General administrator—
appointment of; term of office; duties of ... 69
bond required of; conditions ... 70
record must be kept by, showing his official acts ... 71
administration not to be granted to, when ... 73
granted, on application of third person, applicant to give bond ... 74
summary decree against obligors on such bond ... 75
removal of, when and how ... 101
additional bond may be required of, when ... 102
Husband—
wife not entitled to letters testamentary without consent of ... 49
by consent becomes jointly responsible ... 49
Insolvent estates—
debts, order of payment of ... 290
may be reported insolvent, when and by whom ... 291
report of insolvency, in what court filed ... 291
statement to be filed with, contents ... 292
both to be verified by affidavit ... 293
day fixed for hearing; notice, how given ... 294
hearing of ... 295
issue of insolvency may be made, but only one ... 296
tried by jury on demand of either party ... 296
dismissed, when, payment of costs ... 297
sustained, when, estate declared insolvent; settlement ordered; notice, how given ... 298
administrator, nomination of, by creditors ... 299
manner of voting in making ... 300
made in presence, and under direction of court; proof of claims ... 301
plurality of votes nominates ... 302
appointment of, when creditors fail to attend ... 303
general, sheriff or coroner may be appointed, when ... 303
vacancy in office of, how filled ... 304
appointment of, revokes former letters ... 305
claims against, to be verified and filed, when; affidavit may be amended ... 306
barred unless filed within six months, etc ... 306
infants and persons of unsound mind allowed longer time ... 307
verification of, in another state ... 308
foreign country ... 309
receipt for, indorsement of filing ... 310

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Insolvent estates—*Continued.*
claims against, docket of, to be kept open to inspection, etc 311
allowed without further proof, when 312
objections to, issue, trial, costs 313
if part only found due, allowed to that extent; costs 314
not due may be filed; dividends on 321
allowed after partial distribution entitled to full dividends 322
settlement, when, to be made 315
on, debts paid ratably, ratable proportion reserved for contested claim 316
similar, and distribution made at least every six months 316
insolvency, effect of report of, on pending suit 317
plea of declaration of, proceedings thereon 318
when interposed, judgment certified to probate court; costs 319
appeal, effect of, on contest of report of 320
one declaration of, effectual under all subsequent administrations 329
dividend on claim not due; filing claim not due 321
claims allowed after partial distribution 322
creditor may sue those receiving, for his proportion, when 323
but payment to other creditors reduces recovery 324
costs in such actions 325
sale of lands after declaration of insolvency without taking depositions ... 326
application for, contents; notice, how given 327
ejectment, administrator of insolvent estate may maintain, when 328
Inventory, of personalty must be made by 115
what, must show 116
returned under oath 117
when read in evidence, how explained by proof 351
Judge of probate—
and sureties liable for damages in taking bonds of personal representatives 76
Judgments and decrees—
of probate court, how enforced against 345
execution or garnishment, when sureties liable to 346
when may issue against, to be levied de bonis propriis 347
may have, for enforcement of judgment in favor of predecessor 348
on judgment against decedent cannot issue against, when 349
how judgments against decedents enforced against, provision applicable 349
may purchase under decree or execution for estate 350
decree in favor of administrator ad litem 353
how enforced; proceedings 354–356
Keeping estates together—
probate court may authorize, on application made and good cause shown .. 278
time limited to ten years 278
may be extended for good cause shown 279
plantation, employment of laborers and cultivation of, etc., when 278
authority granted to administrator to hire laborers to cultivate, when 282
application for, notice; report of hiring 283
distributed share, when, kept and worked with undivided portion 280
distributee's share of proceeds, how paid or enforced ... 281
dower of widow reserved, when real estate cultivated 284
estate kept together, only when not in conflict with will 285
annual settlement of such estates 286
filing accounts, etc., for; notice; contest 287
compelled, how, account stated by court, when 288

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Keeping estates together—*Continued.*
creditors, rights of, not affected by provisions ... 289
legatee or distributee not prevented from receiving share on arriving at full age ... 289

Legacies—
payment of, may be compelled, when ... 260
application for, contents of ... 261
day fixed for hearing; citation to representative ... 262
court may direct, when, on legatee giving refunding bond ... 263
refunding bond, terms and conditions of ... 264
how enforced ... 265
widow, what provisions applicable to ... 260–266

Letters of administration—
form of ... 57
with will annexed, when and to whom granted ... 53
executor, sole or surviving, on death of, to whom issued ... 54
of an executor, cannot, as such, administer on estate of first testator ... 54
by what court, and in what county, granted ... 55
order of grant of ... 56
right to, relinquished unless applied for within forty days ... 58
men preferred to women, and whole to half blood, when ... 59
court may grant to one or more, when several equally entitled to ... 59
married woman, when, entitled to, may be granted to her husband ... 59
renunciation of right to, how made ... 60
not to be granted until fifteen days after death ... 61
court, right of, to investigate as to time of death, etc ... 61
conclusiveness of ... 77
not to issue until time for appeal has elapsed, when contested ... 78
in chief not to issue until appeal is finally disposed of ... 78
special administrator, appointment of, in such case, when ... 78
bonds and, to be recorded; transcript of, as evidence ... 79

Letters testamentary—
form of ... 47
executors named in will, grant of, when ... 45
if disqualified, letters with will annexed granted 48
renunciation of right to act as; how made ... 51
by one, letters, to issue to others named ... 52
persons disqualified as ... 46
married woman not entitled to, without husband's consent ... 49
effect of ... 49
on removal of disability of coverture or non-age supplementary, to issue ... 50
conclusiveness of ... 77
not to issue until time for appeal has elapsed, when ... 78
in chief not to issue until appeal is finally disposed of ... 78
special administrator, appointment of, in such case, when ... 78
bonds and, to be recorded; transcript of, as evidence ... 79

Limitations, statute of, payment of debts barred by prohibited ... 128
suspended after death, and before grant of letters not exceeding six months ... 2815
six months after grant of letters ... 2816
by presentation of claim, when ... 2817
suspension of, terminated by notice to sue ... 2817
notice to sue bars action after six months ... 2818

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Married woman—
not entitled to letters testamentary without husband's consent 49
effect of .. 49

Minor—
letters testamentary, entitled to, on attaining majority 50
property of, by whom listed for taxation 3942

Non-claim—
claims against decedent's estate barred unless presented within twelve months 130
minors and lunatics allowed longer time 131
insolvent estate, claims against, barred unless filed within six months 306
longer time allowed minors and lunatics, when 307
personal representative, etc., having claim against estate must file same within twelve months 129
if claim of, accrued after grant of letters must be filed within six months 129

Non-resident—
appointment of, as executor 80
as administrator, proceedings 82
letters testamentary to, on foreign probate of will, steps necessary to grant of 81
bond must be given unless will exempts 81
what application for, or administration must show ... 83
estates, how administered and settled by 84
may bring and maintain suits; security for costs 85
liable to suit; process, how served; venue 86
notice and process, how served and executed 87
sureties of representative, liability of, to execution 88
removal of, to another state no cause for removal 89

Notice—
of appointment of, contents 122
how to be given 123
penalty for failure to give 124

Oath—
inventory must be returned under 117
appraisement must be returned under 118

Partnership lands, sale and partition of—
probate court may order personal representative to sell or partition, when 188
application for; contents 189
day fixed for hearing; guardian ad litem; notice 190
heirs or devisees, unknown, how made parties; notice to. 191, 162
duty, etc., and compensation of guardian ad litem and special guardian 192
hearing and decree on 193
testimony; how taken; when minors, or persons of unsound mind interested 194
when dismissed, costs, execution 195
order when granted, certified copy of, to be recorded 196
conveyances made, report of, when confirmed, when vacated 197
title vested by 198
lands conveyed to personal representative subject to administration and may be conveyed to heirs or devisees 199
authority to sell or partition, may be continued in successor without application 200

Penalty—
for failure of representative to give notice of appointment 124
Perishable property, sale of, by special administrator, when, etc 64

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Personal property—
duty of representative as to collection of, inventory, etc. 115, 117
appraisement of, how made, appraisers, compensation of 118
and inventory, returned, when 119
supplemental, when 120
appraisers, new, may be appointed from time to time 121
Persons disqualified as executors 46
Process—
service of, in suits by and against non-resident, how made 85–87
Removal—
to another state no cause of, effect of 89
surety, application of, to be discharged; new bond required; failure to give 90
new bond, effect of 91
causes of 92
additional bond, required, when, failure to give, cause of 93, 100
application for, or for, who may make; contents 94
citation to issue; service of 95
notice of given by publication, when; expenses, how paid 96
trial of, when either party entitled to jury 97
costs of, against whom taxed 98
order to give, effect of failure to comply 99
probate judge may require, or remove on his own motion, when 100
general administrator may be required to give, effect of failure 102
sheriff or coroner may be required to give, failure to comply vacates office 103
sureties discharged by, when 104
old bond not discharged by giving, when 105
sureties on such bonds, rights of, among themselves 106
general administrator, causes of 101, 102
Renting of lands; how made; rent assets 154
Resignation—
executor or administrator, of, must be recorded 107
liability of, on 108
general administrator, by, effect of 109
successor of, appointed, when 110
administrator de bonis non or cum testamento annexo, appointed, when 111
surviving, after death, resignation, or removal of one or more, continue to act 112
Sale of personal property—
probate court may order, on application of representative; for what purposes 142
application for; notice of, how given 143
may be contested 144
notice of, how given 145
hours of 146
terms of 147
bid rejected and sale postponed, when 148
failure of purchaser to comply; resale; deficiency 149
crops commenced by decedent; nature and sale of 150
stock of goods, etc., sale of 151
application for, contents, when order made, etc. 152
returns of accounts of sales; within what time made 153

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Sale and renting of real estate—
lands may be rented privately or at public auction, report of, rent assets.. 154
sale of, for payment of debts when there is a will..... 155
in case of intestacy when personalty insufficient..... 156
division, under order of probate court, when..... 157
application for, or payment of debts, by and to whom made..... 158
contest of, who may make..... 158
trial, day fixed for; citation, how served..... 159
notice of, when given by publication..... 160
to non-resident by publication..... 161
to unknown parties by publication.... 162
guardian ad litem for minors, etc., appointment of..... 159
special guardian for unknown parties, appointment of..... 162
duty, etc., and compensation of guardian ad litem and special guardian..... 163
evidence of title on..... 186
payment of debts; insufficiency of personalty to be shown by deposition..... 164
all or portion of, ordered, terms of..... 165
for division; proof by deposition necessary; order and terms of 166
shares of unknown parties paid into court, etc.. 162
when minors, etc., interested, proceedings void unless testimony taken by deposition..... 167
when application to be dismissed; costs; execution..... 168
sale, advertisement of, in different counties, when..... 169
hours of; when bid rejected; failure of purchaser to comply; resale; deficiency, etc..... 170
place of, as court may direct..... 172
report of, to be made and examined..... 173
when executor or administrator may be cited by purchaser etc., to make..... 180
fails to obey citation; proceedings..... 181
vacated either in whole or in part, when..... 174
when, resale to be made..... 176
not confirmed until sufficient security is given..... 175
confirmed, when..... 177
purchase-money, how, secured..... 171
report of payment of, when to be made..... 178
conveyance; when, by whom, and to whom made..... 179
dower interest, with widow's consent, may be sold, order for..... 182
value of, how fixed and paid..... 183
mistake in description of lands sold under order of probate court; how corrected..... 184
decree on such application..... 185
land received on compromise, etc., jurisdiction to sell or divide..... 187
Settlements and distributions—
partial settlements; when to be made..... 201

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Settlements and distributions—*Continued.*
final settlement; when may be made 202
account, vouchers and statement of heirs and legatees to be filed 203
damages for failure to file such statement 204
guardian ad litem, appointment of 205
day appointed for, notice 206
notice, contents of 207
when may be given by posting 208
auditing account; proof of credits 209
interest or profits, liability for, exculpatory oath 210
contest of account; evidence in support of 211
depositions; how taken, and when admissible 212
costs of contest; by whom paid 213
items may be withdrawn on contest 214
account to be stated and recorded 215
when representative is also guardian of distributee, proceedings, etc 216
on final settlement, previous settlements presumed to be correct 217
right to show representative is chargeable with other items 218
compensation to executors and administrators 219
commissions on property and money distributed 220
non-resident, how personal property of estate of, disposed of 221
distribution of estate of 222
attachment, settlement compelled by, when, or account stated by court .. 223
stating account, after, citation to representative to file account and vouchers 224
notice of settlement by publication, etc 224
if representative fail to appear and file, etc., account to be examined, etc., and may be restated 224
who may appear and show that representative is entitled to additional credits 225
contest, who may, or further charge representative. 225
decree to be rendered on such settlement 225
set aside on representative filing account and vouchers and paying costs 226
expenses of minor distributees, when representative may defray, etc 227
representative allowed credit for same, when 227
separate account and vouchers must be filed for 228
Settlement after representative's death, removal, or resignation—
when to be made; how conducted; notice 241
remaining or succeeding representative to be made a party; notice 242
decree in favor of, when to be made 243
court to proceed to final distribution, when 243
partial distribution, when 243
decree against, in favor of outgoing representative, how enforced, or paid 244
execution on, to be stayed, when 245
outgoing or deceased representative may be compelled by attachment, or account stated 246

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Settlement after representative's death, removal, or resignation—*Continued.*
outgoing or deceased representative, citation to, on stating such account; notice by publication, etc. 247
on failure of, to appear, court to audit account, and may restate same 247
right of parties to appear for, or against; proceedings 248
decree rendered as upon settlement voluntarily made 248
set aside on filing account and vouchers, paying costs, when 249
proceedings for settlement of, no bar to other suits 250

Special administrator—
appointment of 62
authority of 63
perishable, or wasting goods, power of, to sell 64
authority of, ceases upon grant of letters to another 65
duty of, when his authority ceases 65
appointment of, pending appeal, etc., when 78
suits begun by, continued by successor 332

Sheriff—
administration granted to, when, attaches to office, bond 72
when not to be granted to 73
granted to, on application of third person, applicant to give bond 74
summary decree against obligors on such bond 75
additional bond may be required of, when, effect of failure 103

Suits by and against—
representatives, in what county may be sued 330
not to be sued for six months; no judgment for twelve months, etc 331
by or against, prosecuted by or against successor 333
on death of one, suit continued against survivor 334
damages to realty survive to 335
of those who were liable to an estate also liable 336
liability of, limit of 337
personal representative and sureties 338
for distribution of damages recovered 338
resignation of, no defense, when 339
special administrator, suits begun by, continued by successor 332
executor de son tort only liable to representative; exception 340
bond of representative, suit on, by whom maintained 341
irregularly taken, operates a statutory bond 342
conditional execution or delivery of, no defense 343
ejectment may be brought by administrator of insolvent estate 328
legatee may sue at law for legacy, when 344
foreign representative may sue for and recover, or receive property 359
suit by, not affected by appointment of resident representative 360
resident representative may intervene, when 360
before judgment in favor of, must prove compliance with section 359 361
bond by, amount of, how determined; security thereby afforded 362
delivery of property or recovery of judgment protects defendant 363

ADMINISTRATION OF ESTATES—*Continued.* SECTION

Sureties—
sheriff or coroner acting as administrator, liable for acts of 72
on original bond of, discharged by additional bond, when 104
when not 105
rights and remedies of, on either bond 106
Taxation, by whom property should be listed for 3942
Wife—
not entitled to letters testamentary without husband's consent 49
Wills—
executors named in, grant of letters testamentary to, when 45
may be exempted, by testator, from giving bond 67
on proof of, after grant of administration, letters revoked, and executor appointed 113
if executor of, in such case, fails to apply, copy of, annexed to letters 114

ADMINISTRATORS. See ADMINISTRATION OF ESTATES 45–363

ADMINISTRATORS AD LITEM.

Compensation of 358
Costs of appeal, when paid by, may be reimbursed 469
Decree in favor of 353
how enforced 354–356
When and by whom appointed 352

ADOPTION OF CHILDREN.

Mode and effect of 367

AD QUOD DAMNUM.

Condemnation of lands for public uses; general provisions.

Application for; who may file, and in what court 1712
contents of; must be in writing and sworn to 1713
costs, security for, must be given 1713
day fixed for hearing of, notice, to whom and how given 1714
guardian ad litem appointed for minors, etc 1715
duties, authority; compensation 1715
allegations of, objections, and proof to be heard 1717
if, granted, commissioners appointed, etc 1718
appeal from order granting or refusing 1717
Bill of exceptions may be reserved by either party 1717
Commissioners, appointment of; qualifications; vacancy, how filled 1718
assessment of damages and compensation by; how made 1718
report as to, order of condemnation, etc. 1719
appeal from, who may take; proceedings 1720
when, does not suspend judgment 1720
Costs; against whom taxed; execution 1725
Court of probate deemed always open for filing applications for 1726
Jurors, pay of 1383
Owner not appearing on hearing, court proceeds, etc 1716
Order of condemnation, effect of; effect of appeal 1721
Payment of damages; within what time; effect of default 1722
United States; provisions relating to 626–628
Witnesses, fees of 1388

Corporations, special provisions applicable to.

Foreign telegraph and telephone companies for lines, in favor of 1723
Jurors, pay of 1383
Mining, quarrying and manufacturing companies for roads or canals 1145

AD QUOD DAMNUM—*Continued.* SECTION

Corporations, special provisions applicable to—*Continued.*

Railroad companies for right of way, in favor of..... 1163
crossing other railroads..... 1165
and street-railroad companies may acquire easement for crossings... 1724
Street-railway companies for right of way, in favor of..... 1198
Telegraph companies for right of way and offices..... 1246
and telephone lines, right of way for, along public roads..... 2490
Turnpike and other toll-road companies for right of way..... 1207

Dams for public mills, gins and factories.

Appeal to circuit court; proceedings..... 1748
Application; where filed; to whom addressed..... 1728
contents of..... 1729
notice of; upon whom served..... 1730
to non-residents..... 1731
writ of ad quod damnum issues on filing..... 1732
mode of executing; charge to, and duties of jury..... 1733
when value of acre of land, abutting dam, also assessed.. 1734
inquest; how made and returned..... 1735
owner summoned to show cause against..... 1736
notice to; how given..... 1737
when granted; when refused..... 1738
Authority to raise dam; similar proceedings..... 1743
By whom dams may be erected..... 1727
Canal through another's land; similar proceedings..... 1742
Conditional fee vests on payment of assessment..... 1740
Contest of application; security for costs..... 1744
Deputy-sheriffs may act..... 1746
Failure to fulfill conditions avoids the grant..... 1740, 1741
Grist-mills subject to law of tolls and rotation..... 1747
Jurors, pay of..... 1383
Land reverts on breach of conditions..... 1741
Payment of assessment; effect of default in..... 1739
Penalty for raising or building dam or obstruction across stream without authority..... 1745
Right of appeal protected.....Const., Art. XIV., §7, p. 101.
Right of eminent domain limited and protected.....Const., Art. I., §24, p. 66.

Roads and ferries.

Ferries, lands for; compensation for; proceedings..... 2503, 2504
Private roads, lands for; damages; proceedings..... 2497
Public roads, taking lands for; damages; proceedings.....2447-2449, 2492-2494
appeal by owner of land; security for costs..... 2450
contract for timber for; value of; how assessed..... 2475

ADRIFT.

Property taken up and secured; proceedings for..... 3525-3538

ADULTERY.

Ground of divorce..... 1485
exceptions..... 1491

ADVANCEMENTS.

Controversy as to; issue and trial..... 1469
Deducted in division and distribution of estate..... 1463
Descendant of one receiving, takes subject to..... 1467

ADVANCEMENTS—*Continued.* SECTION

Discovery of, application for; citation; notice 1470
proceedings on death of party receiving 1471
contest of answer; hearing and notice 1472
effect of failure to answer 1473
If made in real or personal estate, considered part of such estate 1465
How value of, determined 1466
Rule when, exceeds or is less than share 1464
What not an advancement 1468

ADJOINING LAND-OWNERS.

Bear equal proportion of expense of partition fences 2118–2121
May agree to keep up separate parts of partition fence 2122
Partition fences defined 2123
Survey changing line between, does not affect right to fences or buildings 3898

ADVANCES BY LANDLORD TO TENANT.

Landlord and tenant, *see* 2703–2715

ADVERSE POSSESSION.

Declaration of, form of 1542
must be recorded 1543
or copy thereof as evidence 1544
until filing of, possession not adverse 1545
exceptions 1546
Notice of, when must be filed in probate office 1541
Suggestion of, in action to recover lands; proceedings on 1536–1539
Under color of title, in good faith, effect of as to rents 1540
Limitation of actions, *see* 2793–2824

ADVERTISEMENTS.

Affidavit required of officer and publisher as to contract for 3046
Contracts, what, in respect to, void 3046
Costs of publication not to exceed one cent per word for each insertion 3045
Executors, administrators and guardians, publication of certain notices to, length of time 3042
For what time publication made when not otherwise provided 3041
Newspaper received as evidence of the fact of publication 3051
sent to officer, etc., making publication and person to whom notice given 3044
certain papers to be taken by designated officers 3049, 3050
bound at expense of county 3049, 3050
Party in interest may designate paper 3040
Publication for specified number of weeks or days defined 3043
when paper suspended or discontinued 3047
Sale under deed of trust or mortgage, notice of, when paper suspended or discontinued 3048

AFFIDAVITS.

Authority to take; all courts 2639
chancellors 642
circuit judges 921
clerks of circuit court 933
clerk of supreme court 3860
judges of probate 3372
justices of the peace 2663
generally, beyond the state 1799
in proceedings to enforce mechanic's lien; beyond state 2728

AFFIDAVITS—*Continued.* SECTION
Authority to take; notaries public 3025, 3032, 3038
registers in chancery 657

AFFIRMATION.
Included in oath 1

AGENT.
Foreign corporation, doing business in state, must file declaration appointing .. 1316
unlawful to transact business before filing declaration; penalty 1318
unlawful to act as, before declaration filed; penalty 1319
Insurance company, agent of, must be licensed 2585
foreign, doing business here must contract through local agent 2614
penalty against agent of, acting without license 2603
Service of process on designated agent of foreign corporation 3277
proof of agency 3277

AGREEMENTS.
Of parties or attorneys in supreme court to be in writing ... S. C. R. 25, p. 1191.
Same in circuit court ..... C. C. R. 14, p. 1197.
Personal property, contract for conditional sale, lease, etc., must be in writing, when 1017
What agreements or contracts void unless in writing 2150–2155

AGRICULTURAL.
Lien of laborers and superintendents, and enforcement of same 2762–2773
landlord and laborers under special contract 2711, 2712

AGRICULTURAL AND MECHANICAL COLLEGE.
Appropriation from sale of fertilizer-tags; how and when drawn 398
Bond of officer receiving or disbursing money of 3697
Constitutional provisions as to ..... Const., Art. XIII., §§9, 10, pp. 98, 99.
Experimental station may be established by trustees of 398
Gifts and grants to; provision as to 3695
what will not work forfeiture of 3695
Incorporation of 3686
Interest on fund of, credit of state pledged for 3688
payment of; when and how made 3697
Powers, duties and liabilities of 3687
Professor of chemistry of, is chemist of department of agriculture 393
Trustees of, powers of board 3689
classification of 3690
vacancy; how filled; term of appointee 3691
time and place of meeting of 3692
quorum 3693
expenses of; how paid 3694
report of, to general assembly 3696

AGRICULTURAL EXPERIMENT STATIONS AND SCHOOLS.
Agricultural and Mechanical College, trustees of, may establish experiment station, etc 398
Appropriation for, out of what fund; how paid 398
Canebrake Agricultural Experiment Station at Uniontown 399
board of control; compensation of 400
authority of 401
duties of 402
expenses of, out of what fund and how paid 403

AGRICULTURAL EXPERIMENT STATIONS AND SCHOOLS—*Continued.* SECTION

Branch station and school for each congressional district; location of..... 404
one for the first, fourth and fifth districts to be located; by whom.....Note, p. 207; 404
appropriation, annual, for, out of what fund; when prorated..... 406
amount of, to be used in making experiments..... 407
withheld, when..... 414
board of control, and executive committee of; how constituted..... 405
term of office; compensation..... 405
and president to prepare and publish bulletins..... 410
Bulletins to be prepared and published; by whom..... 410
Certificates of proficiency or diplomas; by whom granted..... 415
Commissioner of agriculture, ex officio member of board..... 405
Course of study and training; by whom prescribed..... 415
Director of school and station, who shall be..... 409
President or principal of school to make annual reports to superintendent of education..... 411
to make quarterly reports to board as to finances..... 412
Scientific agriculture must be taught..... 413
Superintendent of education, ex officio member of board..... 405
Treasurer of board of control must give bond..... 408

AGRICULTURAL FAIRS.

Taxes on privileges remitted to..... 418
but does not authorize wheels of fortune or games of chance..... 418
Farmers' institutes, commissioner of agriculture authorized to conduct, etc... 416
expenses of, and out of what fund paid..... 417
detailed statement of, embodied in annual report of commissioner..... 416

AGRICULTURE, DEPARTMENT OF.

Attorney-general, to bring suit for fertilizer-tags, when..... 385
Auditor to supply fertilizer-tags and keep account of, etc..... 382
when to certify account of fertilizer-tags to attorney-general..... 385
Chemist of, who..... 393
duties of as to analysis of fertilizers; other duties..... 393
compensation of..... 394
Clerks; oaths of office; bonds; term of office..... 373
duties of..... 374
compensation of..... 375
Commissioner of, election of; by whom and when..... 1573–1575
term of office; vacancy, how filled..... 369, 3052
oath of office; bond..... 370
salary of..... 371
office of, at capitol..... 372
duties of.....Note, pp. 201, 202; 376
fruit-trees, diseased, duty of, as to.....Note, p. 201.
owner may be required to destroy..Ib.
penalty for failure to comply—Note, p. 202.
state geologist to furnish information to, when..... 377
printed report of, or certified copy of record, evidence as to license, etc..... 380
duty of, to furnish license, etc.....Subd. 16, 376
fertilizer-tags, must make requisition on auditor for..... 381
monthly report of sale of..... 382
destroy at end of each season..... 383
suit for, against, when..... 385
commissioner and sureties liable for, not accounted for..... 384

AGRICULTURE, DEPARTMENT OF—*Continued.* SECTION
Commissioner of, farmers' institutes, measures for conducting, adopted by.... 416
expenses of, appropriation for..... 417
detailed statement of, embodied in annual report of 416
Compensation of clerks..... 375
chemist..... 394
Contract for sale of fertilizers void, when..... 378, 386, 387
Evidence, printed report of commissioner, or certified copy of record, effect of as 380
copy of official analysis of fertilizers..... 395
parol, competent to show market value of fertilizers, etc..... 389
Expenses of, how paid..... 397
include traveling expenses of officers..... 397
printing done for, payment for..... 3415
Experiment stations..... 398–403
Fertilizers, commercial, license required for sale of..... 378
sale of, when void..... 378, 386, 387
license for; fee; duration..... 379
tags to be attached by dealer, or sale void.... 386
vitiated by including tag tax in price of..... 387
at fictitious prices, only real market value recoverable..... 388
parol evidence competent to show market value..... 389
statement of name, brand, etc., to be submitted to commissioner..... 390
a guarantee of what..... 390
to be branded, how..... 391
what not included in term..... 392
analysis of..... 376, 393
copy of evidence..... 395
to be branded on bag or package..... 391
Funds of, what are..... 396
License, sale of fertilizers void without..... 378
fee for, duration of..... 379
State geologist to furnish certain information to commissioner of..... 377
Tags, fertilizer, commissioner to make requisition for..... 381
how prepared; what must be printed on..... 382
sale of, monthly reports of to be made..... 382
surplus to be destroyed at end of each season..... 383
commissioner and sureties liable for those unaccounted for... 384
suit against for, when..... 385

AIDES-DE-CAMP.
Number of; how appointed; rank of..... 2853

AIDS TO COMMANDER-IN-CHIEF.
How appointed; rank of..... 2853

ALABAMA.
Boundaries of.....Const., Art. II., §1, p. 68; 623–625
Distribution of powers.....Const., Art. III., p. 68.
Flag of; when displayed.....3751, 3752
Political divisions.....969, 1396, 2214
Seal..... 3727
Sovereignty and jurisdiction.....3749, 3752

ALABAMA BRYCE INSANE HOSPITAL.
Insane Hospital, *see*.....2544–2574

ALABAMA INSTITUTE FOR THE DEAF. SECTION

Annual appropriation for each pupil 3710
may be drawn quarterly 3710
to insure and keep property in repair 3711
Application for, and admission of pupils not indigent 3706
indigent pupils 3704
Board of trustees, who constitute 3700
quorum of; meeting of 3701
Clothing for indigent pupils; by whom furnished and how paid for 3705
Compensation of officers and teachers fixed by board of trustees 3703
Educational institution for the deaf, dumb and blind established 3698
Executive committee, selection of; powers of 3708
Incorporation of; powers of 3699
Mechanical and industrial department 3707
Objects of institution 3704
President of board; by whom appointed 3703
Principal teacher; by whom appointed 3703
may nominate to board assistants, etc 3703
Property to be insured and kept in repair 3711
Secretary appointed by board of trustees 3701
Teacher of articulation employed and necessary appliances provided 3709
To be furnished certain public documents 1988
Treasurer of, appointed by board of trustees; bond of, etc 3701
duties of 3702
Trustees, number of; by whom appointed; classification of 3700
vacancy in office of; how filled; term of appointee 3700

Alabama Academy for the Blind.

Admission; application for; must be in writing, etc 3715
who entitled to 3714
Annual appropriation for each pupil 3716
may be drawn quarterly 3716
Clothing for indigent pupils 3719
Control and management of 3713
Extension of time of pupilage; by whom 3715
Oculist to be employed 3718
Officers and teachers of; by whom appointed; salaries of 3717
Separate institution for the blind established 3712
Secretary, duty of, as to application for admission 3715

Alabama School for Negro Deaf Mutes and Blind.

Admission, who entitled to 3723
application for, and admission 3724
Annual appropriation for each pupil 3725
how and when drawn 3725
Chief executive officer of, who 3722
Control and management of 3721
Laws relating to Alabama Institute for the Deaf applicable to 3726
Separate institution for negro deaf mutes and blind established 3720

ALABAMA NATIONAL GUARD.

Active service, when and by whom troops may be ordered into 2893
while in, by what rules and regulations governed 2895
pay, while in 2890
preservation of order, when in 2891, 2892
Adjutant-general, appointment; rank of; duties of 2853, 2854
clerk of; appointment; bond; duties; salary 2882
Adjutant, of regiment, of battalion; rank of 2858
clerks in office of 2858

ALABAMA NATIONAL GUARD—*Continued.* SECTION

Age for enlistment ... 2860
Aides-de-camp on staff of commander-in-chief, rank; duties of ... 2853, 2854
brigade staff, rank; duties of ... 2856, 2857
allowance; when and how drawn ... 2863
Armories, drill-rooms, etc., quarterly allowance for ... 2863
how and when drawn ... 2863
forfeiture of, when ... 2896
Arms, bond for, by commanding officer ... 2861
when officer not liable for ... 2862
may be issued by governor to chartered institutions, when ... 2880
selling or detaining of, or military property, a misdemeanor ... 2881
governor to have mended at expense of state ... 2882
Artillery, regiments, number of ... 2852
regiment, consists of ... 2858
battalion, consists of ... 2858
battery, number of enlisted men in ... 2860
Assistant adjutant-general, appointment; rank of; duties of ... 2853, 2854
of brigade, rank; duties of ... 2856, 2857
Badge of honor, prescribed by governor; who entitled to ... 2866
Bands, etc., who may organize and disband ... 2869
special enlistment for ... 2869
members of, exempt from poll-tax and jury duty ... 2889
Battalion, what constitutes ... 2858
staff of, how appointed; rank of ... 2858
courts martial, how constituted, etc ... 2886
Batteries, number of enlisted men in each ... 2860
term of enlistment; oath ... 2876
new, how formed, assigned and equipped ... 2861
Blank forms, books, etc., mode of obtaining ... 2854
pay for, auditor to draw warrant ... 2854
Board of examiners—
appointment, examination of officers before commissioned ... 2883
power to compel attendance of witnesses ... 2883
administer oaths, take testimony, etc ... 2883
if report adverse, party ineligible for election sixty days ... 2883
Board of officers, company disbanded on report of ... 2878
survey, report of on arms and property lost ... 2862
Bonds, furnishing arms, etc., on ... 2861
Brigade, what constitutes ... 2855
assistant adjutant-general of; duties ... 2857
staff-officers of; duties ... 2857
Brigadier-general, election of; term of office ... 2855
appoints staff-officers; rank of; duties of ... 2856, 2857
orders election, when ... 2871
casts deciding vote when tie ... 2871
may authorize company or troop to elect additional second lieutenant ... 2859
may, upon approval of governor, organize signal-corps ... 2868
Camp and field duty, instruction in ... 2893-2896
governor may annually order into ... 2893
enforcing attendance ... 2894
government of encampment ... 2895
failure of company to attend forfeits quarterly allowance ... 2896
Cavalry, regiments, number of ... 2852
regiment consists of ... 2858
squadron consists of ... 2858

ALABAMA NATIONAL GUARD—*Continued.* SECTION

Cavalry troop, number of enlisted men in ... 2860
Certificates of election, how made; transmission of; oath ... 2871
Chaplain of brigade, appointment; rank of ... 2856
regiment, appointment; rank of ... 2858
Chief of engineers, appointment; rank of; duties of ... 2853, 2854
ordnance, appointment; rank of; duties of ... 2853, 2854
Color-bearer, how detailed ... 2858
Commander-in-chief ... 2852
staff of, appointment; qualifications of; rank of; duties of ... 2853, 2854
Commissary-general of subsistence, appointment; rank of; duties of ... 2853, 2854
Commissary of subsistence, of brigade, appointment; rank of; duties of .. 2856, 2857
regiment, appointment; rank of ... 2858
Commissary-sergeant, how appointed, of regiment; of battalion ... 2858
Commissions, all officers to be commissioned by the governor, qualifications ... 2883
Commitment of offenders ... 2886
Company, troop, or battery—
officers of, by whom elected ... 2859
number of men requisite to each ... 2860
by-laws and rules may be adopted by, when ... 2874
enlisted men of, must be over eighteen years of age ... 2860
term of enlistment and oath of member of ... 2876
falling below required number, must disband ... 2860
new, how formed, equipped and assigned ... 2861
officer of, when not liable for loss of arms or property ... 2862
allowance for, when and how drawn ... 2863
expenses of, may be paid by county commissioners ... 2864
monthly drills of, etc ... 2865
absence from, deprives of right to vote, when ... 2870
not to go out of county except by permission of ... 2867
state except by permission of ... 2867
member of, may be transferred, when ... 2873
discharged, when and how ... 2874, 2875
officer of, may be discharged, when and how ... 2885
additional second lieutenant, when may elect ... 2859
may be disbanded, when and how ... 2860, 2878
commanding officer of, may reduce to ranks ... 2884
courts martial, how provided for ... 2886
process and jurisdiction of ... 2886
punishment that may be inflicted ... 2886
officers and members of, exempt from poll-tax and jury duty ... 2889
Compensation and expenses—
actual service, for ... 2890
annual provision for drill-room, etc ... 2863
encampments, of, how paid ... 2893
courts martial, of, how paid ... 2886
printing laws, forms, blank books, notices, stationery, etc., of ... 2854
incurred by traveling under orders of governor, how paid ... 2887
Compilation and printing of laws, relating to ... 2854
Constituted of active volunteer organized military forces of State ... 2852
County commissioners may pay, what expenses ... 2864
Courts martial, kinds of; when and by whom appointed ... 2886
constitution of, jurisdiction of ... 2886
findings of, transmission of ... 2886
powers and sittings of ... 2886
sentence of, how enforced ... 2886

ALABAMA NATIONAL GUARD—*Continued.* SECTION

Courts martial, stenographer and witnesses 2886
offenses, to be tried by 2886
Disbanding company 2860, 2878
Discharge, when and how obtained 2874, 2875
for removal from state, etc 2885
conviction of felony 2885
Discipline, system of 2877
Drill, regimental, battalion or squadron, when may be ordered 2865
monthly, officers and members not attending may be fined 2865
rooms, quarterly allowance for 2863
forfeiture of quarterly allowance, how 2896
Election, of brigadier-general, by whom and how 2855
regimental officers, by whom and how 2858
company officers, by whom and how 2859, 2861
certificate of, forwarded to commander-in-chief 2871
vacancy, in case of, or expiration of term 2871
Encampment, expenses of, how paid 2893
company failing to attend forfeits quarterly allowance 2896
enforcing attendance at 2894
government of, by what rules and regulations 2895
governor may order annual 2893
Engineers, chief of 2853
Enlistment, age requisite for 2860
term and oath of 2876
how and by whom 2861, 2874
Examining board for officers 2883
Exemption, of members of, from poll-tax and jury duty 2889
Fines and penalties, when, how and by whom imposed 2865, 2886
may be imposed for non-attendance at drills 2865
amounts that may be imposed by various courts martial 2886
Forfeiture, of quarterly allowance by company 2896
General courts martial, Courts martial, *see, supra.*
Governor, commander-in-chief of 2852
staff of, appointed by, and commissioned as 2853
courts martial, must approve findings of, when 2886
all officers in, to be commissioned by 2883
signal-corps, formation of, must be approved by 2868
Grade, when lost by resignation, etc 2872
Hospital stewards, appointment of 2858
Imprisonment, to preserve order in active service 2891
by sentence of a court martial 2886
Infantry, regiments, number of 2852
regiment, consists of 2858
battalion, consists of 2858
company, number of enlisted men in 2860
Inspector-general, appointment; rank of; duties of 2853, 2854
of rifle practice, appointment; rank of; duties of 2853, 2854
Inspector, of brigade; of rifle practice; appointment; rank of; duties of .. 2856, 2857
regiment, of rifle practice, appointment; rank of 2858
Jail, commitments to 2886
Judge-advocate general, appointment; qualifications of; rank of; duties of .. 2853, 2854
Judge-advocate, of brigade, appointment; rank of; duties of 2856, 2857
courts martial, how appointed; duties of 2886
Jury duty, exemption from 2889
certificate of membership, etc., effect in court 2889
Liquors, commanding officer may close place where sold, when 2892

ALABAMA NATIONAL GUARD—*Continued.* SECTION

Medical department, supplies for, how obtained; how paid for ... 2888
penalty for filing false or fictitious claims for ... 2888
Mileage and pay of witnesses ... 2886
Military expenses, payment for ... 2854, 2882, 2886, 2887
Military property, undistributed, repository for, designated by governor ... 2882
cared for by whom ... 2882
governor may furnish arms to schools, when ... 2880
selling or retaining, without right, a misdemeanor ... 2881
Misdemeanor, party selling or retaining military property, guilty of ... 2881
witness failing to obey subpœna of court martial ... 2886
surgeon filing false or fictitious claim, guilty of ... 2888
Neglect of duty, triable by court martial, punishment ... 2886
New company, troop or battery, how formed, assigned and equipped ... 2861
Non-commissioned officers, of company, troop and battery ... 2859
staff, of regiment; of battalion, etc.; appointment, etc ... 2858
Notices, of election of officers ... 2871
Oaths, of enlisted men ... 2876
courts-martial, power of to administer to witnesses ... 2886
board of examiners, power of, to administer ... 2883
Officers, on staff of commander-in-chief, rank of; duties of ... 2853, 2854
brigade staff, rank of; duties of ... 2856, 2857
of regiment, election of, etc ... 2858
squadron or battalion ... 2858
company, troop or battery ... 2859
all commissioned by governor; qualifications of ... 2883
grade of, when lost by resignation, etc ... 2872
roster of, kept by adjutant-general ... 2854
assistant adjutant-general of brigade ... 2857
Ordnance, chief of ... 2853
sergeant, to each regiment ... 2858
Organization of National Guard ... 2852, 2855, 2858, 2859, 2861
Pay, active service, for ... 2890
of officers, stenographers and witnesses of courts martial ... 2886
Paymaster-general, appointment; rank of; duties of ... 2853, 2854
Poll-tax, exemption from ... 2889
Quartermaster of brigade, appointment; rank of; duties of ... 2856, 2857
regiment, appointment; rank of ... 2858
squadron or battalion, appointment; rank of ... 2858
Quartermaster-general, appointment; rank of; duties of ... 2853, 2854
Rank, when lost by resignation, etc ... 2872
by what rules and regulations governed ... 2877
Regiments, cavalry, artillery and infantry, number of, in ... 2852
each shall consist of ... 2858
Regulations, of United States army, to be obeyed ... 2854, 2857, 2877, 2886, 2890
company, how made ... 2874
Reports, adjutant-general, of ... 2854
of board of survey ... 2862
when company, troop or battery is inefficient ... 2878
of board of examiners ... 2883
reduction, by company commander ... 2884
Resignation, grade lost by, when ... 2872
vacancy caused by, how filled ... 2871
Roster, of officers, kept by adjutant-general ... 2854
by assistant adjutant-general of brigade ... 2857
Rules and regulations may be adopted by company ... 2874
of procedure of courts martial ... 2886

ALABAMA NATIONAL GUARD—*Continued.* SECTION

Sergeant-major, of regiment; of squadron or battalion 2858
Service, active, pay in 2890
what length of, entitles to badge of honor 2866
Sheriff, orders to, to carry in effect fine of court martial 2886
to serve subpœnas, etc 2886
Signal-corps, when and how constituted 2868
Staff-officers, of commander-in-chief, rank of; duties of 2853, 2854
brigade, rank of; duties of 2856, 2857
regiment; squadron or battalion; rank of 2858
Stationery, blank books, forms, etc., furnished by adjutant-general 2854
Subpœna, mode of issuing and serving 2886
Surgeons, of brigade, appointment; rank of; duties of 2856, 2857
regiment, appointment; rank of 2858
medical supplies, purchase of, by 2888
penalty for fictitious claims, by 2888
Surgeon-general, appointment; qualifications; rank of; duties of 2853, 2854
System of discipline 2876
Tax, poll, exemption from 2889
Term of enlistment and oath 2876
service, governor's staff, of 2853
Tie vote, in election of officers, the casting vote given by whom 2871
Transfers, when and how made 2873
Troop of cavalry, number of enlisted men in each 2860
term of enlistment and oath 2876
new, how formed, assigned and equipped 2861
Troops, movement of 2867
Uniforms, shall conform in style and material, etc 2879
wearing of, when unlawful 2886
Vacancy, existing in, how filled 2871
Veteran's badge, presented by governor 2866
What constitutes 2852
Witnesses, issue and service of subpœna on 2886
penalty for failure to obey subpœna 2886
board of examiners, power to compel attendance of 2883

ALIENATION.

Conveyances for alienation of lands; who may make; how executed 981–984
Of homestead by married man; how executed ..... Const., Art. X., §2, p. 91; 2034

ALIENS.

Becoming bona fide residents have same rights as natives—
Const., Art. I., §36, p. 67.
May take, hold and transmit property 419

ALIMONY AND ALLOWANCE.

On decree of divorce 1496–1498
Pending suit for divorce 1495

AMENDMENTS.

Of judgments, decrees, or orders nunc pro tunc 3337–3339
Powers of courts to amend and control their process and orders 2639

In suits at law.

Appeal from justice's court, proceedings on 487–489
Attachment suits, of bond, affidavit, or writ in 564
Errors or mistakes, what, amendable within three years after judgment 3334
in fact, in judgment, or process, apparent upon the record 919

AMENDMENTS—*Continued.* SECTION

In suits at law—*Continued.*

Form, want of, does not vitiate proceedings 3330
In suit for penalty for evading toll-gate 1227
Judgment not arrested or reversed for defect not objected to, if complaint contains substantial cause of action 3333
Of pleadings before or after judgment on demurrer 3304
certain mistakes considered as amended after judgment 3332
defects of form during progress of cause 3331
complaint by adding or striking out parties 3331
Toll-gate, in suit for penalty for evading 1227

In chancery court.

Amendment entitles opposite party to continuance of cause 706
And if continued, both parties entitled to take additional testimony 706
also, if allowed in vacation 706
Of award on settling disagreement between connecting railroads 3470
Of bills before answer, demurrer, or plea filed 704, 705
after demurrer, and before argument 705
at any time before decree, by striking out or adding parties 706
or to meet any state of evidence, etc 706
allowance by register 707
answer to amendment 708
Of answers, at any time before final decree 706
allowance by register 707
Of summons, before service 704

Rules of chancery practice.

Proceedings to amend under sections 706 and 707 ..... R. 40, p. 1210.
Of bill after demurrer and argument ..... R. 41, p. 1210.
after answer filed ..... R. 42, p. 1210.
considered as introduced from allowance ..... R. 43, p. 1210.
notice of allowance, how given ..... R. 44, p. 1210.
supplemental matter may be introduced ..... R. 45, p. 1211.
decree pro confesso not set aside by ..... R. 46, p. 1211.
effect of such decree for want of answer to amended bill .. R. 46, p. 1211.
time for asking for leave to answer, when bill dismissed in vacation— R. 47, p. 1211.
when decree pro confesso may be passed upon amendment. R. 48, p. 1211.

AMENDMENTS OF APPEALS.

Appeal not dismissed for error, etc., in taking, or defect in certificate 470
Such as are necessary to perfect appeal must on motion be allowed 470

AMENDMENTS TO CONSTITUTION.

Constitutional provision ..... Art. XVII., §1, p. 103.
Election on 1662–1664
printing and form of ballot in 1608, 1611

ANALYSIS.

Branded upon bag, barrel or package of fertilizer 391
Chemist of department of agriculture to make, of fertilizers, when 393
Copy of official, admissible in evidence, etc 395
Judge of probate to procure, of stomach, when poison suspected 3368

ANIMALS.

Abandoned and diseased, destruction of, when and by whom 422

ANIMALS—*Continued.* SECTION

Dogs, damages to sheep or other stock by, recovery of 421
no action lies for killing, when 421
may be registered, when 423
fee, tax and certificate of registration 424
Dogs, tax on, appropriated to public schools 425
Domestic, killing by fire-hunters; liability for 420
Earmarks and brands of 2834–2836
Estrays 1761–1789
Killing or injuring by railroads 3475–3480
Levy on live stock 1901
Stallions and jacks running at large 1790, 1791
Trespassing of, setting pits, etc 2113–2117

ANNEXATION.

Of foreign territory; duty of general assembly ..... Const., Art. IV., §51, p. 77.

ANSWER.

Chancery, *see* 691–703, 708, 720, 721, 750–752, 811, 1489
Garnishments, *see* 2187–2207, 2209, 2210

APOTHECARY.

Pharmacists, *see* 3248–3259

APPAREL.

Exempt from sale for payment of debts 2037
taxation ..... Subd. 8, 3907
Of deceased and family, exempt 2072
wife, her separate property 2522

APPEALS.

To supreme court; from what judgments, decrees and orders.

Abolished courts, from judgments or decrees of 435
Actions for usurpation of office, etc., from judgments in 3437
Attachment cases, from certain judgments in, by consent 430
but no reversal had in, if error can be removed by amendment 430
from judgments in 2205
Attorney, from judgment removing or suspending 610
Awards in courts of law, from judgments on 522
of arbitrator from decree in chancery on 846
Chancery, circuit, city or probate court, from any final judgment 426
from certain interlocutory decrees in; preferred cases, etc 427
may be assigned as error after final decree, etc 427
Corporation, from decree dissolving 1297
Demurrer to evidence, from judgment on 3321
Elections, in contests of 1702, 1703
from order or decree of chancellor or chancery court interfering with 1671
Exemption, from judgment in contests of 2052
from decree on exceptions to, set apart to widow 2089
Garnishment cases, from judgments in 2205
Injunctions, from orders sustaining or dissolving 428
New trials, from decisions on motions for 434
Partial or annual settlement of estate, from decree on 433
does not prevent assignment of error after final determination, etc 433
Partition of crops, from decree of probate court on application for 3204

APPEALS—*Continued.* SECTION

To supreme court; from what judgments, decrees and orders—*Continued.*

Receivers, from order appointing or refusing to appoint 429
Remedial writs, from judgments on application for 431
Substitution of lost papers, from order granting or refusing 2652
Summary judgment, from, for failing to make money on, or return execution from probate court 3379
pay over money collected on such execution 3479
Trust estates, in administration of, before register 4170

Manner and time of taking; transcript, bonds, etc.

Certificate of, given to appellee, when 454
Citation and notice to appellee 448
when from order appointing or refusing receiver 449
in case of non-residents 450
Clerk liable for delay or imperfection in transcript 453
Executions for costs adjudged by supreme court on 456
Generally, must be taken within one year 436
Liability for taking insufficient surety on appeal bond 447
Married women, when, relieved from giving bond or security 446
On death of either party after judgment, taken by or against representative .. 455
Receiver, from order appointing or refusing 438
Security for costs of, when required 439, 445
Supersedeas bond, when judgment or decree for payment of money only 440
when for payment of money and performance of other acts. 441
in certain other cases 442
order fixing amount of, filed and recorded 443
in trial of right of property 444
when, from order appointing receiver 445
married woman, when, relieved from giving 446
surety on, may be required to justify 447
liability of officer for taking insufficient 447
Surety may be required to justify 447
liability of officer for taking insufficient 447
names of to be certified with record; execution 439
Transcript, mode of preparing ..... S. C. R. 29, p. 1191.
delivered to appellant's attorney, or sent to clerk; certificate, etc. 451
clerk, etc., liable for delay in furnishing, or imperfection in 453
when to be filed 452
abstract of, appellant relieved from making, for court, etc.— Note, p. 220.
record, parties or attorneys may agree upon— Note, p. 221.
guardian ad litem or attorney may agree for minor ..... Note, p. 221.
fee to officer for certifying such. Note, p. 221.
When returnable 437

From probate court; special provisions as to.

Application, on, to execute will, or administer estate, letters not to issue pending 78
Bill of exceptions, right to, and signing of 465
transcript need only contain, and the decree, when 466
when, contains all the evidence, judgment on 467

APPEALS—*Continued.* SECTION

From probate court; special provisions as to—*Continued.*

Bond on, from order removing personal representative 461
also security for due administration pending appeal 463
execution, on affirmance, against principal and sureties on 462
Circuit or supreme court, to, from final judgment or decree of court or judge. 457
from other designated orders or decrees 458
time within which to be taken 458
Costs of, when reimbursed to party in representative capacity 469
Effect of, on contest of report of insolvency 320
Execution for costs on affirmance of; against whom 462
Guardian ad litem may take, without security for costs 468
Minors or persons of unsound mind, who may take, on behalf of 468
Partition of crops, from judgment on application for 3204
Security for costs to be given; execution, etc 464
Summary proceedings, from judgment in 3379
Supreme court from judgment of circuit court on appeal from probate court.. 459

Proceedings and practice in supreme court.

Affirmance, judgment of, on certificate; reinstatement of, when 474
certificate of, or reversal, clerk to issue 3860
Amendment of; not dismissed for error, etc., in taking, or defect in certificate 470
such, as is necessary to perfect, must be allowed 470
Bond or security, when not dismissed for want of sufficient 471
Certificate of affirmance or reversal to be issued by clerk 3860
Confession of judgment a release of errors 477
Criminal cases submitted at any time by consent 3831
when submitted without consent of state 3831
Damages and costs on affirmance; when judgment suspended 478
when judgment by claimant in trial of right of property is affirmed.. 479
on affirmance of judgment in detinue 480
Discontinuance, must be moved for 472
Errors, pleading over after judgment on demurrer does not waive 3305
confession of judgment a release of 477
Injunction cases; when preferred 3833
Opinion on former appeal not conclusive; qualification 3840
Office, cases involving right to; when preferred 3833
Pleading over after judgment on demurrer does not waive errors 3305
Preferred cases 427-430, 3439, 3831-3833
Receivership, cases involving; when preferred 3833
Remedial writs, judgment on appeal in application for 2828
application for, heard on any motion-day 3832
Reversal upon, cause remanded, or judgment rendered 475
no, for clerical errors, except on motion, and at cost of appellant.... 476
unless trial-court refuses amendment 3334
Revivor, when; citation thereon 473
Revenue of state, cases involving, preferred 3833

To circuit court.

Appellate jurisdiction declared 918
For violation of municipal ordinance 2969
From commissioners' court, proceedings to open roads 2450
in correction of errors in assessments for taxation 3979
From probate court, in proceedings to condemn for erection of mill-dam, etc.. 1748
sell lands for taxes 4069
From justices of the peace; right secured ..... Const., Art. VI., §26, p. 86.
statutory provisions declaring and regulating—
481-495, 918, 2209, 2652, 3809
Right of, in ad quod damnum proceedings, protected. Const., Art. XIV., §7, p. 101.

APPEALS—*Continued.* SECTION

From justices of the peace and proceedings thereon.

Attachments, what defects cured by 489
Bond for appeal or certiorari; payee and conditions 482
amount of, how fixed 483
defects in, may be cured 487
Circuit court, to, or court of like jurisdiction, within what time taken 481
jurisdiction of, from judgments before 918
Costs on appeal or certiorari; how taxed 492
Damages assessed if, taken for delay 491
Forcible entry and unlawful detainer, bond to prevent writ of restitution 2145
or unlawful detainer, judgment in, writ of restitution 2146
Notice of, to be served on appellee 485
how served when appellee removed, absconds, or secretes himself ... 486
Papers and statement to be returned to appellate court 484
Procedendo when justice vacates office pending appeal 494
how judgment, in such case, established when docket has been lost 495
Right of, without prepayment of costs, to be secured by law—
Const., Art. VI., §26, p. 86.
Sureties on appeal bond, judgment against, on affirmance of 493
When and how cases on appeal shall be tried 488
tried without a jury 490
Within what time appeal taken 481
Writs of certiorari on judgments before, authority of probate judge to issue .. 3372

Rules of Practice.

Abatement on failure to revive by next term after death suggested—
S. C. R. 40, p. 1194.
Affirmance on certificate; when appellee entitled to ..... Ib. 35, p. 1193.
when set aside ..... Ib. 36, 37, p. 1193.
Agreements not binding unless in writing ..... Ib. 25, p. 1191.
Applications for bail and writs of habeas corpus, etc.; proper paper for—
Ib. 39, p. 1194.
Arguments limited to one hour ..... Ib. 8, p. 1188.
opening and concluding argument ..... Ib. 6, p. 1188.
Assignment of errors and joinder therein ..... Ib. 1, p. 1187.
additional assignments ..... Ib. 2, p. 1187.
cross-assignment of errors ..... Ib. 3, p. 1187.
Authorities furnished opposing counsel; penalty for failure ..... Ib. 5, p. 1188.
read in opening argument ..... Ib. 7, p. 1188.
Bills of exceptions, establishing; testimony, how taken ..... Ib. 44, p. 1194.
Bond for restoration of injunction, ne exeat, or writ of seizure .. Ch. R. 87, 1221.
Briefs to be printed in certain cases ..... S. C. R. 9, p. 1188.
appellant's; how to be prepared ..... Ib. 10, p. 1188.
appellee's ..... Ib. 11, p. 1188.
succinct statement of points and authorities ..... Ib. 12, p. 1188.
of both parties to be filed on submission of cause ..... Ib. 13. p. 1188.
additional; service of ..... Ib. 13, p. 1188.
on rehearing; service of ..... Ib. 42, p. 1194.
Call of special motions on Thursday, and call of roll ..... Ib. 15, p. 1189.
Certificate when no proceedings at return-term ..... Ib. 38, p. 1193.
Certiorari to perfect or bring up record ..... Ib. 19, p. 1190.
Delay cases; rule as to ..... Ib. 18, p. 1189.
Duty of clerk as to sending copies of opinions ..... Ib. 43, p. 1194.
Establishing bills of exceptions; testimony, how taken ..... Ib. 44, p. 1194.
From decree in equity by one complainant or defendant in name of all—
Ch. R. 86, p. 1220.

APPEALS—*Continued.* SECTION

Rules of practice—*Continued.*

General rules of practice ..... pp. 1185, 1186.
Injunctions, in applications to reinstate ..... Ch. R. 101, p. 1224.
bond for restoration of, ne exeat, or writ of seizure..Ib. 87, p. 1221.
Motion-docket; notices of motions ..... S. C. R. 16, p. 1189.
Motion to quash in circuit court, when made ..... C. C. R. 13, p. 1197.
Opening and conclusion of argument ..... S. C. R. 6, p. 1188.
Opinions, duty of clerk as to sending copies of ..... Ib. 43, p. 1194.
Order of business on Thursdays ..... Ib. 17, p. 1189.
Order of calling and trying cases ..... Ib. 4, p. 1188.
Original papers; when sent up ..... Ib. 27, p. 1191.
not sent up, but copied in transcript, unless ordered— Ib. 28, p. 1191.
Preferred cases 427–430, 3439, 3831–3833
Rehearings; regulations as to ..... S. C. R. 41, p. 1194.
Restrictions upon use of papers by attorneys ..... Ib. 20, p. 1190.
Rules in circuit court same as in supreme court ..... C. C. R. 23, p. 1199.
Transcript; paper for ..... S. C. R. 26, p. 1191.
mode of preparing ..... Ib. 29, p. 1191.
papers to be omitted from ..... Ib. 30, p. 1192.
abridgement of, by agreement ..... Ib. 31, p. 1192.
seal, how placed; papers otherwise attached not part of— Ib. 32, p. 1192.
what must contain ..... S. C. R. 33, p. 1192; Ch. R. 85, p. 1220.
clerk furnishes samples of paper for ..... S. C. R. 34, p. 1192.
not received unless conforms to rules ..... Ib. 34, p. 1192.

APPEALS TO CHANCELLOR.

Motions and appeals from register, hearing of, notice ..... Ch. R. 1, p. 1202.
necessary papers laid before chancellor on— Ch. R. 116, p. 1228.
Orders by register subject to ..... Ch. R. 2, p. 1202.
Receiver, from order of register appointing 800
Trust estates, from orders of register relative to claims against 4170

APPEALS TO JURY.

From judgments of justices of the peace 2687–2694

APPEARANCE IN COURT.

Failure to appear; when an abandonment ..... G. R. 3, p. 1185.
How entered; leading counsel and notice ..... Ib. 1, p. 1185.
Proceedings on appearance of attorney without authority 593
Proof of authority; when required 594
Rights of parties ..... Const., Art. I., §§7, 11, pp. 61, 63.
Who may appear ..... G. R. 2, p. 1185.

APPLES, DRIED.

Weight per bushel, twenty-four pounds 4240

APPORTIONERS OF PUBLIC ROADS.

Appointment of 2454
Appoint overseers 2455
Duties of 2468
Fill vacancies in office of overseer 2457
Oath of 2458
Resignation or excuse of; what must show 2465, 2466
Service of notice to 2463
Term of 2455

APPORTIONMENT. SECTION
Constitutional provision as to members of general assembly—
Const., Art. IX., §§6, 7, p. 90.
Hands to work on roads, of 2468, 2469, 2472, 2473
Poll-tax to race paying, of 3608
Representatives of general assembly, of 2213
Road precincts, of 2454
School revenue, of 3601–3623
Senators, of 2214
Watercourses and hands to work thereon, of 2517, 2518

APPRAISEMENT.
Administration, of property exempt from 2078–2082, 2097
Estates of decedents, of goods of estates of 115–121
Of homestead 2078–2080
Trust property, of 4157

APPRAISERS.
Duty of, to set apart exemptions to widow and minor children 2079
Homestead, of; commission to; duties of 2078–2080
Of property of estates of decedents 118–120
Trust property, of 4157

APPRENTICES.
Bond, master must give, with surety approved by judge of probate 500
Indentures, when canceled 506
Judge of probate—
binds out children of the poor as 496
bond of master approved by 500
certain officers to report poor minor children to, who binds out as 497
record of proceedings to be made by; compensation, by whom paid 497
parent or person having control of child notified 498
age of child; when fixed by 499
Master appointed on full proof; must give bond 500
duties of 501
may chastise, but not to inflict cruel or inhuman punishment 502
remedy of, if apprentice leaves 503
apprentice discharged from indenture, when 503
judgment against, when 503
release of, and reapprenticing minor, when 504
removal of, to another state, proceedings for removal of apprentice 505
Parents may apprentice minor child 507
or person having control of child notified, when 498
Probate court, jurisdiction of, to bind children as 3363

APPROPRIATIONS.
Agricultural and Mechanical College, for..Const., Art. XIII., §2, p. 97; 398, 3688, 3697
experiment stations and schools 403, 406
Alabama Institute for the Deaf, for 3710, 3711
Academy for the Blind 3716
School for Negro Deaf Mutes and Blind 3725
Army, none for support, for longer than one year.....Const., Art. I., §28, p. 67.
Auditor's office, for additional clerical assistance in 1998
Charitable or educational institutions, for, when....Const., Art. IV., §34, p. 76.
Farmers' institutes 417
General appropriation bill, what, shall embrace....Const., Art. IV., §32, p. 76.
Geological survey 2284
Governor may disapprove one or more items of bill for—
Const., Art. V., §14, p. 80.
Insane Hospital, for support of 2574
Jail, for heating 1411–1413

APPROPRIATIONS—*Continued.* SECTION
Laws for, not required to contain but one subject....Const., Art. IV., §2, p. 71.
Military companies, for.... 2863
Money only paid out upon....Const., Art. IV., §33, p. 76.
Public schools for....Const., Art. XIII., §5, p. 98; 3539, 3540
faith and credit of state pledged for interest on.... 3658
Quarantine purposes, for.... 2396
State Medical Association, for.... 2442
University of Alabama, for....Const., Art. XIII., §2, p. 97; 3670, 3681

ARBITRATION AND AWARD.

Controversies generally.

Appeal and bill of exceptions, who may take.... 522
Arbitrators submission to; contents; delivery to.... 510
proceedings before, how award made and delivered.... 511
supplying place of, award by majority of.... 512
oath of, by whom administered.... 515
pay of.... 520
At common law not prevented.... 523
Award entered as judgment of court, when.... 509
how made and delivered.... 511
a majority may make.... 512
return and effect of, to what court returned.... 513
performance of, when enforced by attachment.... 514
final unless set aside for fraud, partiality or corruption.... 521
either party may appeal from.... 522
Bill of exceptions, by whom certified.... 522
Chancery court, causes in, may be referred to; proceedings for; decree.... 846
Costs of, by whom paid.... 520
Depositions, when may be taken, commission.... 516
Fees and charges, payable in advance, recovery thereof.... 519
receipt of arbitrators evidence of payment of.... 519
Insurance company belonging to tariff association, provision in policy of, to arbitrate loss, not binding on the assured.... 2619
Probate court; controversies as to settlements of estates, may be referred to..251–258
Submission to, in pending suit.... 508
duty of courts to encourage.... 508
when no suit pending, award entered as judgment.... 509
must be in writing.... 510
Subpœnas, by whom issued.... 516
executed.... 517
fees for executing.... 520
Witnesses, either party may have subpœnas for.... 516
arbitrators administer oath to.... 516
defaulting, fine and liability.... 518
pay of.... 520

Controversies in probate court.

Arbitration of controversies on settlement of estates of decedents.... 251
Arbitrators, number and qualification of.... 253
Award to be in writing and returned to court.... 254
if approved, entered of record; final and conclusive.... 254
when, to have effect of a judgment.... 255
may be set aside.... 256
objections to, proceedings thereon.... 257
Code, sections of applicable.... 258
Guardian may consent to, for ward.... 252
Minors, etc., guardian may consent for.... 252

ARCHIVES. SECTION
Certified copies of, to be furnished by secretary of state, received as evidence.. 1815
What are public archives..... 1815

ARMS.
Bond for, by commanding officer of company..... 2861
Governor to have mended at expense of state..... 2882
may issue to chartered institutions, when..... 2880
Right of citizen to bear, in defense of himself and state. Const., Art. I., §27, p. 66.
Selling or detaining, a misdemeanor..... 2881
When officer not liable for..... 2862

ARMY.
Military subordinate to civil authority.....Const., Art. I., §28, p. 67.
No appropriation for, for more than one year.....Ib.
No standing army kept without consent of general assembly.....Ib.
Quartering soldiers in peace and war.....Const., Art. I., §29, p. 67.

ARREST.
Of certain persons on election day..... 1634–1636
In what cases, prohibited.....Const., Art. I., §8, p. 62.
When electors privileged from.....Const., Art. VIII., §4, p. 88.
Writs of, for persons of unsound mind..... 2258

ARREST OF JUDGMENT.
Not allowed for defect or want of form..... 3330
Suit may be commenced within one year after..... 2806
When, not allowed, if complaint contains substantial cause of action..... 3333

ARTILLERY.
Battalion of, number of companies composing..... 2858
Battery, number of enlisted men in..... 2860
Regiment, number of companies composing..... 2858
Regiments, number of..... 2852

ASSAULT AND BATTERY.
Actions for, excepted from jurisdiction of justices..Const., Art. VI., §26, p. 86.
limitation of..... 2796
Form of complaint in actions for.....No. 18, p. 946; 3352
General assembly may authorize prosecutions for, before justices' and inferior courts.....Const., Art. I., §9, p. 62.
In prosecutions for, grand jury may be dispensed with by general assembly. Ib.
Jurisdiction of circuit court in civil actions for..... 918

ASSEMBLY.
Right of people to assemble for redress of grievances, etc. Const., Art. I., §26, p. 66.
Unlawful, general assembly may dispense with grand jury in prosecutions for— Ib., §9, p. 62.
See also General Assembly..... 2213–2240

ASSESSMENT OF TAXES.
See Taxation..... 3930–3992

ASSESSORS.
See Taxation..... 3922–3929

ASSIGNEES.
Assignor of negotiable paper, what necessary to charge..... 892–895
pays costs of suit against maker..... 896

ASSIGNEES—*Continued.* SECTION

Crops, of joint owner of, may have partition 3206
has lien 2760
Landlord, of, has remedy for enforcement of his lien 2706, 2720, 2721
Of judgment or decree entitled to execution 1928
also to scire facias to have same revived 1929
mechanic's lien has rights and remedies of original holder 2752
Railroad companies, of claims against, for injuries, to property, may be sued in their own name 877
Set-off against, except in case of negotiable paper 879

ASSIGNMENT.

By limited partnership, giving preference, void 3227, 3228
Contracts, of, in writing 876
Creditors, made to hinder, delay, or defraud, void as to 2156
of personal property in trust for grantor void as to 2150
Deeds, of breaches on implied warranty in 1035
Deemed genuine, unless denied by sworn plea ..... C. C. R. 29, p. 1200; 1801
Dower, of 1515–1528
General assignment, when, enures equally to benefit of all creditors 2158
taxes a preferred claim on 4116
Judgment, when to be assigned to surety 3888
Penal bond, of breaches on 3289
Purchase-money of land, assignment of note for, passes lien 878
Tax certificate, assignable 4067
Taxes, in case of general assignment, preferred claim 4116

ASSIGNMENT FOR BENEFIT OF CREDITORS.

Account—
trustee must render in three months and every six months after 4167
day appointed for settlement; notice, how given 4168
hearing and passing upon debits and credits 4169
stated and passed and distribution made as in insolvent estates 4169
allowance to trustee for expenses and commissions 4169
counsel preparing deed of assignment 4169
discharge of liens and prior claims 4169
provision for contested and undecided claims 4169
decree by register for each creditor's share; execution 4169
Administered, on petition, in chancery when over one thousand dollars in value 4158
Advertisement by register, of time fixed for filing claims 4160
trustee, of sale of real estate 4172
Appeal lies from decision of register to chancellor 4170
heard in term time or vacation on ten days' notice 4170
without any presumption in favor of register's decision 4170
lies from decision of chancellor to supreme court in thirty days 4170
Application to require trustee to give bond; contents; notice 4153
hearing of; when bond required; order by register 4154
Appraisers, appointment of; qualification; duties 4157
report of, to register; fees of, taxed as costs 4157
Bond; when required of trustee; proceedings 4152–4154
failure to give, as required; successor appointed 4155
execution against sureties on, when may issue 4169
Claims; docket of, to be kept by register; form and contents 4162
register must give notice to creditors of time fixed for filing 4160
how notice given; form 4160
must be presented within time prescribed 4161
verified as required by section 133 4161
duly filed, and not objected to, stand allowed 4163

ASSIGNMENT FOR BENEFIT OF CREDITORS—*Continued.* SECTION

Claims; if not presented, postponed until allowed claims paid 4161
objection to; when and by whom may be filed 4164
register must fix time for hearing and give notice 4165
heard before register; testimony; order 4166
Commissions to trustee or assignee 4169
Compromise or sale of bad and doubtful debts 4171
Deed of must be filed and recorded in office of judge of probate 1004
operates from date of delivery to judge 1004
reasonable charge for preparation of, allowed, when 4169
Dividends to be made and decreed, when 4169
Docket of claims to be kept by register; form and contents 4162
Evidence in proceedings before register to be noted 4170
Exception to action of register; review by chancellor 4170
General assignment; what instruments and acts amount to 2158
Inventory; two copies to be made by trustee and filed with register 4156
one copy to be attached to commission to appraisers 4157
preserved but not recorded 4157
and combined appraisement to be recorded 4157
Lands may be sold by trustee; notice to creditors 4172
Objections to creditor's claim—
when and by whom may be filed in writing 4164
register must fix time for hearing and give notice to creditor 4165
hear and note testimony and pass upon claim 4166
exceptions; review by chancellor; appeal to supreme court 4170
Petition to have trust administered in chancery; jurisdictional amount 4158
who may file; where filed; contents 4158
submitted to chancellor with inventory and appraisement 4159
time fixed by chancellor for filing claims 4159
Powers of sale in deed of, exercised by assignee 4172
Settlements; trustee to make, when 4167
compelled by citation 4173
removed for failure, when 4173
Taxes a preferred claim, to be paid from first money received 4116
Testimony on hearing before register to be noted 4170
Trustee; required to give bond, when, removed for failure 4152–4155
to make and file duplicate inventory of trust property 4156
may file petition to have trust administered 4158
must render accounts to register, when 4167
sale of real estate by; notice 4172
settlements by; when and how compelled 4173

ASSISTANT.

Adjutant-general, appointment of; rank; duties of 2853, 2854
of brigade; rank; duties of 2856, 2857
Clerk of house of representatives 2233, 2234
Examiners of public accounts 1876–1879
Health officers 2437
Marshal and librarian of supreme court 3846, 3847
Registrars of election 1561–1564, 1566, 1570–1572
Reporters of decisions of supreme court 3865
Secretary of senate 2233, 2234

ASSOCIATE JUSTICES.

Supreme court, *see* 3825–3841

ASYLUM.

Insane Hospital, *see* 2544–2574

ATTACHMENTS. SECTION

Issue of.

Administrators and executors may sue out 543
Affidavit required 527
when additional, required 529
and bond, return of 537
Bond, with surety, also required 528
and affidavit, return of 537
Branch writs of, may issue to any county 545
Corporations, foreign or domestic, may sue out 533
foreign, security for costs by 534
private, provisions applicable to 539
affidavits or answers of, by whom made 539
Demands, on what, issued 524
Exemption, indorsement of waiver of 2108
Executors and administrators may sue out 543
Foreign corporation, security for costs by 534
against 535
Form of, no objection for defect in 536
Grounds, on what, issued 525
Non-resident, by, against another 530
defendant, notice of issue and levy to 531
security for costs by, or foreign corporation 534
Notice of issue and levy to non-resident defendant 531
levy to resident defendant 532
Officers, by what, issued 526
Security for costs by non-resident, or foreign corporation 534
Sunday, when issued and levied on 538
Winner at gambling may be garnished by creditor of losing party 2166–2168
Writ, form of, no objection for defect in 536
branch, may issue to any county in the state 545

Executed, in what manner and on what property.

Attorneys or officers, money in hands of, may be garnished 2180
Bond of indemnity, when, may be demanded of plaintiff 554
Branch writs of, may issue to any county 545
Constable may levy, when 547
Corporations, shares of stock of, subject to levy and sale 1265
levy, sale, and proceedings thereon 1265
Crops, growing or ungathered, not subject to levy; exception 1891
Debts or demands in suit subject to garnishment; execution stayed, when 2177
Defendant, when money to be paid to 552
Executed in any county 544
Garnishment, debts or demands in suit, subject to; when execution stayed 2177
executors and administrators subject to, for debt due by decedent 2178
debts due legatees or distributees 2179
officers or attorneys, money in hands of, subject to 2180
trustee, money in hands of, subject to 2181
new writs, of 546
Levied, how and on what property 540
when, by garnishment, garnishee cited to answer 541
on joint or separate estate of joint obligors, etc 542
by constable, when 547
when may be on Sunday 538
Lien, attaches from what time 548
Officers and attorneys, money in hands of, may be garnished 2180

ATTACHMENTS—*Continued.* SECTION

Executed, in what manner and on what property—*Continued.*

Perishable property, sale of, under order of court, when ... 549
when, without order of court ... 550
proceeds of, recovered of sheriff by motion, etc ... 553
Plaintiff, when proceeds of sale, pending suit, paid to ... 551
bond of indemnity may be demanded of ... 554
Refunding bond, when, executed by plaintiff ... 551
proceedings on forfeiture of; money paid defendant, when ... 552
Sale of perishable property under order of court ... 549
without order of court, when ... 550
proceeds of, when, may be received by plaintiff pending suit ... 551
received by sheriff, recovered by plaintiff or defendant, when ... 553
Sheriff, how proceeds of sale, etc., recovered of ... 553
Sunday, when, may be executed on ... 538
Writs of, branch, may issue to any county, etc ... 545
alias ... 546

Replevy of property.

Bond, replevy, to whom payable; conditions ... 555
forfeiture of; execution thereon ... 556
Defendant or stranger may replevy goods or chattels ... 555
If property dies, or is destroyed, etc., tender of value, etc ... 557
Tender, if, refused, obligors may obtain relief by supersedeas ... 557

Ancillary attachments and garnishments.

Attachment may issue when resident defendant evades service of summons ... 559
proceedings in such cases ... 560
Ancillary garnishment, special affidavit for ... 2173
Corporation, subscription to stock in, subject to garnishment ... 2182
Defendant, resident, evades service of summons, attachment may issue; proceedings ... 559, 560
Garnishments upon decrees in probate court, when ... 3372
in aid of such decrees, when ... 3376, 3377
representatives and sureties, in aid of decrees against ... 345, 346
guardians, their sureties, etc ... 2349
mechanic's lien, in suits for enforcement of ... 2743
agricultural laborer's lien, in suits for enforcement of ... 2770
decrees in equity, on ... 772
state, in favor of, when ... 3758
taxes, in aid of collection of ... 4014–4016
on judgment, or in pending suit ... 2172
judge of probate, authority of, to issue, etc ... 3372
Judge of probate, authority of, to issue garnishments, etc ... 3372
Pending suit, attachment in aid of ... 558
garnishment in aid of, or on judgment, when ... 2172
bond required ... 2174
Subscription for stock in corporation may be garnished ... 2182

Answer of garnishee and proceedings thereon.

Answer of garnishee; when and how made; oral examination ... 2187
corporation; by whom made ... 2190
contest of, by plaintiff ... 2196
defendant ... 2197
judgment on, when answer not sustained ... 2198

ATTACHMENTS—*Continued.* SECTION

Answer of garnishee and proceedings thereon—*Continued.*

Answer, judgment on; when execution suspended 2191
demand payable in personal property, etc 2192
judgment and proceedings on, admitting possession of effects 2193
when garnishee admits possession of money 2194
Claim of exemption to money and choses in action garnished; contest 2059
Court may order money loaned pending suit 2189
Garnishee recovers his costs on a discharge; execution 2206
proceedings on death of, or contestant 2207
when, may pay fund into court 2188
Judgment of condemnation, effect of, as between garnishee and defendant 2185
On suggestion of claim by another, in answer of garnishee, claimant made party 2199
proceedings to try such claim 2200
if contestant non-resident, proceedings stayed; proceedings 2201
resident, judgment on return of two notices "not found" 2202
such collateral issues do not affect jurisdiction 2203
bills of exceptions in such cases 2204
appeal to supreme court; in whose favor lies 2205
Nature of garnishment declared 2171
Proceedings on failure of garnishee to answer 2195

Pleadings, trial, judgment and execution.

Abated when 563
when cannot be 564
Affidavit, amendment of 564
Amendment of affidavit, bond or writ 564
Appeal, by consent, only, from certain interlocutory judgments 430
Bond, affidavit and writ, amendment of 564
suits on, when; damages recoverable 565
venue of 566
Complaint, time of filing 561
Damages, recoverable on bond; when 565
Execution or venditioni exponas, when property sold under 570
Executors and administrators, no judgment against until after twelve months, etc 569
Exemption, claim of, proceedings when waiver not sustained 2109
Grounds of issue of, not traversable 565
Judgment by default or nil dicit, when 562
not rendered until trial of collateral issues 567
against personal representatives, when 569
process for satisfaction of, when property insufficient 570
Law must be liberally construed 564
Motion to quash to be made at first term ..... C. C. R. 13, p. 1197.
Practice in attachment suits 562–564
Process for satisfaction of judgment, when 570
Property sold under execution or venditioni exponas, when 570
Trial of right of property, interposition of claim for, proceedings 568
attached 4141–4151
Trial-term 561
Venue of suits on bond 566
Writ of, amendment of 564
inquiry, may be executed, when 562

ATTACHMENTS—*Continued.* SECTION

For enforcement of designated liens.

Agricultural superintendents and laborers, and railroad employes, in favor of 2765–2773
Blacksmiths, wood-workmen and other mechanics, in favor of 2754–2757
For stumpage (owners of land for timber sold, etc.) 2781–2783
Landlords for rent of farm-lands, and advances 2708–2715
article applies to tenant in chief and subtenant 2715
for rent of storehouses and other buildings 2717–2721
lien and remedy vest in assignee 2721
Owners of booms and bulkheads 2785–2787
Owners of stallions, jacks, bulls, rams, he-goats and boars 2777–2779
Public ginners, in favor of 2789–2792
Tenant in common on crop, in favor of 2760, 2761

Equitable attachments.

Answers, levy, etc., powers of chancellor in vacation as to 763
Bill, copy of, to be served with summons, when 766
Bond, replevy, to be returned 768
execution on, when property not delivered 770
Chancellor, powers of, in vacation as to answers, levy, etc 763
Creditor, when, may intervene in suit commenced by surety, etc 783
Debt or demand, not necessary to reduce to judgment before suing out; decree, etc 765
Dissolved, when may be, if sued out by indorser, or surety, etc 781
Equitable debts and demands, for enforcement of; proceedings 762
Execution on replevy bond, when 770
Legal demand, on, to subject equitable effects 764
Lien, attaches from what time 769
Orders for issue of, by whom made 771
Property to be specified in writ 766
replevy of 767
Register, duty of, to issue 657
may dissolve, when 781
money arising from sale of property to be paid to 771
Replevy bond to be returned 768
execution on, if property not delivered 770
Replevy of property attached 767
Sale of personal property, etc., orders for, by whom made 771
proceeds of, to be paid register 771
State, in aid of suit by, when 3758
Surety, etc., in written contract, for benefit of 780
when decree in favor of 782
when creditor may intervene 783
Writs of ne exeat and attachment, orders for issue of; by whom made 771
Orders for applied for before register ..... Ch. R. 4, p. 1203.
no notice required ..... Ib. 5, p. 1203.
Alias or pluries writ may issue ..... Ib. 26, p. 1208.
Bond on appeal for restoration of, when levy discharged ..... Ib. 87, p. 1221.

Issued by justices of the peace.

Code, provisions of, applicable to issue, levy and trial of, by 572
Debts or demands, for what, issued, and in what cases 571
in any court of record, cannot be attached 575
Defects, what, cured by appeal 489
Execution for balance of judgment unsatisfied, when 578
on forfeited bond 577

ATTACHMENTS—*Continued.* SECTION

Issued by justices of the peace—*Continued.*

Form of 573
Garnishee, answer of, to be in writing, etc., evidence on appeal 2209
contest of, and collateral issues tried without jury, when 2210
when property in hands of, not sufficient; execution..... 578, 2211
Garnishment, provisions applicable to issue and trial of..... 572, 2208
Grounds of 571
Judgment, execution for balance of, when 575, 2211
sale of property attached before, when..... 576
Lands, notice of levy on; how given; papers returned to circuit court..... 574
sale of when garnishee answers indebtedness for purchase-money; proceedings..... 2212
Levy on real estate, notice of, how given..... 574
Money in hands of sheriff and other executive officers of court not subject to.. 575
Property, what, may be sold before judgment..... 576
replevied to be delivered, when; execution on forfeited bond..... 577
Real estate, notice of levy on; papers returned to circuit court..... 574
sale of, when garnishee answers indebtedness for purchase-money; proceedings..... 2212
What cannot be attached..... 575

For enforcement of decrees, orders, etc.

Account of sales, return of, by executors and administrators compelled by.... 153
Answer in chancery, in certain cases, compelled by—
Ch. R. 24-26, pp. 1207, 1208; 692-695
Award made by arbitrators, performance of, enforced by..... 514
Courts of chancery may enforce their decrees, orders and rules by..... 852, 855-857
Delivery of specific property recovered compelled by..... 1483
Settlements by executor and administrator compelled by..... 223, 288
Witnesses, attendance of, before justice, compelled by..... 2685
in civil suits, etc., compelled by..... 1828

ATTAINDER.

No conviction shall work corruption of blood, or forfeiture of estate—
Const., Art. I., §20, p. 64.
No person shall be attainted of treason by the general assembly.....Ib.

ATTENDANCE.

Of witnesses, how secured..... 1824-1832

ATTESTATION.

Of deeds..... 982, 984
mortgages..... 982, 2151
wills..... 4263

ATTORNEY-GENERAL.

Constitutional provisions.

Compensation to be fixed by law, and not changed during term of office—
Const., Art. V., §7, p. 79.
Duties of, constitutional provisions as to—
Const., Art. V., §24, p. 82; Art. VI., §27, p. 87.
Election of, constitutional provisions as to—
Const., Art. V., §§3, 4, p. 79; Art. VI., §27, p. 87.
Executive department, one of.....Const., Art. V., §1, p. 78.
Impeachment, grounds of.....Const., Art. VII., §1, p. 87.
Increase of salary; what vote required.....Const., Art. XI., §8, p. 96.
Qualifications for office.....Const., Art. V., §19, p. 81.

ATTORNEY-GENERAL—*Continued.* SECTION

Constitutional provisions—*Continued.*

Residence of, constitutional provisions as to—
Const., Art. V., §7, p. 79; Art. VI., §27, p. 87.
Term of office of.....Const., Art. V., §5, p. 79; Art. VI., §27, p. 87.
The law-officer of the state.....Const., Art. VI., §27, p. 87.
Vacancy filled by governor.....Const., Art. V., §23, p. 82.

Statutory provisions.

Bond; by whom approved; where recorded; where filed..... 2027
additional, may be required of, when..... 2027
Claims due the state, authority, with others, to compromise..... 3753, 3754
Clerk, may appoint; salary of..... 2030
Commissioned, to be..... 3058
Counting of election returns sent secretary of state, to be present at..... 1647
Domestic insurance company, application by, for injunction against, when..... 2580
Dueling oath, required to take..... 3062
Duties of, general.....Const., Art. V., §24, p. 82; Art. VI., §27, p. 87; 2028
Election of.....Const., Art. V., §§3, 4, p. 79; Art. VI., §27, p. 87; 1573–1575
Fees and commissions to be paid into state treasury..... 2032
Fertilizer-tags, must be present at destruction of, and certify to same..... 383
institute suit against commissioner of agriculture for, when..... 385
Foreign corporations; duty of as to enforcing penalties against..... 1320
May institute and prosecute civil actions to protect interest of the state..... 2029
appoint clerk; salary of..... 2030
Notes for school lands to be placed with, for collection..... 3655
Oath of office.....Const., Art. XV., §1, p. 103; 3062
where filed..... 3064
Presidential electors, to be present when governor estimates election returns for 1655
Revenue laws, duty of, to construe for auditor..... 4109
certificates of purchase and tax deeds, forms of, furnished auditor by..... 4076
Representatives in congress, to be present when governor estimates election returns for..... 1655
Room in capitol to be assigned to..... 1956
Salary of..... 2031
State board of assessment, must attend meetings of..... 3970
tie vote decided by..... 3971
dissent by, from majority of, reasons for spread upon record..... 3971
Suits, may institute and prosecute for state..... 2029
Tax deeds and certificates of purchase, forms of, furnished auditor by..... 4076

ATTORNEYS.

Actions against, for failure to pay over money, or neglect, limitation of..... 2796
Admission of, to bar of supreme court.....S. C. R. 24, p. 1190.
Appeal from judgment of removal or suspension..... 610
Argument of causes in circuit court..... 3311
Authority to bind client by agreement, etc..... 592
appearance without, proceedings on..... 593
proof of, to appear, when required; how made..... 594
to take from court file of pending suit.....G. R. 5, p. 1186; 2646
Clerk of circuit court or his deputy not to practice, where..... 591
city court or his deputy not to practice, where..... 591
judge of probate not to practice, where..... 591
Compensation of, when acting as special chancellor..... 649

ATTORNEYS—*Continued.* SECTION
Costs of suit, when liable for 1349
in proceedings for removal or suspension 608
security for, when required in proceedings for removal, etc 607
Duties of ..... Note, sec. 12, p. 258; 590
Employment of, by governor to represent state, etc 671, 3762
superintendent of education ..... Subd. 12, 3546
county superintendent of education 3805
Fees allowed to, when, in suits against railroads for extortion 3460
Graduates of University of Alabama admitted without license—
S. C. R. 23, p. 1190.
License to practice, extent of ..... Note, sec. 5, p. 257; 580
application for ..... Note, sec. 1, p. 257; 582
examination of ..... Note, sec. 2, p. 257; 583
order for, to be entered ..... Note, sec. 5, p. 257; 584
supreme court may appoint committee to examine applicant for 586
Licensed, who may be ..... Note, secs. 1, 5, p. 257; 581
minors may be, by chancery, circuit or city court. Note, sec. 9, p. 258; 585
precluded from pleading infancy, etc .... Note, sec. 9, p. 258; 585
Money in hands of, may be garnished 2180
summary proceedings for, or property recovered 3810, 3811
Notice may be served on, in chancery 712, 789
to, as effectual as to party 3312
Oath of ..... Note, sec. 8, p. 257; 587
penalty for practicing before taking ..... Note, sec. 10, p. 258; 588
presumptive evidence of right to appear for client 594
Officers, what, and deputies disqualified from practicing 591
Official bonds, when not competent sureties on 3077
Papers, restrictions upon use of by ..... G. R. 5, p. 1186; S. C. R. 20, p. 1190.
Party may manage his own cause ..... Note, sec. 11, p. 258; 589
Penalty for practicing before taking oath ..... Note, sec. 10, p. 258; 588
Practice, who may 579
when attorney of another state may 611
Register in chancery, his deputy, or partner not to practice, where 591, 667
Removal of, causes for 595
Removal or suspension of, causes for 596
proceedings for, at whose instance 597
in whose name conducted 606
on death of informant 609
by Bar Association 598
charge to be in writing 599
sworn to 600
cited to answer 601
in default of appearance, charge examined, etc 602
answer 603
after demurrer overruled ... 604
how tried, by jury, when 605
testimony, how taken; security for costs 607
costs, judgment for 608
acquittal final; appeal from conviction 610
Restrictions upon use of papers by, in supreme court ..... S. C. R. 20, p. 1190.
Right to prosecute or defend by counsel protected .... Const., Art. I., §11, p. 63.
Special judge or chancellor, compensation when acting as 929, 651, 649

ATTORNEYS—*Continued.* SECTION

Special judge, when appointed as, of circuit, chancery, or city court—
Const., Art. VI., §18, p. 85; 928, 650, 945
probate court..... 3381, 3382
Supreme court may appoint committee to examine applicant for license..... 586
examination in, time for.....S. C. R. 21, p. 1190.
extent of.....Ib. 22, p. 1190.
University of Alabama graduates admitted without license.....Ib. 23, p. 1190.

Rules of practice as to.

Abandonment of causes.....G. R. 3, p. 1185.
Appearances; how entered; who may appear.....Ib. 1, 2, p. 1185.
Pleadings and briefs signed by.....Ib. 4, p. 1186.
Circuit court.....C. C. R. 14, 18, 19, pp. 1197, 1198.
argument of causes in..... 3311
costs, attorney may be security for, but not bail for client—
C. C. R. 5, p. 1196.
Supreme court.....S. C. R. 5-14, 25, 31, pp. 1188, 1189, 1191, 1192.

ATTORNMENT.

Of tenant dispensed with..... 1019
On redemption, notice to tenant dispenses with..... 3506

AUCTION.

Tax on gross amount of sales at..... Subd. 1, 3912

AUCTIONEER.

License required of..... Subds. 34, 41, 4122
Memorandum of, takes sale of lands without statute of frauds..... 2153
Tax on gross amount of sales by..... Subd. 1, 3912

AUDITOR.

Constitutional provisions.

Compensation to be fixed by law, and not changed during term of office—
Const., Art. V., §7, p. 79.
Duties of, constitutional provision as to..... Ib. §24, p. 82.
Election of, constitutional provision as to..... Ib. §§3, 4, p. 79.
Executive department, one of..... Ib. §1, p. 78.
Fees of office to be paid in advance into state treasury..... Ib. §25, p. 82.
Impeachment; grounds of..... Const., Art. VII., §1, p. 87.
Increase of salary; what vote required..... Const., Art. XI., §8, p. 96.
Not to receive any fees, etc., other than salary..... Const., Art. V., §25, p. 82.
Qualifications for office..... Ib. §19, p. 81.
Residence of.....Const., Art. V., §7, p. 79.
Term of office.....Ib. §5, p. 79.
To make reports to governor.....Ib. §24, p. 82.

Statutory provisions.

Accounts against state to be itemized and verified..... 2008
Additional bond may be required of, by governor..... 3110
clerical assistance, appropriation for..... 1998
Approves contracts by secretary of state under Art. IV., §30, of Constitution.. 1978
for public printing..... 3392
publication of general and public laws in newspaper... 3401
Bonds and securities belonging to, or under control of state, deposited with... 2012
Bond of; by whom approved; where filed..... 1993
Books, accounts, etc., subject to examination by examiner of public accounts.. 1876

AUDITOR—*Continued.* SECTION

Statutory provisions—*Continued.*

Chancellor, must deduct from salary of, etc., when 652
Chief clerk, official acts of, presumption as to, etc 2000
Circuit judge, must deduct, etc., from salary of, when 930
Claims against the state, verification of 2009
may require proof of 2003
authority of, with others, to compromise, in favor of state 3753, 3754
Clerks of, their salaries, qualifications and duties 1998, 1999
may be removed by 1998
term of office of 2001
Commissioned, must be 3058
Compromise of claim in favor of state, authority, with others, to 3753, 3754
Contingent fund, how money paid from 2004
Copies of papers, records, etc., in office of, evidence 1816
relating to tax matters, etc., evidence 4119
Counting of money in treasury, may be required to be present at 1876
Defaulter, must not draw warrant in favor of 2006
Dueling oath, required to take 3062
Duplicate warrants, when required to issue 2010
Duties of, general 1995
Examination of office of, by legislative committee 2218–2220
Fees to be collected by, and paid into state treasury 1996
Fertilizer-tags, duty as to having printed, etc 382
commissioner of agriculture must be charged with 382
credited with, on certificate of certain officers 383
account for, when certified to attorney-general for suit 385
Fiscal year 2011
Insurance companies, foreign fire, fire and marine, etc., duty as to licensing 2615–2618
Keeper of bonds approved by governor 2002
and securities belonging to state, etc 2012
Licenses, duties as to collection of, etc 4125, 4131, 4132
forms of, prepared by; blanks furnished judges of probate 4129
copies of reports of, to be furnished solicitors by 4133
money for, when and how refunded 4135, 4136
License-tax against railroads, how ascertained; duty as to 3489
Mutual aid associations, duties as to 1117–1119
Oath of office ..... Const., Art. XV., §1, p. 103; 3062
filed with secretary of state 3064
Official acts of chief clerk, presumption as to, etc 2000
Office of, under supervision of governor 1997
Public-school fund, duties as to 3540
apportionment and disbursement of, duties as to 3601–3623
Railroad and telegraph companies, assessments against, duties as to 3964–3976
Redemption of lands sold for taxes, duties as to 4090–4105
Revenue, not to receive, unless expressly authorized 2007
laws, duty as to enforcement of 4109–4115
to be printed in pamphlet for distribution 4112
Room in capitol to be assigned, by governor 1956
Salary of, and fees to be collected by 1996
Seal of office, device of 1994
State board of assessment, member of 3966
bonds redeemed or paid, must be registered in office of 2005
treasurer, bond of, to be filed with 2013
resigned or removed, records statement of settlement of 2014
states account against, and delivers books, etc., to successor, when 2015
Summary proceedings in favor of, against clerks of circuit court 3792–3794

AUTHORITY, JOINT. SECTION

May be exercised by majority 3

AUTOPSY.

Judge of probate may order analysis of stomach when poison suspected 3368

AWARDS.

Arbitration and award, *see* 508–523

BAIL.

Attorneys cannot become for clients ..... C. C. R. 5, p. 1196.
Right of declared; exception ..... Const., Art. I., §17, p. 64.

BAILIFFS.

Constables summoned to act as; compensation 925, 926

BALLOTS.

Assistance to electors in preparing, when 1623
Attachment to get possession of, in contest of election 1699
Bound in book or block; stub attached to 1612
Candidates' names printed on, etc 1607
Cards of instruction for electors as to; must be printed 1617
Constitutional amendments; how printed on 1608
Contests of election, in what, may be examined; attachment to get possession of 1699
Counting of 1637
manner of 1638
Description and contents of 1607
Form of 1611
Judge of probate, duty of, relative to printing 1606
failing to perform duty as to, duty discharged by circuit clerk 1614
Mode of preparing, by elector 1622
casting 1625
Municipal elections; when mayor to provide for printing and distribution of .. 1615
Number of, for each voting-place 1613
Pay for printing and delivery of, and cards of instruction; by whom 1609
Poll-lists and ballots; how disposed of 1639, 1640
Rejected, when, marked and laid aside 1632
must not be for technical errors, etc 1638
Vote by, at all elections by the people ..... Const., Art. VIII., §2, p. 88.
Voting shall be by secret official ballot 1605
When elector spoils, how another obtained 1624

BALLOT-BOXES.

Number of, by whom provided 1587

BAGATELLE-TABLE.

License for ..... Subd. 13, 4122

BANKS AND BANKING.

Banks of deposit and discount—
how incorporated 1085
stockholders, number; amount of capital stock 1086
declaration filed with probate judge; contents 1087
certified copy of, filed with secretary of state 1088
powers of corporation 1089
board of directors 1090
capital stock may be increased or decreased 1091
existing banks or loan associations may reorganize, when 1092
having capital less than fifty thousand dollars may increase and reorganize 1093

BANKS AND BANKING—*Continued.* SECTION

Banks of deposit and discount—*Continued.*
certificates of deposit not to be reissued 1094
married women and minors, deposits by 1095
Bills and notes issued as money redeemable in gold and silver—
Const., Art. XIV., §16, p. 102.
Counterfeit bank-notes may be defaced 1098
Discounting paper at more than eight per cent. forfeits all interest 2631
Foreign bank, how, must exercise privilege of banking 1096
General assembly prohibited from incorporating banks to issue bills of credit, etc., except under conditions prescribed by constitution—
Const., Art. XIV., §14, p. 102.
Holders of bank-notes and depositors entitled to preference, when—
Const., Art. XIV., §17, p. 102.
Interest, rate of, no greater than allowed to individuals—
Const., Art. XIV., §19, p. 102.
banker discounting paper for more than eight per cent. forfeits all... 2631
Limit of corporate existence, unless extended; exception—
Const., Art. XIV., §18, p. 102.
Not to be established except under general banking law and upon specie basis—
Const., Art. XIV., §15, p. 102.
Penalty for failing to comply with law 1097
Specie payment, no law to be passed sanctioning suspension of—
Const., Art. XIV., §16, p. 102.
State prohibited from being stockholder in.....Const., Art. XIV., §20, p. 102.
credit of, shall not be given or loaned to bank—
Const., Art. XIV., §20, p. 102.
Taxation of shares in, and property of; how taxed; where assessed and collected .....Subd. 8, 3911

BARGAIN.

When covenant of warranty implied from use of, in conveyance 1035

BARLEY.

Weight per bushel, forty-seven pounds 4240

BASTARDS.

Divorce for pregnancy bastardizes issue 1499
Incestuous marriages, provisions against apply to 2838
issue of, when not illegitimate 2840
Inherit from mother 1459
Marriage of parents legitimates when recognized by father 364
Mother or kindred on her part inherit from 1460
Proceedings to legitimate; effect of 365

BATTERY.

Assault and battery, *see* 918, 2662, 2796

BEANS.

Weight per bushel, sixty pounds 4240

BELL.

Duty of engineer of railroad locomotive to ring, when 3440

BENEFICIARY.

Action for use of, not abated by death of nominal plaintiff 30
Considered sole party on the record 29
When beneficial owner must sue 28

BENEVOLENT SOCIETIES. SECTION

Incorporation and powers 1302–1304
Service of process and papers, how made 1305

BETTING.

Any person may recover money paid on, for use of wife, etc., of another 2164
Gambling contracts void, and money may be recovered 2163
Garnishment bars another suit 2167
a prior judgment bars 2168
One judgment bars other suits for the same cause 2165
The winner may be garnished by a creditor of losing party 2166
The answers of the parties do not subject them to prosecution 2169

BICYCLES.

Subject of taxation ..... Subd. 5, 3911

BILL IN CHANCERY.

Addressed to chancellor of the division 673
District, in what, to be filed 676
Frame of bill 677
Filing bill is commencement of suit when prosecuted 675
Multifariousness, objection for, raised only by demurrer 678
Waiver of oath to answer 679

BILL OF DISCOVERY.

Answers to such bills compelled 816
not evidence on indictment 817
Collusive judgment as ground for 815
Creditors without lien may file to subject property fraudulently conveyed 818
Examination of debtor 822
Judgment creditor may file to enforce collection of judgment 814
of corporation may file against stockholders 823
and simple contract creditors may file jointly 819
Orders and decrees 821
Several creditors, with or without liens, their assignees, may join in 820

BILLS OF EXCEPTIONS.

Agreement of parties as to signing 616–619
Arbitration proceeding, in 522
Charge in writing, special, exception to giving or refusing, presumed, when ... 613
Contents of; tendered by aggrieved party 615
if correct, duty of judge to sign; becomes part of record 615
Establishment of, in supreme court, when ..... S. C. R. 44, p. 1194; 621
when vacancy in office, etc., or judge does not sign, etc 622
Garnishment proceedings, on trial of collateral issues in 2204
Judgment, on application to set aside, or to enter, or set aside satisfaction of, or to amend, etc 3339
Nonsuit, plaintiff suffering, may take 614
On trial without jury, when 3321
Probate court, in 465–467
Questions reserved by 612
Refusal to sign, a high misdemeanor 621
Remedial writs, on application for 2828
Signed, when to be ..... C. C. R. 30, p. 1200; 616
in vacation by order of court, when 617
agreement, when 618
Time fixed by court, or judge for signing, may be extended by agreement 619
extension of, not to exceed six months 620

BILLS OF EXCHANGE AND PROMISSORY NOTES. SECTION

Acceptance of, to be in writing ... 880
written promise to accept, when an ... 881
may be required to be written on the paper; effect of refusal ... 882
refusal to return bill in twenty-four hours is an acceptance ... 884
authority of notary to demand, and payment of negotiable paper ... 3025
Actions on; in whose name brought ... 28
lost note, bill, etc ... 31
limitation of ... 2795, 2796
statute not applicable to paper issued as money ... 2824
form for complaint in ... Nos. 1–6, pp. 942, 943; 3352
Bank-notes; counterfeits may be defaced ... 1098
Bonds, state, county, municipal and corporate, when assignable without indorsement ... 875
Change-bills, bank-notes, etc., provisions in reference to ... 867, 868, 1098
Choses in action not within registration statutes ... 1002
Commercial law, what instruments governed by ... 869
other instruments governed by, as to grace, protest and notice ... 870
Costs, when recoverable against assignor or indorser ... 896
Damages for breach of promise to accept ... 883
on protested bills ... 885
include all charges except interest and protest fees ... 886
cover exchange, if bill payable in our currency ... 887
exchange added if bill payable in foreign currency ... 888
on protest for non-acceptance ... 889
Equitable attachment in favor of indorser, etc ... 780–783
Grace, days of, on what instruments not allowed ... 871
Holidays, papers due on, due next succeeding business day ... 872
Indorsement, what paper assignable by ... 876
state, county, municipal and corporate bonds, when negotiable without ... 875
Inland and foreign bills defined ... 873
Issued to circulate as money; effect of ... 866
suits on, rate of interest ... 866
Justice of peace, when may act as notary public ... 3031
Limitation of actions on ... 2795, 2796
statute not applicable to paper issued as money ... 2824
Lost note, bill, etc., action on ... 31
Notary public, authority of, to demand acceptance and payment of negotiable paper ... 3025
protest for non-acceptance or non-payment and give notice ... 3025
certificate of, as evidence ... 3030
when justice of peace may act as ... 3031
fees of, for protest, etc ... 3033
Notice of protest, where sent, etc ... 890
personal, when not necessary ... 891
Payable, to whom, if expressing other than real payee, etc ... 874
Purchase-money of land, transfer of paper given for, carries lien ... 878
Railroad companies, claims against, for injuries to property, may be assigned ... 877
Set-off, etc., against non-negotiable paper ... 879
when negotiable paper not subject to, or recoupment ... 3733
Suit necessary to charge indorser, etc., on non-negotiable paper ... 892
time for bringing, may be extended or waived ... 893
excuse for not bringing, obtaining judgment, etc ... 894
applies to irregular indorsements or assignments ... 895
costs recoverable against assignor or indorser ... 896

BILL OF LADING. SECTION
See WAREHOUSEMEN AND COMMON CARRIERS 4218–4223

BILL OF PARTICULARS.
In actions on accounts defendant entitled to list of items 3290

BILL OF REVIEW.
Application for, when to be made 761
Decree may be suspended on presenting; bond and decree thereon 760

BILL OF REVIVOR.
Defendant entitled to, when; mode 722
Rule for in equity ..... Ch. R. 103, p. 1224.
Suit or decree may be revived for costs ..... Ch. R. 107, p. 1226.
Supplemental bills and bills of revivor, recitals and contents of— Ch. R. 104, p. 1225.
proceedings and practice in relation to ..... Ch. R. 105, p. 1225.
When allowed for costs against representative, on death; proceedings— Ch. R. 107, p. 1226.

BILLIARD-TABLES.
License required, when kept in connection with barroom or saloon .. Subd. 10, 4122
elsewhere and use charged for ..... Subd. 9, 4122

BIRTH.
Attending physician or midwife must report to county health officer 2438
Register of births to be kept and annual report to be made 2436, 2430

BLACKSMITHS AND WOOD-WORKMEN.
Attachment to enforce lien; affidavit; bond 2754
Joinder of persons having liens on same property 2755
verdict, judgment and distribution 2755
Proceedings when one or more fail to join in action 2756
Lien declared 2753
Limitation, six months 2757

BLANKS.
Furnished at expense of county, to clerk of circuit court 940
county treasurer 1431
judge of probate 3384
register in chancery 661
registrars 1568
sheriff 3747
tax-assessor 3929, 4120
tax-collector 4120
state, to the several departments 1978, 3385
supervisors of election returns 1646

BLIND.
Alabama Institute for the, *see* 3712–3719

BLOOD.
No conviction shall work corruption of ..... Const., Art I., §20, p. 64.
distinction against heirs of half-blood; exception 1457
Whole preferred to half blood in grant of administration 59

BOARD OF EDUCATION.
Cancellation of teacher's license for intemperance, etc., by 3588
Diploma from chartered institution in this state; effect of 3585
Examination of applicants for license to teach in public schools 3585

BOARD OF EDUCATION—*Continued.* SECTION
Fee for examination; how divided 3585
How constituted 3583
Meetings of board 3584
Normal-school graduates holding state certificates not examined by 3586
Register of licenses issued and cancellations to be kept by 3587
Vacancies, how filled 3583

BOARD OF DENTAL EXAMINERS.
Dentists, *see* 1444–1452

BOARDS OF HEALTH.
Health and quarantine, *see* 2423–2442

BOARD OF MEDICAL EXAMINERS.
Physicians, *see* 3260–3267

BOARD OF PHARMACY.
Pharmacists, *see* 3248–3259

BOARS.
Lien in favor of owners of, for season; proceedings to enforce 2776–2779

BOATS.
Assessed for taxation, when ..... Subd. 3, 3911
Damages for injuries to; limitation 4217, 4140
License for retailing on ..... Subd. 2, 4122
buying, selling, etc., merchandise on ..... Subd. 35, 4122
Lien for victualing, repairing, wages, wharfage and dockage 2758
lost if not enforced in six months 2759

BONDS.

Official.

All official bonds to be recorded 3084
Amount, approval, record and filing of bond—
attorney-general 2027
clerk of circuit court 931
clerks in department of agriculture 373
clerk of supreme court 3857
commissioner of agriculture 370
constable 974
coroner 1075
county superintendent 3552–3554
county surveyor 3891
county treasurer 1428
deputy insurance commissioner 2577
judge of probate 3357–3358
justice of the peace 2661
marshal of supreme court 3851
notary, commercial 3024
notary, ex officio justice 3037
register in chancery 654
secretary of state 1975
sheriff 3735
state auditor 1993
state treasurer 2013
superintendent of education 3543
tax-assessor 3923
tax-collector 3994
Approved by governor, except auditor's bond, filed with auditor 1971

BONDS—*Continued.* SECTION

Official—*Continued.*

Attorneys, on what bonds not sufficient sureties 3077
Auditor, duty of, to keep, in iron safe or vault 2002
bond of, by whom approved; where filed 1993
time of filing, with secretary of state 3080
time of filing bonds with 3080
By whom approved 3079
Conditional execution or delivery no defense 3090
to what bonds applicable 3090
County officers, bonds of, may be declared insufficient on petition of freeholders, etc 3119
bond and affidavit required of applicants, etc 3123
day appointed for hearing; notice; order for new bond 3120
where application, order, etc., filed 3121
upon failure to make new bond, office declared vacant 3122
vacancy, by whom and to whom certified 3122
Date of approval of, to be indorsed 3071
filing of, to be indorsed 3074
Deputy insurance commissioner required to give 2577
Directions as to payee, penalty and conditions when not otherwise provided ... 3070
Failure to file vacates office 3085
notice of, must be given solicitor of circuit, etc 3086
Guarantee companies may execute official bonds 3092
Judge of probate, of; where recorded; where filed 3358
liability of, and sureties for neglect in taking bonds 3359
in taking, from guardians 2283
personal representatives 76
for failure to pay over money collected, etc 3369
who may sue on bond of 3359
Legal effect and obligation of 3087
Liability of sheriff and sureties for acts as constable 3741
constable and sureties for moneys received 980
county surveyor 3896
judge of probate and sureties for neglect in taking bonds 3359
in taking, from guardians 2283
personal representatives 76
for failure to pay over money collected, etc 3369
Liens, what bonds operate as 3078, 3995
May be executed by guarantee companies 3092
Notice by secretary of state to solicitor of officers failing to file, in his office ... 1974
Not to be filed unless properly approved 3073
discharged by single recovery 3088
vitiated or affected by irregularity or informality 3089
Offices hereafter established, provisions applicable to 3091
Officers, what, not sufficient sureties 3076
Party aggrieved may sue on, in his own name 14
Payee, penalty and conditions, directions as to, when not otherwise provided .. 3070
Penalty for improperly approving 3072
Provisions applicable to offices hereafter established 3091
Qualifications and sufficiency of sureties 3075
Secretary of state to give notice to solicitor of officers failing to file, in his office 1974
time of filing with 3080
to give notice to solicitor of failure of officer to file 3086

BONDS—*Continued.* SECTION

Official—*Continued.*

Sheriff, liability of, and sureties for acts as constable 3741
Solicitor, notice to, of failure of officer to file; by whom given 3086
State, venue of suit by, on designated bonds 4208
Sureties, qualifications and sufficiency of 3075
what officers not sufficient 3076
on what bonds attorneys not sufficient 3077
discharge of, to be made on application 3124
application for; to whom made 3125
new bond, requisition to principal to give 3126
failure to give vacates office 3127
approval and filing of, if given 3128
when and to what extent discharged by 3129
when goes into effect 3130
effect of exoneration of 3131
rights of, among themselves 3118, 3132
Time of filing, with secretary of state and auditor 3080
clerk of circuit court 3081
judge of probate 3082
in other cases 3083
Trustee of express trust may be required to give bond, when 4152
Venue of suit by state on designated bonds 4208
What bonds operate as liens 3078, 3995
Who may sue on bond of judge of probate for neglect in taking, etc 3359

State and county bonds and securities.

Auditor to keep account of state bonds issued and paid ..... Subd. 4, 1995
register of state bonds redeemed or paid 2005
bonds and securities belonging to state deposited with 2012
payments on, to be made to treasurer 2012
Counties may issue, to fund specified indebtedness 1424
taxes levied to pay principal and interest 1424
County bonds; when negotiable without indorsement 875
Fiscal agency for payment of interest on state bonds 2019
how such interest paid; account thereof 2020–2022
when treasurer not liable in respect to such payment 2023
Municipal and corporate bonds; when negotiable without indorsement 875
State, county, municipal, and corporate bonds; when negotiable without indorsement 875
State bonds issued and paid, account of to be kept by auditor 1995
redeemed or paid, register of, to be kept by auditor 2005
and other securities belonging to state deposited with auditor 2012
payments on, to be made to treasurer 2012
exempt from taxation ..... Subd. 2, 3907
interest on, fiscal agency for payment of 2019
money for payment of, how drawn 2020
how sent to fiscal agency 2021
payment of, in New York 2022
when treasurer not liable for loss in sending money 2023
when duplicate of lost or destroyed registered, may issue 2026
Treasurer custodian of state bonds redeemed and coupons paid, duties in reference to 2024
when not liable for loss in transmitting money for payment of interest 2023
must record paid and canceled coupons 2025
Trustee may invest in state or United States securities 4174

BONDS—*Continued.* SECTION

Of executors, administrators, guardians and other trustees.

Additional bonds required of, when; proceedings 90–100, 2278
Approving, filing and recording of; transcript evidence 79, 2284
Complainant must give bond before injunction issues 786–788
appointment of receiver 801
Conditional execution or delivery of, no defense to surety 2282, 3090
Executors and administrators, must give 66
new bond required of, on motion of court, when 100
testator may exempt from giving; exception, ... 67
proceedings when bond required of 68
General administrator required to give 70
additional bond required of, when 102
General guardian required to give 2276
Guardians required to give 2272
before obtaining order to sell land 2273
testamentary, may be relieved from giving 2274
required to give, when 2275
new or additional bond of, on motion of court, when 2278
Injunction, complainant must give bond before issue of 786–788
Receiver, complainant must give bond before appointment of 801
Sheriff, or coroner, appointment of, as administrator, on application of third party, applicant to give 74
additional bond required of, as administrator, when 103
guardian, when 2277
Sureties, discharge of; application for 90, 2279
new bond required on petition of 90, 2279
effect of 91, 2280
when discharged by additional bond 104
former bond of force 105
rights of, among themselves 106
Testator may exempt executor or guardian from giving 67, 2274
Trustee of express trust may be required to give bond, when 4152

General provisions.

Actions on lost bonds 31
judgments in, issue of execution on 32
bond of licensee of ferry, etc., in whose name brought; recoveries on 2507
contractor for building bridge or causeway 2513
penal bond, assignment of breaches in 3289
Assignment of breaches in action on penal bond 3289
Commercial law, when governed by, as to grace, protest, etc 870
Complaint in action on, form of ..... Nos. 6 and 7, pp. 943, 944; 3352
Consideration of, may be impeached or inquired into 3288
Contractor, action on bond of, for building bridge or causeway 2513
Costs, in suits against maker, recoverable in suit against assignor or indorser 896
Effect of, when payable to any thing or bearer, or any fictitious person or bearer, or bearer only 874
how construed if payable to an existing person or bearer; exception 874
Execution, issue of, on judgment in action on lost bond, etc 32
Form of complaint in action on ..... Nos. 6 and 7, pp. 943, 944; 3352
Ferry, action on bond of licensee of, etc.; in whose name brought; recoveries on 2507
Grace, protest, etc., when governed by commercial law as to 870
How construed if payable to an existing person or bearer; exception 874

BONDS—*Continued.* SECTION

General provisions—*Continued.*

Indorser or assignor, suit necessary to charge 892
may be waived by written consent of 893
excuse for not suing, obtaining judgment, etc 894
irregular indorsements or assignments require suit 895
cost, in action against maker, recoverable in suit against 896
Judgment, on, by default or nil dicit, writ of inquiry awarded, when 3289
but in no case shall, exceed principal and interest on bond 3289
Licensee of ferry, etc., action on bond of; in whose name brought; recoveries on 2507
Lien, transfer of bond given for purchase-money of land carries 878
Penal bond, assignment of breaches in action on 3289
Person aggrieved may sue on, in his own name 14
Profert of, dispensed with; right of inspection given 3290
Purchase-money of land, transfer of bond given for, carries lien 878
Seal, when bond required, undertaking good without 9
Set-off against such, as are non-negotiable 874
Suit on, who may bring 19
necessary to charge indorser or assignor 892
may be waived or extended by written consent of indorser or assignor 893
Transfer of, given for purchase-money of land carries lien 878
When bond required, undertaking without seal sufficient 9
What, are assignable by indorsement 876

BOOKS AND PAPERS.
Belonging to an office to be delivered to successor 3133
proceedings to compel such delivery 3134
officer discharged on affidavit 3135
imprisoned on refusal to make affidavit 3136
search-warrant, when issued 3137
delivered to incumbent if obtained 3338
proceedings to recover, from another in possession 3139
Distribution of books, etc., relating to public lands 1989
acts of congress 1970, 1990
and resolutions of general assembly 1984, 1985, 1988
journals of general assembly 1987
other books and documents 1991

BOOKS AND STATIONERY.
Furnished at expense of county to clerk of circuit court 940
county treasurer 1431
judge of probate 3384
register in chancery 661
registrars 1568
sheriff 3747
tax-assessor 3929, 4120
tax-collector 4120
state, to the several departments 1978, 3385
supervisors of election returns 1646

BOOMS.
Lien of owners of booms and bulkheads 2784–2787

BOUNDARIES.
Of state ..... Const., Art. II., §1, p. 68; 623–625
counties ..... Const., Art. II., §2, p. 68.

BOWIE-KNIVES.
Dealers in, required to take out license ..... Subd. 27, 4122

BOWLING-ALLEY. SECTION
License for, required.....Subd. 8, 4122

BRANDS AND MARKS.
Cattle, hogs, sheep and goats running at large to be marked or branded..... 2834
Fertilizers, analysis of, to be branded upon bags or packages..... 391
Recorded in office of probate judge; record of, public..... 2835, 2836

BREWERS.
License required to be taken out by.....Subd. 7, 4122

BRIDGES, CAUSEWAYS AND FERRIES.
Actions on bonds; who may bring; recoveries on..... 2507
Bridges or causeways on line of two counties built at joint expense..... 2499
Compensation to owner of land..... 2504
County commissioners have authority to establish..... 2498
may levy special taxes to build bridges and causeways 2498
authority of, to license a person to establish..... 2500
bond required of licensee; conditions, etc..... 2500
also to regulate, fix, and alter toll..... 2501
court of, jurisdiction of, in relation to, declared..... 957
Damages for injury by defect in bridge or causeway built under contract..... 2512
recovery of against contractor..... 2512
when recovered of county..... 2512
Drawbridges on railroads over navigable rivers; regulation as to boats, etc. 3445–3447
Fences not to be joined to bridges, etc., without authority, etc..... 2471
Ferry, license for; application and notice; established only on public road.... 2503
liability of owner of, for detention at..... 2508
keeper of bridge or causeway, for receiving excessive tolls.. 2509
any person may ford at, without being liable for toll..... 2511
Judge of probate may require additional bond of licensee..... 2502
Jurisdiction of court of county commissioners in relation to, declared..... 957
On line between counties; by whom established; bond..... 2505
Penalty for injuring gate to bridge or causeway..... 2510
obstructing, injuring, or destroying bridge or causeway..... 2510
for avoiding payment of toll at..... 2510
any person may, however, ford at ferry without toll..... 2511
Riparian owners; when may charge toll for ferries..... 2514
Suit by county against contractor for failure to rebuild or repair bridge..... 2513
Timber for bridges and causeways; contracts for, etc..... 2475
Toll-bridge or ferry not to be established within two miles of another; exception 2506
Width of bridges and causeways on public roads..... 2444

BRIEFS.
In supreme court, to be printed or typewritten when over eight pages—
S. C. R. 9, p. 1188.
appellant's brief, how prepared.....Ib. 10, p. 1188.
appellee's brief; contents.....Ib. 11, p. 1188.
succinct statement of points and authorities required—
Ib. 12, p. 1188.
must be filed on submission of cause.....Ib. 13, p. 1188.
when additional briefs filed after submission; notice.....Ib.
on rehearing; service.....S. C. R. 42, p. 1194.
To be signed by counsel where counsel employed.....G. R. 4, p. 1186.

BROKERS.
Gross commissions taxed.....Subd. 2, 3912
Pawnbrokers, *see*.....3242–3247, Subd. 32, 4122

BUILDING. SECTION
Lien for rent of ... 2716–2721
of mechanics and material-men ... 2723–2752

BUILDING AND LOAN ASSOCIATIONS.
Annual report by; contents of; filed with auditor ... 1129
fee to be paid on filing; penalty for failure to report ... 1130
"Building and loan association," the name, defined ... 1128
Declaration for incorporation of, filed in office of probate judge; contents ... 1123
to be recorded; certificate of incorporation ... 1124
Fines and penalties may be imposed by; limitation ... 1133
Foreign associations, requirements of; exceptions ... 1138
unlicensed, unlawful to do business for ... 1132
Hypothecation of securities by, prohibited unless organized prior to February 7, 1893 ... 1127
Increase of capital stock, proceedings for; notice by publication ... 1126
proceedings reduced to writing and recorded in probate office ... 1126
valuation of shares of association incorporated prior to Code of 1876 ... 1126
May be incorporated ... 1122
Non-resident associations must file statement and pay fee ... 1131
Officers of, must give bond ... 1137
On foreclosure of mortgage by, what credits must be given ... 1135
Powers of ... 1125
Premiums upon loans must be fixed by by-laws; limit of ... 1134
Shares of stock one year old must have a definite withdrawal value, etc ... 1136
Taxation of; privilege and property ... 3916
Unlawful to do business for unlicensed foreign association; misdemeanor ... 1132

BULKHEADS.
Lien of owners of booms and bulkheads; how enforced ... 2784–2787

BULL.
Lien for service of; how enforced ... 2776–2779

BURIAL-PLACE.
Exempt from levy and sale under process ... 2036
Taxation, exempt from ... Subd. 2, 3907

BURIAL SOCIETIES.
Chairman and members of board of trustees of ... 1309
Charter of, may be altered or amended, how ... 1314
Incorporation of ... 1302, 1303
Powers of corporation ... 1304
Power to execute mortgage; how executed ... 1306, 1307
Service of process on ... 1305
Special privileges of ... 1308

BUSHEL.
Weight per bushel of certain commodities ... 4240
Weights and measures, *see* ... 4230–4240

BUTTER.
Duty of commissioner of agriculture to inquire into sale of spurious, and to take steps to suppress ... Subd. 20, 376

CANALS.
Constitutional provisions as to ... Const., Art. XIV., §§21–25, pp. 102, 103.
For mills; proceedings to condemn ... 1742
Mining and manufacturing corporations may construct ... 1145
Taxation, subject to ... Subd. 2, 3911

CANDIDATES FOR OFFICE. SECTION

Certificate of nomination of, contents; with whom filed 1606
Names of, how certified 1606
printed on official ballot in alphabetical order 1607
Nominated by petition 1606
political parties 1606
Refusing nomination, name not printed on ballot, when 1607

CANOE.

Damages for injuries to; limitation 4217, 4140

CAPITOL.

Private secretary of governor keeper of 1961–1963
Rooms in, assigned by governor; to whom 1956, 372
Servants for, employed by governor 1966
Watchmen for, governor must employ; compensation 1967
invested with powers of sheriffs 1968
designated capitol policemen; wear gray uniform; arrest trespassers, etc ..... Note, p. 608.

CARDS.

Dealers in playing-cards required to take out license ..... Subd. 26, 4122

CASE.

Trover, trespass and case may be joined 3293

CASUAL EJECTOR.

Complaint in statutory ejectment need not allege ouster 1530
Consent rule in ejectment, effect of entering into ..... C. C. R. 24, p. 1199.

CATTLE.

Diseased, and abandoned, may be destroyed, when 422
Dog known to kill or worry, may be killed 421
Estrays; when taken up; proceedings 1761–1789
Fire-hunters liable for killing or injuring 420
Lien for price of service; proceedings to enforce 2776–2779
Mark or brand, running at large, must have 2834
must be recorded in office of judge of probate 2835
first recorded entitled to priority 2836
record open to inspection 2836
Penalty for injuring, when fence not lawful 2113
setting stakes, pit, poison, etc., for 2114
Trespass by, upon lawfully inclosed lands; remedy 2115–2117

CAUSEWAYS.

Bridges, causeways, and ferries, *see* 2498–2514

CEMETERIES.

Exempt from levy and sale under process 2036
taxation ..... Subd. 2, 3907

CENSUS OF THE UNITED STATES.

As basis for apportionment of senators and representatives—
Const., Art. IX., §§2–4, p. 89.
If unsatisfactory, legislature to provide for state enumeration ..... Ib. §5, p. 89.
Licenses, price of, determined by, when ..... Subd. 58, 4122
Records, etc., expenses for, apportioned upon, between counties of chancery district 662, 664
Report of, kept by judge of probate free to examination ..... Subd. 11, 3365

CERTIFICATE OF WITNESS. SECTION
Issued by clerk; contents 1337
Refusal of payment excuses witness from further attendance 1341
Taxed as costs; how collected and paid 1340

CERTIORARI.
Abatement of proceeding for, on performance of duty demanded, cost 2831
Appeal to supreme court from judgment on application for 431, 2827
to be decided at first term 2827
judgment on appeal 2828
Application for; pleading and practice 2825, 2826
Bill of exceptions; either party may reserve 2828
Certiorari upon suggestion of diminution of record not affected 2833
rule for obtaining in supreme court ..... S. C. R. 19, p. 1190.
Common law not repealed by statutory provisions 2833
Granted by justices of the supreme court ..... Const., Art. VI., §2, p. 83; 3827
judges of circuit and city courts 921, 944
judge of probate on judgment before justice of the peace 3372
Revivor in case of vacancy in office 2829
proceeding when but one officer 2830
abates if successor perform duty 2831
when against several officers; costs 2832
To justices' courts 481–495

CESSIONS TO THE UNITED STATES.
Lands, United States may acquire 626
value of, how determined 627
governor to cede jurisdiction over, to; restrictions 628
Of submarine sites; restrictions 629

CHAIN-BEARERS.
Compensation fixed by county commissioners 3897
Sworn by surveyor; oath 3893

CHALLENGE OF JURORS.
Each party has four peremptory challenges 2655

CHALLENGE OF VOTER.
By any qualified elector of the precinct 1629
Communicated to inspectors, by sheriff 1629
Inspector must inform person challenged of penalty 1631
Oath administered by inspectors to person challenged 1630

CHANCELLORS.
Acknowledgment and proof of conveyances before 993
Affidavits, may take 642
Bonds, official, power to declare insufficient and require new ones 3119–3123
power to require new ones on application of sureties 3124–3132
Commission of; when to be issued 3058–3060
Compensation to be fixed; no fees; only hold judicial office during term—
Const., Art. VI., §10, p. 84.
of special chancellors 651
solicitor acting as special chancellor—
Const., Art. VI., §18, p. 85; 649
Contempt, power to punish for 641
Court, may hold for each other ..... Ib. §8, p. 84.
when to be opened 645
failure to attend, or absence from; penalty for 646
sheriff to certify such 647
failure of to certify; penalty 648
when not required to certify 648

CHANCELLORS—*Continued.* SECTION

Court must hold or provide for holding, in his division 644
required to hold, at least once a year, in each district—
Const., Art. VI., §8, p. 84.
Dueling oath, required to take 3062
Election of, by qualified electors of division .....Const., Art. VI., §12, p. 85; 1573
time of 1574, 1578
one for each division; residence of .....Const., Art. VI., §7, p. 84; 643
Impeachment, grounds of .....Const., Art. VII., §2, p. 87.
Incompetent, when 2637
attorney appointed as special chancellor, how—
Const., Art. VI., §18, p. 85.
Injunction, may grant 784
Jurisdiction of, extraordinary 639
coextensive with the state 644
in contest of election of circuit judge 1695
denied in other election matters, appeal, etc 1671
to relieve infants of disabilities of non-age 829-835
Marriages, may solemnize 2841
Oaths, may administer 642
Process, powers to enforce execution of; may appoint special officer to execute 640
Prohibited from practicing law .....Const., Art. VI., §20, p. 86.
Qualifications for office .....Ib. §14, p. 85.
Receivers, may appoint 799
Registers, must appoint .....Const., Art. VI., §21, p. 86.
may remove .....Ib. §24, p. 86; 653
require additional bond of, when 655
appoint special, when 660
Residence of .....Const., Art. VI., §7, p. 84; 643
Rules, may adopt to facilitate business 865
Salary of 643
reduced while special chancellor presiding; exceptions 652
Special chancellor appointed by governor, when 650
must take oath of office and be commissioned 650
powers and jurisdiction of 650
compensation of 649, 651
when selected by parties or their attorneys—
Const., Art. VI., §18, p. 85.
Term of office of 3054
not affected by change in division ....Const., Art. VI., §15, p. 85.
Vacancy filled by governor; appointee's term .....Ib. §17, p. 85.
Vacates office by accepting another 3141

CHANCERY.

Divisions, state to be divided into .....Const., Art. VI., §7, p. 84.
to be divided into districts .....Ib. §7, p. 84.
Court to be held at least once a year, in each district .....Ib. §8, p. 84.
General assembly to provide for holding court when chancellor fails to attend .....Ib. §19, p. 86.
Court, who holds when chancellor incompetent .....Ib. §18, p. 85.
State divided into five divisions; names of 630
Abatement—
suit by unmarried woman does not abate on marriage...Ch. R. 102, p. 1224.
Amendments—
to bill, before answer, plea, or demurrer 704
in such case, after defendant has obtained copy of bill 705
after demurrer, and before argument 705

CHANCERY—*Continued.* SECTION

Amendments—*Continued.*

to bill, at any time before final decree by striking out or adding new parties, etc 706

if allowed on hearing, adverse party entitled to continuance..... 706

if cause continued, etc., additional testimony may be taken..... 706

register may allow, after answer..... 707

after demurrer and argument.....Ch. R. 41, p. 1210.

after answer, order to amend generally not allowed— Ch. R. 42, p. 1210.

considered as introduced from allowance.....Ch. R. 43, p. 1210.

notice of allowance, how given.....Ch. R. 44, p. 1210.

supplemental matter may be introduced .....Ch. R. 45, p. 1211.

decree pro confesso not set aside by.....Ch. R. 46, p. 1211.

effect of on amendment.....Ib.

on amendment after thirty days.....Ib.

time for asking leave, when bill dismissed for defects in pleading, etc.....Ch. R. 47, p. 1211.

answer, at any time before final decree, etc..... 706

if on hearing, adverse party entitled to continuance..... 706

right to take additional testimony..... 706

register may allow, on notice..... 707

bill or answer, mode of making; when by interlineation, etc.— Ch. R. 39, p. 1210.

notice; service of copy of proposed amendment— Ch. R. 40, p. 1210.

decrees, amendment of, nunc pro tunc.....3337-3340

notices of, when served on solicitor..... 712

Answer—

time in which may be filed..... 691

attachment, compelled by, when.....Ch. R. 24, p. 1207; 692

defendant evading, sequestration against...Ch. R. 25, p. 1207.

arrest under..... 693

defendant imprisoned until he files answer or bond..... 695

bond, discharge on..... 693

suit on, when..... 694

oath to; by whom administered..... 696

waiver of, by bill..... 679

sworn answer, rule requiring two witnesses to overcome, modified..... 680

protection from full answer..... 697

application to answer specially; contest; notice..... 698

all defenses may be set up in..... 699

effect of, on hearing, on bill and answer..... 702

in divorce cases..... 1489

to bill charging fraud may be compelled..... 816

such answer not evidence on indictment for fraud..... 817

of non-resident under oath, how made..... Ch. R. 31, p. 1208.

must be sworn to, to dissolve injunction or discharge a ne exeat on answer.....Ch. R. 32, 1209.

exceptions to; when filed..... 714

proceedings on.....Ch. R. 31-38, p. 1209.

defendant not in contempt for want of answer until decision on.....Ch. R. 33, p. 1209.

for insufficiency, cannot be made when oath waived— Ch. R. 34, p. 1209.

to amendments..... 708

may be made cross-bill..... 720

to such cross-bill..... 721

after decree pro confesso granted.....750, 751

after publication of testimony..... 752

CHANCERY—*Continued.* SECTION

Appeal—
transcript on, duty of register as to....Ch. R. 85, p. 1220; 658
liability of register for delay in furnishing.... 453
in whose name taken....Ch. R. 86, p. 1220.
bond for restoration of injunction, ne exeat, etc., on....Ch. R. 87, p. 1221.
motions and appeals from register, hearing of, notice....Ch. R. 1, p. 1202.
necessary papers laid before chancellor on—
Ch. R. 116, p. 1228.
orders by register subject to appeal to chancellor....Ch. R. 2, p. 1202.
without bond, from any order or decree relating to elections; exception. 1671, 1695
receiver, from order of register appointing.... 800
trust estates, from orders of register relative to claims against.... 4170
Arbitration, causes may be referred to; proceedings.... 846
Bill—
suits in, commenced by; to whom addressed.... 673
filing of, commencement of suit.... 675
limitation as to.... 674
frame of.... 677
where filed.... 676
answer to, under oath may be waived.... 679
multifariousness, no objection for, unless taken by demurrer.... 678
parties unknown, made defendants, how.... 690
non-resident or insolvent parties may be dispensed with..Ch. R. 18, p. 1205.
when parties numerous, court may proceed, having before it parties to represent adverse interests....Ch. R. 19, p. 1205.
stating part divided and numbered....Ch. R. 8, p. 1204.
interrogatories divided and numbered....Ch. R. 9, p. 1204.
containing blanks defective....Ch. R. 10, p. 1204.
note to be made as to averments or interrogatories to be answered—
Ch. R. 11, p. 1204.
such note part of bill; any alteration treated as amendment to bill—
Ch. R. 12, p. 1204.
form of interrogating part....Ch. R. 13, p. 1204.
bill, and note, and petitions to be signed....Ch. R. 14, p. 1205.
dismissed for neglect to bring in defendant, etc....Ch. R. 27, p. 1208.
dismissal of, when equivalent to dismissal on merits. Ch. R. 28, p. 1208.
how sworn to....Ch. R. 15, p. 1205.
exhibits part of, admission of dispenses with proof of....Ch. R. 16, p. 1205.
prayer to, requisites of....Ch. R. 17, p. 1205.
exceptions to, rules in reference to....Ch. R. 35, 37, 38, p. 1209.
allegations as to subsequent incumbrances in mortgage suits—
Ch. R. 108, p. 1226.
for divorce; averments and parties.... 1488
on ground of abandonment, allegation as to residence.... 1492
when defendant non-resident, allegation as to residence.... 1494
objections to, for want of parties, or improper parties, set for hearing.... 709
if, prevail on final hearing, bill dismissed.... 709
taken for want of parties, for first time at hearing, decree to be rendered.... 710
Bill of review—
application for; when to be made.... 761
decree may be suspended on presenting; bond and decree thereon.... 760
Bill of revivor—
defendant entitled to, when; mode.... 722
rule for in equity....Ch. R. 103, p. 1224.
suit or decree may be revived for costs....Ch. R. 107, p. 1226.

CHANCERY—*Continued.* SECTION

Bill of revivor—*Continued.*
when allowed for costs against representative, on death; proceedings— Ch. R. 107, p. 1226.
supplemental bills and bills of revivor, recitals and contents of— Ch. R. 104, p. 1225.
proceedings and practice in relation to— Ch. R. 105, p. 1225.

Children—
custody of, on voluntary separation of parents, decreed 2536
decree of divorce 1501
mode of proceeding; orders pending suit 2537

Court of—
general assembly has power to establish with original and appellate jurisdiction ..... Const., Art. VI., §7, p. 84.
judicial power, in part, vested in ..... Ib. §1, p. 82; 2636
to be held, at least once a year, in each district ..... Ib. §8, p. 84.
who holds, when chancellor incompetent ..... Ib. §18, p. 85; 650
special chancellor, appointment of; oath; powers and jurisdiction of; compensation 650–652
must take cognizance of causes in equity, when defendants reside in this state 669
against non-residents in particular cases 669
in such other cases as by law required to 669
powers of, to enforce execution of process 640
punish for contempts 641, 2638, 2640
other, in common with other courts 2639
to cause substitution of lost papers or records 2647
admit attorneys to practice 580
open at all times for certain purposes ..... Ch. R. 1, p. 1202; 3760
duty of sheriff to attend terms of 3739
continuances ..... Ch. R. 70, 71, p. 1217; 706

Correction of errors in settlements in probate court—
bill to correct errors in settlements of estates of decedents, when to be filed 805
by guardians 807
confirm irregular sales of lands under decrees of probate court 808
infants and persons of unsound mind allowed longer time 806

Costs—
apportioned at discretion of chancellor; execution for .. Ch. R. 110, p. 1226; 851
proceedings when execution for, returned "no property". Ch. R. 111, p. 1227.
security for, when to be given; penalty for failure 1347
on appeals 439

Creditors' bills—
bill for discovery by judgment creditor; decree 814
of collusive judgments or fraudulent conveyances 815
bill of discovery by judgment creditor, decree 819
defendant required to answer on oath 819
several may join in; also assignee, or several assignees of judgments 820
judgment creditors and creditors without liens, assignees, etc., may join in 820
orders and decrees; appointment of receiver 821
examination of debtor 822
may be filed by judgment creditor of corporation against stockholder 823
creditor without lien may subject property fraudulently conveyed 818
answer to bill charging fraud may be compelled 816
not evidence on indictment for fraud 817

CHANCERY—*Continued.* SECTION

Cross-bill—
answer may be made 720
answer to such cross-bill 721

Decrees—
on pleas, demurrers and motions to dismiss in vacation..Ch. R. 74, p. 1218.
enrollment of, under this rule ..... Ib.
in vacation; proceedings and process on ..... Ch. R. 79, p. 1219.
when difficult, may be rendered in vacation 845
must be in writing 845
in term time; entry of on minutes ..... Ch. R. 81, p. 1220.
orders of reference, etc., may be opened or changed before final decree—
Ch. R. 83, p. 1220.
final decree, after term ended, only questioned by bill of review—
Ch. R. 84, p. 1220.
cannot be impeached by original bill except for fraud—
Ch. R. 84, p. 1220.
orders and decrees may be made at any time by consent 847
how consent made in vacation ..... Ch. R. 80, p. 1219.
lien and priority of 848
for conveyances and releases operate as such; executed by register or commissioner 849
enforced by attachment or sequestration 852
when such attachment to issue; proceedings 855
if such attachment is not executed, sequestration follows 856
process for enforcement of 857
return-day of 858
execution, when may issue for enforcement of 859
crops on lands decreed to be sold, when and how tenant may retain possession of 850
for performance of act to prescribe time 853
sale of property under decree to be made by register 854
on partition; effect of 860
of sale in mortgage suits ..... Ch. R. 108, p. 1226.
proceedings when subsequent incumbrances discovered before sale confirmed ..... Ch. R. 109, p. 1226.
registration; lien; execution 1920–1923

Decrees pro confesso—
may be taken unless answer, plea, or demurrer filed within thirty days after service 691, 746
if time extended for pleading, after expiration of such time 746
may be taken before register 746
operates an admission of allegations of bill; exceptions 747
on certificate of publication when passed by chancellor..Ch. R. 29, p. 1208.
after demurrer overruled, on failure to answer ..... Ch. R. 30, p. 1208.
not to be entered against defendant excepting to answer until decision on exceptions ..... Ch. R. 33, p. 1209.
cause not to be heard on day of taking 748
set aside on full answer at any time before testimony published; terms...750, 751
defendant, in such case, may demur or plead on terms 750
permission to file answer after testimony published discretionary 752
not set aside by amendment ..... Ch. R. 46, p. 1211.
effect of, on amendment ..... Ib.
on amendment ..... Ch. R. 48, p. 1211.
on supplemental bill or bill of revivor ..... Ch. R. 105, 106, p. 1225.

Demurrer—
grounds of must be specifically set forth; effect of failure 700

CHANCERY—*Continued.* SECTION
Demurrer—*Continued.*
hearing of.....Ch. R. 71, 72, p. 1217.
and exceptions.....Ch. R. 73, p. 1218.
pleas and motions to dismiss in vacation, on notice—Ch. R. 74, p. 1218.
multifariousness, objection for, taken by..... 678
or motion to dismiss for want of equity; when heard.Ch. R. 71–76, p. 1218.
Divorce and alimony..... 1485–1503
Docket—
call of, setting down causes for hearing..... 844
what it must contain; copy filed with papers.....Ch. R. 66, p. 1216.
continuances.....Ch. R. 70, 71, p. 1217; 706
call for motions every morning.....Ch. R. 96, p. 1223.
submissions on, each morning.....Ch. R. 78, p. 1219.
Election as to prosecution of suit at law or in equity—
when complainant put to.....Ch. R. 114, p. 1227.
not applicable to suit by state for recovery of money wrongfully used..... 3757
Equitable attachment—
may issue on equitable debts and demands; in what cases..... 762
by what provisions governed..... 762
on legal demands; operate only on equitable effects or debts; in what cases..... 764
powers of chancellor in vacation in respect to..... 763
what officers may make orders for, and sale of property levied on; proceeds..... 771, 921
may issue before judgment for debt; decree and execution..... 765
property to be specified; copy of bill to be served..... 766
replevy of property attached; bond..... 767
bond to be returned with writ..... 768
has force of judgment, if property not delivered..... 770
executions on..... 770
lien of..... 769
in favor of surety, or accommodation drawer, indorser, etc., of written contract against principal; proceedings..... 780
may be dissolved, in such case, when..... 781
no decree in such case, until debt of principal is paid..... 782
when creditor may intervene..... 783
in aid of suit by state for recovery of money wrongfully used, etc..... 3758
register may make orders for, on any day.....Ch. R. 4, p. 1203.
what sufficient prayer for, in bill.....Ch. R. 17, p. 1205.
restoration of, on appeal from order discharging.....Ch. R. 87, p. 1221.
Evidence—
depositions, fees for taking..... 738
examination of complainant by defendant..... 715
defendant by complainant..... 716
interrogatories, in such cases, copy to be served..... 717
exceptions to such; notice, etc..... 718
answers to such; evidence..... 719
exhibits and other documentary evidence, proof of.....Ch. R. 64, p. 1214; 728
fees for taking depositions..... 738
interrogatories, filing of; service of copy.....Ch. R. 50, p. 1212.
how served, if adverse party resides out of district..... 732
commissioners, notice giving names of, to accompany—Ch. R. 58, p. 1213.
objection to, how made and heard.....Ib.
if allowed, register appoints other.....Ib.

CHANCERY—*Continued.* SECTION

Evidence—*Continued.*

interrogatories, commissioners, register may act as, when 734
party filing, must give names and residence of witnesses, etc.....Ch. R. 60, p. 1213.
unless preceding rule complied with, no commission to issue, or proceedings had, except by consent.....Ib.
party in contempt not entitled to copy of, or notice— Ch. R. 61, p. 1214.
commission to issue at once in such case.....Ib.
service of, may be waived; what operates a waiver.....Ib.
rebutting, filing of..... 733
inclosure and direction of, by commissioner— Ch. R. 62, p. 1214.
reference before register, evidence on.....Ch. R. 89, p. 1221; 744
report of register, on exceptions to, note of testimony to be made— Ch. R. 94, p. 1222.
testimony taken upon interrogatories, when..... 725
when plaintiff and defendant may take..... 727
cannot be taken by either party until cause is at issue as to all defendants.....Ch. R. 49, p. 1211.
commission to take, to whom directed, and when returnable.... 730
not to issue until resident adverse party served with copy of interrogatories..... 731
party desiring to be present at time of taking, gives notice— Ch. R. 51, p. 1212.
when may be retaken; notice, etc .....Ch. R. 52, 53, p. 1212; 729
publication of.....Ch. R. 62, p. 1214.
register's duty on.....Ch. R. 63, p. 1214.
after, none taken, except by consent, or leave of court .....Ch. R. 62, p. 1214.
on bill of interpleader, rule for taking.....Ch. R. 56, p. 1213.
chancellor may appoint examiners; qualifications and duties— Ch. R. 59, p. 1213.
introduction of, on hearing, note of to be made.Ch. R. 76, p. 1218.
memorandum of, to be entered on minutes; copy filed for chancellor....Ch. R. 77, p. 1219.
additional, when party entitled to take on amendment..... 706
on file, when may be used on setting aside decree without personal service..... 755
rules for taking oral examination of witnesses.Ch. R. 65, p. 1215.
witnesses, oral examination of, when and before whom taken..... 723
notice of..... 724
competency of, rule as to, same as at law..... 726
subpœna for, by whom issued; examination of 735
executed; what proof of default..... 736
compensation of..... 737
attendance of, before commissioner..... 1839, 1840
default of, proceedings on..... 739
defaulting, may be committed, without bail, until consents to testify..... 740, 1839
if examination postponed, may give bail..... 1840
when may be examined de bene esse.....Ch. R. 54, p. 1212.
party examining not required to retake testimony; who may retake.....Ch. R. 55, p. 1212.
mode of impeaching.....Ch. R. 57, p. 1213.
rules for taking the oral examination of.....Ch. R. 65, p. 1215.

CHANCERY—*Continued.* SECTION

Exceptions—
to answers, when made; notice ... 714
not allowed if oath waived ... Ch. R. 34, p. 1209.
bills or answers, proceedings on ... Ch. R. 35-38, p. 1209.
interrogatories to complainant by defendant; time of taking and hearing 718
register's decision, either party may reserve ... 745
report, how taken ... Ch. R. 94, p. 1222; 745
time of taking and hearing, who entitled to— Ch. R. 95, p. 1222.
objections to bill for want of parties, or joinder of improper parties, set for hearing ... 709
if, prevail on final hearing, bill dismissed ... 709
taken for want of parties, for first time at hearing, decree to be rendered ... 710
Feme sole, suit by, or against, not abated by marriage of ... Ch. R. 102, p. 1224.
Filing papers—
date of, to be indorsed ... 711
Forthcoming bond—
authorized when personal property ordered sold ... 861
effect of forfeiture of; execution ... 862
Final decrees without personal service—
not absolute for twelve months; exception ... 753
copy to be sent defendant ... 753
petition to set aside and defend on merits, when to be filed ... 754
if parties have been dismissed, notice required ... 754
cause may be opened and proceeded with as if no decree had been rendered ... 754
what testimony may be used in such case ... 755
on service of copy, decree conclusive unless, etc ... 756
infants and persons of unsound mind allowed time ... 757
rights and liabilities of parties without service extend to representative 758
power of court with reference to altered state of parties, or any new interest acquired ... 758
execution of such decrees ... 759
Garnishment—
when may issue in equity; proceedings ... 772
Governor, appointment of special chancellor by, when ... 650
direction in writing by, sufficient authority for bringing suit ... 671
may employ assistant counsel ... 671
Hearing—
failure of parties to appear on; effect of; default may be set aside— Ch. R. 69, p. 1217.
continuances ... Ch. R. 70, 71, p. 1217; 706
of demurrers and pleas ... Ch. R. 72, p. 1217.
exceptions ... Ch. R. 73, p. 1218.
pleas, demurrers and motions to dismiss heard in vacation, on notice— Ch. R. 74, p. 1218.
of motions to dismiss for want of equity ... Ch. R. 75, p. 1218.
dissolve injunction ... Ch. R. 97, p. 1223.
and appeals from register; notice ... Ch. R. 1, p. 1202.
proceedings on, introduction and note of testimony, etc.— Ch. R. 76, 77, pp. 1218, 1219.
motions and petitions, notice of ... Ch. R. 98, p. 1223.
calls for, every morning ... Ch. R. 96, p. 1223.
submission, each morning ... Ch. R. 78, p. 1219.
rehearing; proceedings for ... Ch. R. 82, p. 1220.

CHANCERY—*Continued.* SECTION

Infants—
disability of non-age, may be relieved from, when 829
petition for removal of, where filed 830
notice given by register 831
contest of; evidence, how taken 832
decree on, and its effect 833
copy of, filed with probate judge for record 835
rights of minors may be restricted or qualified 834
Injunctions—
by whom granted 784, 921
order for, made before bill filed, valid 798
judgment, of, a release of errors 785
bond for injunction of 786
sufficiency of prayer in bill for ..... Ch. R. 17, p. 1205.
bond for, after recovery of lands 787
in other cases 788
effect of, on dissolution of injunction of a judgment, execution .. 794
notice of, of suits or judgments may be served on attorney 789
application for, if refused, to whom renewed; when refusal final 790
to justice of supreme court, when may be made 791
refusal to grant, to be indorsed on bill 792
erasure of such indorsement, misdemeanor 792
on dissolution of, damages may be decreed for delay 793
execution for costs, when may be issued against obligors on bond 795
refunding bond, when required of defendant on interlocutory decree dissolving injunction 796
motion to dissolve or discharge in vacation for want of equity, or denials in answer 797
on overruling exceptions to answer for insufficiency, discretionary to dissolve, without motion or argument ..... Ch. R. 99, p. 1223.
dissolved, if defendant not brought in before second term— Ch. R. 100, p. 1223.
only, on sworn answer ..... Ch. R. 32, p. 1209.
hearing of motion to dissolve ..... Ch. R. 97, p. 1223.
register has no authority to grant or dissolve 659
application to reinstate; appeals therefrom ..... Ch. R. 101, p. 1224.
bond for restoration on appeal from decree dissolving .... Ch. R. 87, p. 1221.
appeals from orders sustaining or dissolving 428
domestic insurance company, when granted against 2580
custody of children on separation, may issue pending application for 2537
intemperate persons, may issue to secure estates of, pending suit 838
limitation of actions, time of injunction not computed in 2820
lien of fieri facias destroyed by bond for injunction 1894
summary remedy for failure to pay over money on execution enjoined 3778
Intemperate persons—
bill by relatives of, for preservation of estate 836
allegations of; decree; appointment of trustee 837
trustee, duty of 839
must make partial settlements 842
compensation of 843
estate, security of, pending suit 838
restoration of 840
jurisdiction of court; management and settlement of trust 841
Issues out of chancery—
issue of fact, trial of, by jury, before chancellor, or certified to law court .. 824

CHANCERY—*Continued.* SECTION

Issues out of chancery—*Continued.*
issue of fact, trial of, by jury, change of venue may be allowed..... 824
evidence; parties examined..... 825
in suits by state for money wrongfully used 3761
jury, proceedings to summon, etc., before chancellor..... 826
pay of, and how taxed..... 827
practice in partition suits when title or adverse claim involved..... 828
Jurisdiction—
general assembly has power to establish with original and appellate—
Const., Art. VI., §7, p. 84.
judicial power, in part, vested in.....Ib. §1, p. 82; 2636
in civil cases in which a plain and adequate remedy is not provided in other tribunals..... 638
gambling consideration, in cases founded on, etc..... 638
equitable title or claim to real estate, to subject, to payment of debts..... 638
in such other cases as may be provided by law..... 638
money wrongfully used by officer, in suits by state for..... 3756–3761
connecting railroads, to settle disagreements between..... 3467–3473
corporations formed for navigation, to wind up affairs of..... 1250
to dissolve, and settle affairs of..... 1291–1301
to execute a power when trustee, with right of selection, dies, leaving power unexecuted..... 1056
dower, to assign, to widow; when exclusive..... 1525
wills, of contests of, after admission to probate..... 4298–4300
divorces, to decree, from bonds of matrimony..... 1485–1501
bed and board..... 1502, 1503
infants, to relieve, from disability of non-age..... 829–835
children, to decree custody of, etc., in case of voluntary separation .. 2536, 2537
intemperate persons, to protect estates of..... 836–843
homestead, to decree sale of, in certain cases..... 2064
liens, to enforce, in favor of mechanics and material-men..... 2733
partition of lands, to set aside, made under decree of probate court..... 3171
to partition lands, or to sell lands for division..... 3187
to issue writs of ne exeat, equitable attachments, garnishments and writs of seizure..... 762–783
of injunctions..... 784–798
receivers, to appoint..... 799–804
settlements in probate court, to correct errors in 805–808
irregular sales of lands under decrees of probate court may be confirmed.. 808
of creditors' bills, to enforce collection of demands, when..... 814–823
trusts and trustees..... 4152–4204
in election matters denied, except as to contest of election of circuit judge..... 1671, 1695
Limitations—
generally..... 674
dower, suits for, as against alienees of husband..... 1528
errors in settlements in probate court, suits for correction of..... 805
wills, of contests of validity of..... 4298
Married women—
suit by or against unmarried woman not abated by marriage—
Ch. R. 102, p. 1224; 37
Minutes, form of caption of.....Ch. R. 67, 68, p. 1217.
must be read each morning; upon adjournment signed by judge.... 2641
Motions—
to dismiss for want of equity, when heard.....Ch. R. 71–76, p. 1218.
dissolve injunctions.....Ch. R. 97, p. 1223.
call for every morning.....Ch. R. 96, p. 1223.

CHANCERY—*Continued.* SECTION

Motions—*Continued.*
and petitions, notice of hearing of....Ch. R. 98, p. 1223.
submission on calls for, each morning....Ch. R. 78, p. 1219.
and appeals from register, hearing of, notice....Ch. R. 1, p. 1202.
necessary papers laid before chancellor on..Ch. R. 116, p. 1228.
Multifariousness, objection for, taken by demurrer.... 678
Non-residents, publication as to; fee for making, etc....686, 688, 690
must give security for costs.... 1347
Notices—
as to supplemental bill, amendment, decree, etc., served on solicitor.... 712
to parties in default.... 713
when English rules require two days' notice, one day sufficient—
Ch. R. 117, p. 1228.
on guardian ad litem or next friend sufficient....Ch. R. 118, p. 1228.
computation of time....Ch. R. 119, p. 1228.
for orders before register, when necessary; when not....Ch. R. 5, p. 1203.
Objections to bill for want of parties, or joinder of improper parties, etc.... 709, 710
Orders—
of reference, etc., may be opened or changed before final decree—
Ch. R. 83, p. 1220.
consent, orders and decrees may be made at any time by.... 847
how made in vacation....Ch. R. 80, p. 1219.
order-book to be kept by register....Ch. R. 3, p. 1203.
application for, how drawn up, etc....Ib.
orders and decrees by register, when may be granted....Ch. R. 4, p. 1203.
when notice necessary; when not—
Ch. R. 5, p. 1203.
for sale of personal property by administrators and guardians, rule in reference to....Ch. R. 115, p. 1228.
by register subject to appeal to chancellor....Ch. R. 2, p. 1202.
Order-book to be kept by register....Ch. R. 3, p. 1203.
Parties—
joint demand may be prosecuted against one or more, without joining others.... 670
state, suit by, in, what rules govern.... 671
solicitor represents; assistant counsel; compensation.... 671
authority of, for bringing; what sufficient.... 671
for moneys wrongfully used by officer or depositary.... 3756, 3757
parties defendant to.... 3757
multifariousness, no objections for, can be raised.... 3757
persons of unsound mind may sue, how.... 672
upon restoration to sanity, how suit proceeds.... 672
Pleas to dismiss for want of equity, when heard....Ch. R. 71–76, pp. 1217, 1218.
demurrers and motions to dismiss heard in vacation, on notice—
Ch. R. 74, p. 1218.
enrollment of decree under this rule....Ib.
hearing of....Ch. R. 72, p. 1217.
Process, alias and pluries, may issue without any order....Ch. R. 26, p. 1208.
Publication—
as to non-residents and parties absent from state more than six months, etc., order for.... 686
defendants unknown, as to.... 690
fee for making, deposited with register.... 688
unless deposited within thirty days after notice, bill dismissed.... 688
foreign corporation; to whom copy of order sent....Ch. R. 21, p. 1206.
order of, steps necessary to obtain; duties of register....Ch. R. 22, p. 1206.

CHANCERY—*Continued.* SECTION

Receivers—
appointed by chancellor or register; notice 799
appointment by register subject to appeal; suspension of order 800
complainant must give bond before appointment of 801
any person damaged may sue on bond 802
may be sued without leave of court 803
service of process on 804
one for same property, though more than one suit .....Ch. R. 112, p. 1227.
order, when there is one receiver in two or more suits..Ch. R. 113, p. 1227.
sales of personal property in hand of, order in vacation.Ch. R. 115, p. 1228.
listing of property in hands of, for taxation 3942
railroad property in hands of, for taxation 3964
on dissolution of corporation, appointment of, and his duties 1294
how selected; bond 1295
pays debts; contested claims 1296
creditors' bill, when may be appointed on, authority, etc 821
appeal from order appointing or refusing 429
when returnable 438
bond or security for costs on 445
notice of 449
Recording papers; final record; substitution ..... Subd. 7, 657; 658, 2642-2652
References to and proceedings before register as master—
accounting before register; how made .....Ch. R. 91, p. 1221.
accounts before register, form of; exception .....Ch. R. 90, p. 1221.
notice of taking .....Ch. R. 92, p. 1222.
evidence, etc., in cause may be used on 744
reference, matter of, time within which to be presented 741
hearing, notice of day of 742
authority of register on 743
register, decision of, exceptions to, may be reserved 745
sessions of, where held .....Ch. R. 88, p. 1221.
report of register, notice to bring in objections to draft of, not necessary—
Ch. R. 93, p. 1222.
exceptions to .....Ib.
draft of, cannot be taken before register. Ib.
hearing of, before chancellor; not referred to register .....Ib.
how taken; note of testimony to be made—
Ch. R. 94, p. 1222; 745
who is and who is not entitled to—
Ch. R. 95, p. 1222.
confirmation of; hearing of exceptions .....Ib.
testimony, how taken .....Ch. R. 89, p. 1221.
Rehearing—
proceedings for, etc .....Ch. R. 82, p. 1220.
Rules of practice—
adopted by supreme court recognized; effect of 864
may be adopted by chancellors to facilitate business 865
of English chancery; when of force .....Ch. R. 7, p. 1203.
Replication to answer not necessary 701
Sale—
to be made by register, when 854
forthcoming bond; when authorized 861
forfeiture of, effect of; execution 862
in mortgage suits .....Ch. R. 108, p. 1226.
proceedings when subsequent incumbrances discovered before sale confirmed .....Ch. R. 109, p. 1226.
orders for, etc., by personal representatives and guardians; rule in reference to .....Ch. R. 115, p. 1228.

CHANCERY—*Continued.* SECTION

Security for costs, non-residents must give 1347
Sheriff—
liability of, and sureties for failure to collect money; proceedings 863
duty of to attend sessions of court 3739
State, suits by, for money wrongfully used, etc.—
jurisdiction in equity; no objection for multifariousness; cannot be put to election 3757
auxiliary writs in aid of 3758
levy of, replevy of property 3759
court open at all times; proceedings and decree 3760
trial by jury; effect of verdict; when may be waived 3761
Suit in—
commenced by bill, addressed to chancellor 673
filing bill is the commencement of 675
state may bring, by whom represented; what rules govern, etc 671
for moneys wrongfully used by officers, etc 3756, 3761
when complainant required to elect as to prosecution of suit in law or in equity ..... Ch. R. 114, p. 1227.
dismissal of, in vacation 703
Summons—
issue of 681
service of 682
corporations, foreign or domestic, service on whom ..... Ch. R. 21, p. 1206.
executed in another county; returned by mail, when 683, 684
infants, service on; how made ..... Ch. R. 20, p. 1205.
guardian ad litem for, appointment of ..... Ch. R. 23, p. 1207.
non-residents, summons for, and service on, when 687
persons of unsound mind, service on 685
guardian ad litem for, appointment of 685
Supplemental bills and bills of revivor—
recitals and contents of ..... Ch. R. 104, p. 1225.
proceedings and practice in relation to ..... Ch. R. 105, p. 1225.
Terms of court—
times and places of holding in northern division 631
northeastern division 632
northwestern division 633
southeastern division 634
southwestern division 635
special, when 636
notice of; how given 637
when to be opened 645
duty of sheriff to attend 3739
Trusts and trustees—
express trusts for payment or security of debts 4152–4173
investment, removal, and liability of trust estates 4174–4187
resignation, appointment and removal of trustees 4188–4204
Unmarried woman—
suit by, or against not abated by marriage of ..... Ch. R. 102, p. 1224.
Venue—
generally 676
divorce, suits for 1493
infants, petition to relieve of non-age 830
public moneys, suits by state for recovery of 3756
wills, contests of validity of 4298
change of, may be had in trial by jury of issue out of chancery 824
Writs of ne exeat—
on what demands, and in what case may issue 762

CHANCERY—*Continued.* SECTION

Writs of ne exeat—*Continued.*
power of chancellor in vacation in respect to ... 763
what officers may make orders for ... 771, 921
in aid of suit by state for recovery of money wrongfully used ... 3758
restoration of on appeal from order discharging ... Ch. R. 87, p. 1221.
register may make orders for on any day ... Ch. R. 4, p. 1203.
what sufficient prayer for, in bill ... Ch. R. 17, p. 1205.
answer must be sworn to, to authorize discharge of ... Ch. R. 32, p. 1209.

Writs of seizure—
when and by whom ordered ... 773
affidavit and bond ... 774
bond, property restored to defendant on giving ... 775
execution on, when ... 778
liability of plaintiff and sureties on ... 779
when property delivered to plaintiff ... 776
return of writs and bonds ... 777
restoration of on appeal from decree discharging ... Ch. R. 87, p. 1221.

Registers in chancery.

Acknowledgment and proof of conveyances, may take ... 993
Administrator ad litem, power to appoint ... 352
Appeal bond, liability for taking insufficient surety on ... 447
Appointment of; term of office ... Const., Art. VI., §21, p. 86; 653
Bond of; additional bond ... 654, 655
Books, duty of as to recopy of ... 664
and stationery, claim for, to be allowed ... 661
expense of, how apportioned when district more than one county ... 662
Compensation, such fees and commissions as may be provided, etc.— Const., Art. VI., §21, p. 86.
Contempt, may punish for ... 668
Costs, unpaid, on appeal, may issue execution for ... 456
Depositions, etc., not to be recorded; papers; transcript on appeal ... 658
Duties of, general ... 657
in relation to trusts and trustees ... 4152–4204
Execution, may issue, for costs unpaid on appeal ... 456
Fees allowed to ... 1373
prohibited from receiving, for indexes ... 1362
not entitled to, not entered on book ... 1365
Fee bill, must keep, posted up in office ... 1354
penalty for failure to post ... 1355
Fee-book, must keep ... 1364
File in pending suit, rule as to ... 2644, 2646
Indexes, to keep general, direct and reverse ... 663
prohibited from receiving fees or allowances for ... 1362
Injunctions, has no authority to grant or dissolve ... 659
Newspapers, duty as to taking and filing ... 3049, 3050
Office of, place of ... 656
Order-book to be kept by ... Ch. R. 3, p. 1203.
Pays money to successor ... 666
Practice law, register, his deputy, or partner not allowed to, where ... 667, 591
Records of office free to examination of public, when ... 665
Removal of, from office ... Const., Art. VI., §24, p. 86; 653
Rule as to allowing file in pending suit to be taken from office ... 2644, 2646
Special register, appointment of, when ... Ch. R. 6, p. 1203; 660
duties and powers of ... Ch. R. 6, p. 1203.
Summary judgments against ... 3784–3789

CHANCERY—*Continued.* SECTION
Testimony, powers and duties as to perpetuating 1861–1875
Transcript on appeal, duty as to .....Ch. R. 85, p. 1220; 658
liability for delay in furnishing..... 453
Trusts and trustees, powers and duties as to..... 4152–4204

CHANGE-BILLS.
Corporations must not pay out; penalty 867
officers of, prima facie liable for acts of corporation as to issue of 868
For sum not exceeding one dollar, interest at one hundred per cent.; suit on.. 2832
Holder may bring suit; notice and judgment..... 868
Persons circulating held makers..... 868
Suits on paper issued to circulate as money; interest on..... 866

CHANGE OF NAME.
Person adopting child may change name; proceeding..... 366, 367

CHANGE OF VENUE.
All courts invested with power to direct.....Const., Art. IV., §36, p. 76.
Chancery court..... 824
Circuit court.....C. C. R. 20, p. 1198; 4210–4215
Contested wills..... 4295–4297
Probate court 3383
When convict system interested..... 4216

CHARGE OF COURT.
Court must state the law of the case to the jury..... 3326
evidence when disputed..... 3326
not charge upon effect of evidence unless requested..... 3326
Must be in writing if requested before argument begun..... 3327
Special charges; how asked and passed upon..... 3328
given, must be taken by the jury..... 3328
refused, must be retained by clerk..... 3328
exception to giving or refusal presumed..... 613

CHATTEL-MORTGAGES.
Detinue based on; debt may be ascertained and payment bars writ..... 1477
defendant may plead any defense to debt except limitation 1478
Not valid unless in writing and subscribed by mortgagor..... 2151
Recorded; where and when must be..... 999, 1000
when self-proving, or certified copy evidence..... 992
Unrecorded; void as to creditors and purchasers without notice..... 1009

CHATTEL REAL.
Estate pur autre vie after death of tenant..... 4246

CHIEF JUSTICE.
Supreme court, *see*.....Const., Art. VI., §§11, 12, pp. 84, 85; 3825

CHILDREN.
Adoption of; proceedings..... 367
Advancements by parent to child or other lineal descendant..... 1463–1473
Apprenticed, when and how..... 496–507
Bastard, inherit from mother..... 1459
legitimated by marriage of parents, if recognized..... 364
declaration filed; effect..... 365
name may be changed, how..... 366
Birth of child revokes will made before marriage, when..... 4249
after will made, child inherits, when..... 4251
how child's portion set apart..... 4252

CHILDREN—*Continued.* SECTION

Conveyances of personalty to minor to be recorded when; effect of failure..... 1014
Custody of, on appointment of guardian..... 2249, 2250
decree of divorce..... 1501
voluntary separation..... 2536, 2537
Death of child born after will restores will, when..... 4253
Descent of real and personal property of parents to..... 1453–1462
Devise or legacy to child, effect on, of child's death..... 4257
Divorce for pregnancy bastardizes issue..... 1499
Exemptions in favor of minor, from estate of deceased parent..... 2069–2103
when minor may claim, for father..... 2063
have homestead sold in equity..... 2064
Father entitled to preference in granting letters of guardianship..... 2249
may, by will, appoint guardian for minor..... 2250
or mother may sue for seduction of daughter..... 24
personal injury to minor causing death..... 25, 26
Grandchildren, when take under appointment or power to child..... 1058
Incestuous marriage, issue of, not illegitimate, when..... 2840
Liability for support of indigent parents..... 3233
Marriage of parents legitimates bastard, when..... 364
child, when consent of parent required..... 2845
penalty for issuing license without such consent..... 2848, 2849
Mother or next of kin on her part inherit from bastard..... 1460
Non-age, minors over eighteen relieved of; proceedings..... 829–835
Possession of minor's personalty is possession of child, when..... 1015
Posthumous, inherit as if born in lifetime of father..... 1458
Redemption by child, of lands sold under mortgage, execution, etc..... 3515

CHOSES IN ACTION.

Acceptance of, to be in writing..... 880
written promise to accept, when an..... 881
may be required to be written on the paper; effect of refusal..... 882
refusal to return bill in twenty-four hours is an acceptance..... 884
authority of notary to demand, and payment of negotiable paper.. 3025
Actions on; in whose name brought..... 28
lost note, bill, etc..... 31
limitation of..... 2795, 2796
statute not applicable to paper issued as money..... 2824
form for complaint in.....Nos. 1–6, pp. 942, 943; 3352
Bank-notes; counterfeits may be defaced..... 1098
Bonds, state, county, municipal and corporate, when assignable without indorsement..... 875
Change-bills, bank-notes, etc., provisions in reference to..... 867, 868, 1098
Choses in action not within registration statutes..... 1002
Commercial law, what instruments governed by..... 869
other instruments governed by, as to grace, protest and notice..... 870
Costs, when recoverable against assignor or indorser..... 896
Damages for breach of promise to accept..... 883
on protested bills..... 885
include all charges except interest and protest fees..... 886
cover exchange, if bill payable in our currency..... 887
exchange added if bill payable in foreign currency..... 888
on protest for non-acceptance..... 889
Equitable attachment in favor of indorser, etc..... 780–783
Grace, days of, on what instruments not allowed..... 871
Holidays, papers due on, due next succeeding business day..... 872
Indorsement, what paper assignable by..... 876
state, county, municipal and corporate bonds, when negotiable without..... 875

CHOSES IN ACTION—*Continued.* SECTION

Inland and foreign bills defined ... 873
Issued to circulate as money; effect of ... 866
suits on, rate of interest ... 866
Justice of peace, when may act as notary public ... 3031
Limitation of actions on ... 2795, 2796
statute not applicable to paper issued as money ... 2824
Lost note, bill, etc., action on ... 81
Notary public, authority of, to demand acceptance and payment of negotiable paper ... 3025
protest for non-acceptance or non-payment and give notice ... 3025
certificate of, as evidence ... 3030
when justice of peace may act as ... 3031
fees of, for protest, etc ... 3033
Notice of protest, where sent, etc ... 890
personal, when not necessary ... 891
Payable, to whom, if expressing other than real payee, etc ... 874
Purchase-money of land, transfer of paper given for, carries lien ... 878
Railroad companies, claims against, for injuries to property, may be assigned ... 877
Set-off, etc., against non-negotiable paper ... 879
when negotiable paper not subject to, or recoupment ... 3733
Suit necessary to charge indorser, etc., on non-negotiable paper ... 892
time for bringing, may be extended or waived ... 893
excuse for not bringing, obtaining judgment, etc ... 894
applies to irregular indorsements or assignments ... 895
costs recoverable against assignor or indorser ... 896

CHURCHES.

Incorporation of; election of trustees ... 1302
complete on trustees filing certificate ... 1303
powers of corporation ... 1304
service of process and papers on ... 1305
execution of mortgage by ... 1306
recital in minutes, as to mortgage, evidence ... 1307
May alter and amend charter; proceedings ... 1314, 1315
Pews or seats in, exempt from levy and sale ... 2036
Property of, exempt from taxation ... 1311, 3907

CIGARETTES.

Dealers in, required to take out license ... Subd. 28, 4122

CIRCUIT.

Meaning of the word ... 2

CIRCUIT COURT.

Acts, supreme court reports, digest, etc., use of during term ... 927
Adjourned terms, when to be held; proceedings ... 917
Appeals from judgments of justices, jurisdiction of ... 481
Attorneys, authority to admit to practice law ... 580
Circuits, state to be divided into ... Const., Art. VI., §4, p. 83.
number of, not to exceed eight unless, etc ... Ib.
to contain not less than three nor more than twelve counties ... Ib.
judge for each to be elected by qualified voters ... Ib.
state divided into thirteen ... 897
Criminal docket, when to be taken up ... 913
Errors, correction of, after judgment, etc ... 919
General assembly has power to provide for holding when judge fails to attend ... Const., Art. VI., §19, p. 86.
Judicial power in part vested in ... Const., Art. VI., §1, p. 82; 2636

CIRCUIT COURT—*Continued.* SECTION

Judges may hold for each other.....Const., Art. VI., §6, p. 84.
when incompetent, provisions for trial of causes—
Const., Art. VI., §18, p. 85.
when fails to attend, general assembly to provide for holding—
Const., Art. VI., §19, p. 86.
special; when appointed; qualifications; compensation..... 928, 929
Jurisdiction of, as declared by constitution.....Const., Art. VI., §5, p. 83.
and powers of, declared, generally..... 918
attorneys, to remove or suspend..... 595–609
dower, to allot, when judge of probate incompetent..... 1527
corporations, of actions to vacate charters of..... 3417–3419
of actions for usurpation or forfeiture of office..... 3420–3439
of franchise..... 3420–3439
mechanic's liens, to enforce..... 2733
awards of arbitrators, to enforce..... 513
summary proceedings.....3763–3811
for defaults when process returnable before justices..... 3824
of appeals from judgments of justices..... 481
Minutes must be read each morning; upon adjournment signed by judge..... 2641
Powers of, in common with other courts..... 2638–2640
to prevent abuse of process..... 919
correct errors after final judgment..... 919
Process, power to prevent abuse of..... 919
Recording papers; final record; substitution.....Subd. 9, 934; 2642–2652
Rules of practice in.....pp. 1195–1202.
authority of supreme court to establish..... 3826
Sheriff, duty of to attend..... 3739
constables, three to be summoned by..... 925
duty to attend..... 976
compensation of..... 926
Special terms, when to be held..... 914
notice of..... 915
witnesses and process..... 916
Times and places of holding—
in first circuit..... 899
second circuit..... 900
third circuit..... 901
fourth circuit..... 902
fifth circuit..... 903
sixth circuit..... 904
seventh circuit..... 905
eighth circuit..... 906
ninth circuit..... 907
tenth circuit..... 908
eleventh circuit..... 909
twelfth circuit..... 910
thirteenth circuit..... 911
To be held at court-house of each county, except when otherwise provided.... 898
in each county at least twice in each year..Const., Art. VI., §6, p. 84.
When to be opened..... 912
court-house cannot be occupied, may be held elsewhere..... 1406

CIRCUIT-COURT CLERK.

Acknowledgment and proof of conveyances, may take..... 993
Additional bond may be required of..... 3112

CIRCUIT-COURT CLERK—*Continued.* SECTION

Appeal bond, liability for taking insufficient surety on 447
Appeal, liability for delay in furnishing transcript on 453
Attachments, authority to issue 526
Authority of, general 933
to calculate interest on certain judgments 3316
as to settlements by probate judge as custodian of funds of minors 2390
Ballot-boxes, must, with others, provide for election 1587
Ballots, if probate judge fails to have printed, must perform duty 1614
Bond of; penalty, condition, etc 931
by whom approved 931, 3079
a lien upon property of principal from time of execution 3078
may be declared insufficient and new bond required; when and how 3119
Certifies copy of indictment against convict 938
Commission of, when to be issued 3058–3060
Contest of election of members of general assembly, duty as to 1689–1692
chancellor, duty as to 1693, 1694
judge of probate, duty as to 1696
Conveyances, may take acknowledgment and proof of 993
Costs and commissions of sheriff, collects, when 937
Costs on appeal, may issue execution for 456
in contested election, must issue execution for 1692
Death of judge of probate, must notify governor of 3146
Dismissal of suits before, in vacation 3317
Dockets, order-books and executions, rules as to ...C. C. R. 1–4, pp. 1195, 1196.
Dueling oath, required to take 3062
Duties of, general 934
Elected by qualified electors of county .....Const., Art. VI., §23, p. 86; 1573
Election of, time of 1574, 1578
how contested 1686–1703
Examination of office of, by committee 941–943
Fee bill, required to post; penalty for failure 1354, 1355
Fee-book, required to keep 1364
Fees, what, entitled to 1372
not entitled to unless entered in fee-book 1365
Impeachment, grounds of .....Const., Art. VII., §3, p. 88.
Ineligibility 3056
Inspectors of election, duty as to appointing 1588
Jail, duty as to examination of 1415
Must pay over money to successor 939
Newspaper, weekly, duty as to taking and filing 3049, 3050
Oath of office filed with judge of probate 3066
Office, where kept 932
vacated from expiration of term on failure to elect 3143
stationery for, to be paid for by county 940
examination of by committee 941–943
rule as to taking file of pending suit from 2646
Practice law, must not, in his court 591
Recopy of books of office 936
Records of office free to examination of all persons, when 935
Reports failure of judge to hold court; exceptions 923, 924
Returning-officers of election, duty as to appointing 1588
Rule as to taking files, in pending suits, from office 2646
Special election, notified of, by sheriff 1603
Stationery for office of, paid for by county 940
Summary proceedings against 3784–3799
for failure to pay over county money 3803
venue of 3767

CIRCUIT-COURT CLERK—*Continued.* SECTION
Supervisors of election, one of board of 1644
Term of office of ..... Const., Art. VI., §23, p. 86; 3054
Testimony, duty as to perpetuation of 1866
Transcript on appeal, liability for delay in furnishing 453
Vacancy in office filled by governor ..... Const., Art. VI., §23, p. 86; 3061

CIRCUIT JUDGE.
Absence of, adjourns court 922
Acknowledgment and probate of conveyances, authority to take 993
Additional bonds of certain officers, authority to require 3111
Appeal from judgments of, on application for remedial writs 431
Are conservators of the peace ..... Const., Art. VI., §16, p. 85.
Attachments, authority to issue 526–529
Authority of, general 921
Clerk's office, duty to appoint committee to examine 941
Clerical errors, authority to amend after judgment 3334
Commission of; when to be issued 3058–3060
Compensation of, not to be diminished during term .. Const., Art. VI., §10, p. 84.
Dueling oath, required to take 3062
Elected by qualified electors of circuit ..... Const., Art. VI., §12, p. 85; 1573
one for each circuit to be ..... Const., Art. VI., §4, p. 83.
Election of, time of 1578
how and before whom contested 1686–1703
Equitable attachments, writs of ne exeat, etc., necessary orders for issue of ... 771
Fees and perquisites, not to receive ..... Const., Art. VI., §10, p. 84.
Forfeiture for failure to hold court or absence from 923, 924
General election for 1574
Impeachment, grounds of ..... Const., Art. VII., §2, p. 87.
Incompetent, when 2637
when, provisions for trial of causes ... Const., Art. VI., §18, p. 85.
Injunctions, authority to grant ..... Const., Art. VI., §6, p. 84; 784
Marriages, authority to solemnize 2841
May hold court for each other ..... Const., Art. VI., §6, p. 84.
Not to hold any office, except judicial, during term .. Const., Art. VI., §10, p. 84.
Official bonds, authority to declare insufficient and require new bond 3119–3123
sureties on, authority to discharge and require new bond .. 3124–3132
Practicing law, prohibited from ..... Const., Art. VI., §20, p. 86.
Qualifications of ..... Const., Art. VI., §14, p. 85.
Remedial writs, appeal from judgments of, on application for 431
Residence of ..... Const., Art. VI., §4, p. 83; 920
Salary of 920
reduced one-half while court held by special judge; exception 930
Special judge, appointed by governor, when 928
oath of office, to take; commission of 928
powers and jurisdiction of 928
compensation of 929
Term of office of ..... Const., Art. VI., §15, p. 85; 3054
not to be affected by change in time of election—
Const., Art. VI., §15, p. 85.
Vacancy filled by governor; term of appointee ..... Const., Art. VI., §17, p. 85; 3061
Vacates office by accepting another 3141
Writs of seizure returnable into chancery court, authority to order 773

CIRCUS.
License required for each day's exhibition of ..... Subd. 18, 4122

CITIES.
Municipal corporations, *see* 2937–2973

CITIZEN. SECTION

Any citizen may sue for statutory penalty when no mode of recovery provided 15
No citizen shall be exiled....Const., Art. I., §31, p. 67.
Right to speak, write and publish his sentiments....Ib. §5, p. 61.
assemble and apply for redress of grievances....Ib. §26, p. 66.
bear arms in defense of himself and the state....Ib. §27, p. 66.
Who are citizens....Ib. §2, p. 60.

CITY COURT.

Attorneys, authority to admit to practice.... 580
Election of judges and clerks; time and term.... 1578
Judges of, prohibited from practicing law....Const., Art. VI., §20, p. 86.
Jurisdiction and powers of.... 944
Marriages, authority of judges to solemnize.... 2841
Special judge, appointed by governor, when.... 945
provisions relative to special circuit judge applicable to.... 945
compensation of, deducted from salary of judge.... 945

CITY-COURT CLERK.

Election and term of office.... 1578
May issue attachments.... 526
Must not practice law.... 591

CIVIL LAW.

Kindred computed by.... 1456

CLERGYMAN.

Of different denominations may solemnize marriages.... 2841-2843

CLOCKS.

License required for selling or peddling....Subds. 38, 39, 4122

CLOUD ON TITLE.

Bill in equity to remove, and to quiet title; proceedings....809-813

COAL.

Full weight to be credited to miner at 2,000 pounds a ton.... 2908

COAL-OIL.

Dealers in, as principal business, taxed on gross receipts....Subd. 56, 4122

CODE.

Act adopting....p. 1.
providing for publication and distribution of....pp. 1-5.
Duty of general assembly to make provision for....Const., Art. IV., §46, p. 77.
Law adopting, an exception to provision as to subject and title of laws—
Ib. §2, p. 71.
Meaning of certain words used in.... 1-9
revenue law.... 3906
University of Alabama, law department of, entitled to three copies of.... 3684
What laws continued in force; what laws repealed by.... 10
Words used in, meaning of.... 1-8

COLLATERAL KIN.

No representation among; exception.... 1455
When they inherit.... 1455

COLLATERAL SECURITIES.

Not to be transferred without transfer of debt secured.... 947
Receipt to be given for if demanded; penalty for willful failure.... 946
Sale of.... 948
notice and place of.... 949
surplus proceeds of, disposition of.... 950

SECTION

COLLECTOR.

Of taxes. See TAXATION 3993–4045

COLOR.

No educational or property qualification for suffrage or office to be made on account of race or ..... Const., Art. I., §38, p. 67.

Railroads must provide separate and equal accommodations for passengers of different 3454

conductor must assign passenger to car designated for his color 3455

COLOR OF TITLE.

Adverse possession without; declarations; record; notice 1541–1546

When possession under relieves from rent for more than one year 1540

COMMERCE AND TRADE.

As between individuals; choses in action 869–896

collateral securities and pledges 946–950

fraudulent and void contracts 2150–2170

interest 2626–2632

limited partnership 3207–3231

Public regulations; change-bills and banking 866–868

insurance 2575–2625

notaries 3021–3033

railroads 3440–3480

storage and sale of cotton 1389–1395

warehousemen and common carriers 4218–4229

weights and measures 4230–4240

COMMERCIAL AGENCY.

License required of ..... Subd. 40, 4122

COMMERCIAL FERTILIZERS.

Fertilizers, *see* 378–395

COMMERCIAL LAW.

What instruments are governed by 869, 870, 875

COMMISSIONER OF AGRICULTURE.

Appointment of clerks, authority for 373

Bond of, by whom approved; conditions, etc., where filed 370

Clerks of; bond; oath of office; term of 373

duties of 374

compensation of 375

Dueling oath, required to take 3062

Duties of ..... Note, pp. 201, 202; 376

Duty of, to furnish license to fertilizer-dealers ..... Subd. 16, 376; 379

Election of; when and by whom 1573–1575

term of office of; vacancy, how filled 369, 3052

Farmers' institutes, measures for conducting, adopted by 416

expenses for, appropriation for 417

detailed statement of embodied in annual report of 416

Fertilizer-tags, must make requisition on auditor for 381

monthly report of sale of 382

destroy at end of each season 383

suit for, against, when 385

liability of, and sureties for, not accounted for 384

Fruit-trees, diseased, duty of, as to ..... Note, pp. 201, 202; 376

owner may be required to destroy same ..... Ib.; 376

penalty for failure to comply ..... Note, p. 202; 376

License to be furnished by, to dealers in fertilizers ..... Subd. 16, 376; 379

printed report of, or certified copy of record, evidence as to, etc 380

COMMISSIONER OF AGRICULTURE—*Continued.* SECTION

Oath of office; bond, etc. 370
Office of, at capitol 372
Printed report of, or certified copy of record; evidence as to license, etc. 380
Reports, must make quarterly, etc., as to receipts and disbursements....Subd. 19, 376
annual, as to license issued, receipts, disbursements, etc. Subd. 19, 376
Salary of 371
State geologist to furnish information to 377
Term of office of 369, 3052
Vacancy in office of; how filled; term of appointee 369

COMMISSIONERS OF DEEDS.

Acknowledgment and proof of conveyances, may take 968, 994
Affidavits, authority to take 1799
Appointment of in other states; term of office; authority of 968
Depositions, may take and certify 968
Wills, may take proof of 968

COMMISSIONER OF INSURANCE.

Secretary of state styled "Insurance Commissioner ex-officio" 2577
may appoint deputy commissioner; bond; salary 2577
duties of as commissioner 2577-2613

COMMISSIONERS' COURT.

County commissioners, court of, *see* 951-967

COMMISSION MERCHANT.

Tax on gross receipts of Subd. 2, 3912

COMMISSIONS.

Commissioned officers; who are 3058
special judge 928
chancellor 650
Form and issue of 3059
Issued, when 3060
Vacancies, appointees to, to receive 3061, 2659

COMMON CARRIER.

Absolved from liability as insurer on arrival of freight, how 4224
Bill of lading to be given for property received 4218
liability for failure to give 4218
must not be given for property not delivered 4219
Cotton, delivery of to compress, when sufficient 4220
concealing or changing marks 4229
Form of complaint on bill of lading No. 15, p. 946.
Insurance, proceeds of, how applied 4227
Liability for false bill of lading or receipt 4223
second bill of lading or receipt without canceling first 4223
Sale or incumbrance of property received forbidden 4221
of perishable freight to pay charges 4225
other freight to pay charges 4226

COMPANY.

Included in "person" or "party" in revenue law Subd. 5, 3906
When word employed as part of corporate name 1286

COMPLAINT.

Accompanies summons in all cases, 3291
All actions on contract may be joined 3292

COMPLAINT—*Continued.* SECTION
Amendments allowed, when ... 3304, 3330-3334
Assignment of breaches of penal bond, ... 3289
warranty implied from "grant," "bargain," etc., in deed ... 1035
Attachment, when complaint to be filed in ... 561
Attorney, must be signed by ... G. R. 4, p. 1186; 3291
Brevity and perspicuity required in ... 3285
Case, trover and trespass may be joined in ... 3293
Declaration dispensed with for ... 3291
Defamation, what sufficient in ... 3287
Forms of ... pp. 942-949; 3352
Joinder of all actions on contract in ... 3292
trover, trespass and case in ... 3293
Lost instrument, on; to be accompanied by affidavit of loss ... 31
Mechanic's lien, essential averments in ... 2734
Profert of sealed instrument dispensed with ... 3290
Stricken out for prolixity, etc., when ... 3286
Verified account, on, facts to be indorsed ... 1804
Waiver of exemptions to be averred in, when ... 2107

COMPOSITION.
Written, of debts, given effect according to instruction of parties ... 1806

COMPOUNDERS AND RECTIFIERS
Of spirituous and vinous liquors, license for ... Subd. 6, 4122

COMPROMISE.
Authority of personal representative to compromise bad or doubtful claims .. 138-140
guardian to compromise debts due ward ... 2301-2304
trustee to compromise debts due trust estate ... 4171
Counties may compromise their indebtedness ... 1424
Governor, attorney-general and auditor may compromise claims due state .. 3753, 3754
In writing, must operate according to intention of parties ... 1806

CONCERT.
License required for; exception ... Subd. 17, 4112

CONDEMNATION OF LANDS FOR PUBLIC USES.
Eminent domain, *see* ... 1712-1726

CONDITIONAL SALES.
Conditional sale, lease, rent or hire of personal property; when void unless in writing ... 1017
when and where to be recorded ... 1017
contract for, or certified copy as evidence, etc ... 1018
Contract for, of railroad rolling-stock; effect of failure to record ... 1016
when, acknowledged and recorded, original, or certified copy admissible in evidence ... 1018
Mortgagee or vendor, etc., in suits by, secured debt may be ascertained and paid by defendant; proceedings ... 1477
what may be pleaded in such case ... 1478
when debt less than value of property sued for; proceedings ... 1480
Railroad, conditional sale of rolling-stock of; effect of failure to record contract of ... 1016
when contract for, acknowledged and recorded, original, or certified copy admissible in evidence ... 1018

CONFESSION OF JUDGMENT. SECTION

A general assignment 2158
A release of errors on appeal 477
Creditor obtaining not entitled to redeem 3510
Surety not to confess judgment, when 3883

CONGRESS.

Acts of, distribution of 1970, 1990
Death of representative to, notice of; by whom and to whom sent 3145
Districts, congressional 969
one representative elected for each; by whom elected 970, 1573, 1579
Election of member of, time of 1579
Resignation of member of, to whom made 3148
Special election for member of 1598
notice of, by proclamation of governor 1601

CONSERVATORS OF THE PEACE.

Circuit judges within their circuits ..... Const., Art. VI., §16, p. 85.
Constables within their counties 975
Judges of supreme court throughout state ..... Const., Art. VI., §16, p. 85.
inferior courts within their jurisdictions ..... Ib.
probate courts within their counties 3360
Justices of the peace within their counties 2663

CONSIDERATION.

Fertilizers; including tag tax in price of, vitiates sale 387
sold at fictitious price, only market value recoverable 388
Instruments sued on, impeached by plea; burden of proof 1800
presumption as to 1800
under seal, may be impeached or inquired into 3288

CONSOLIDATION.

Actions pending; when court may order 3318
Corporations; insurance companies 1110–1115
mining, manufacturing, etc., companies 1147–1151
railroad companies 1166–1168
street-railway and electric-light companies 1202–1204

CONSTABLE.

Additional bond may be required of when 3112–3118
Attachments and executions, how served when office vacant or constable interested 979
issued by justices, returnable to circuit court, when levied, by .. 547
Bond of 974
additional, may be required of 3112–3118
surety on, discharge of, and new bond required, when 3124–3132
Circuit court, when required to attend; penalty for failure 925
compensation for attending 926
when summary proceedings against, may be instituted in 3824
Commission of, when to be issued 3058–3060
Compensation of, when attending circuit 926
Conservator of the peace, is, within the county 975
Dueling oath, required to take 3062
Duties of, general 976
and liabilities of special constable 978
Elected, one for each precinct ..... Const., Art. VI., §26, p. 86; 971, 1574
Election, by qualified electors of precinct 1573
time of 1576

CONSTABLE—*Continued.* SECTION
Executions and attachments, how served when office vacant or constable interested ... 979
levy of, when issued by justice of another county ... 1936, 1937
when bond of indemnity may be required before ... 1940
on land, duty of ... 1947, 1948
Fees allowed to ... 1380
in actions of forcible entry and unlawful detainer ... 2143
of sheriff when acting as constable ... 3741
Forcible entry or unlawful detainer, service of writ of ... 2130
penalty for failure to execute process in actions of ... 2140
Forthcoming bond, approved by ... 1941
must return forfeited, when ... 1942
Jurors before justices, must summon ... 2691
Justices appoint special constable, when ... 978, 2663
Land, levy of execution on, duty of ... 1947, 1948
Liability of, and sureties ... 980
Limitation of actions against ... 2795
sureties of ... 2796
designated summary proceedings against ... 3823
Nuisance to health, may execute warrant for removal of ... 2393, 2394
Oath of office, filing of ... 3066
Quarantine, may execute warrant for arrest of person escaping from ... 2402
Removal from precinct vacates office ... 977
penalty for acting after ... 977
Resignation of; to whom made ... 3149
Sheriff may execute process required of constables ... 3741
fees and liabilities of, when so acting ... 3741
Special constables without bond, appointed by justices, when ... 978, 2663
Subpœnas issued by justices, service of by ... 2682
in another county, when ... 2683
Summary judgments against ... 3815–3820
in favor of ... 3821
Summary proceedings against, limitation of designated ... 3823
when may be instituted in circuit court ... 3824
venue of ... 3822
Term of office of ... 971
Vacancy filled by governor; term of appointee ... 972, 3061
notice of; when and by whom given ... 973
special constable appointed by justice when vacancy or constable interested ... 978
Venue of summary proceedings against ... 3822

CONSTITUTION.
Constitution of the United States ... p. 6.
this state ... p. 60.
mode of amending ... Const., Art. XVII., p. 103.
Elections on proposed amendments to state ... 1662–1664
how ballot prepared and cast ... 1608, 1611
Notice of local or special laws required by ... Const., Art. IV., §24, p. 74.
how given and proved ... 2231
Pupils in state schools to be instructed in state and federal constitutions— Subd. 4, 3546

CONSTRUCTION.
And operation of conveyances ... 1019–1063
Of attachment law ... 564
certain provisions of revenue law ... 3982

CONSTRUCTION—*Continued.* SECTION
Of contracts; when in reference to standard of weights and measures, etc..... 4231
garnishment law..... 2186
words and phrases used in this Code..... 1-11

CONTAGIOUS DISEASES.
Health and quarantine, *see*..... 2392-2442

CONTEMPTS.
Power of courts generally to punish for..... 2638-2640
chancery court..... 641
circuit court.....Subd. 4, 918
court of county commissioners.....Subd. 6, 958
justices of the peace.....Subd. 2, 2663
probate court..... 3364
registers in chancery..... 668
supreme court.....Subd. 6, 3826

CONTESTED ELECTIONS.
Elections, *see*..... 1667-1671

CONTINGENT FUND.
For department of education; unexpended part credited to succeeding year— 3622, 3623
executive department, evidence preliminary to payment from..... 2004

CONTINGENT REMAINDER.
Birth of posthumous child, effect of, on estate limited to heirs, issue, or child.. 1024
In lands operates as executory devise..... 1022
Remainder limited after death without heirs or issue; how construed..... 1023
Rule in Shelley's case abolished..... 1025
Tenant for life, etc., not to defeat a remainder dependent on his estate..... 1026
Warranties by tenant for life void against remainder-men, etc..... 1034

CONTINUANCES.
Rules as to in circuit court.....C. C. R. 16, 17, 28, pp. 1197, 1198, 1200.
chancery court.....Ch. R. 70, 71, p. 1217.
on amendment of bill or answer..... 706

CONTRACTS.
Assignable by indorsement..... 876
Auctioneer's memorandum sufficient to take without the statute..... 2153
Between officers and publishers for legal notices; when void..... 3046
railroad commissioner and clerks and railroads; when prohibited.... 3488
railroads for pooling; when void..... 3464
Change-bills, etc., when rendered void..... 1097
Commercial fertilizers, for sale or exchange of; when void.....378, 386
market value of, only recoverable, when..... 388
parol evidence competent to show... 389
Commercial law, what contracts governed by..... 869-871
Conditional sale, for, of railroad rolling-stock, etc., to be recorded..... 1016
such contract or certified copy, as evidence..... 1018
lease, rent or hire of personal property; void unless in writing, when 1017
when and where recorded 1017
if such property moved into this state or from one county to another must be recorded..... 1017
Consolidation, for, of insurance companies.....1110-1115
mining, quarrying and manufacturing companies....1147-1151
railroad companies.....1166-1169
street-railways and electric-light companies..... 1202-1204

CONTRACTS—*Continued.* SECTION

Constitutional provision against impairing obligation of—
Const., Art. I., §23, p. 65; Art. IV., §56, p. 78.
Conveyance of property devised, when devise not revoked by contract for..... 4254
land, written contract for; how executed on death of vendor.....1069-1072
Dentist, for services of, when void..... 1452
Drugs, for sale of, when void..... 3259
Devise, when, not revoked by contract for conveyance of property delivered.. 4254
Fertilizers, commercial, for sale or exchange of; when void..... 378, 386
market value only recoverable, when..... 388
parol evidence competent to show..... 389
Founded on a gambling consideration, void..... 2163
Fuel, stationery, etc., for, for state; by whom made on behalf of state..... 1978
to be furnished under contract, etc.—
Const., Art. IV., §30, p. 75.
what officers not to be interested in contract for.....Ib.
Gambling consideration, founded on, void..... 2163
remedies for recovery of money or thing lost at.....2163-2169
General and public laws, publication of, in newspaper; provisions as to....3399-3401
Hotel-keepers, special contract between, and guest authorized..... 2540
Husband and wife may contract with each other; confidential relations; exception..... 2529
Improvements on public lands may be sold..... 2162
Infants relieved of disabilities of non-age; power to contract..... 833
In writing assignable by indorsement..... 876
Indorsement, assignable by..... 876
Insurance companies, for consolidation of..... 1110-1115
Interest on..... 2626-2632
Lands, public, not to bid at any sale of; unlawful and void..... 2159-2161
to bid off, under agreement to transfer; unlawful and void..2160, 2161
penalty for making such contracts..... 2161
written contracts for conveyance of; how executed on death of vendor..... 1069-1072
Liquors, spirituous, vinous or malt, for sale or exchange of; when void..... 3524
Lost contract, etc., required by law to be recorded, substitution of..... 2650, 2651
Made on Sunday; when void..... 2170
Medical services, contract for; when void..... 3266
provisions of chapter do not apply to midwives..... 3267
Midwifery, women practicing, exempt from provisions relating to contract for medical services..... 3267
Mile-posts and sign-boards, for, by whom made; payments..... 2474
Mining, quarrying and manufacturing companies, for consolidation of.... 1147-1151
Minors relieved of disabilities of non-age; powers to contract..... 833
licensed to practice law precluded from pleading infancy—
Note, sec. 9, p. 258; 585
Newspaper, for publication in, of general and public laws; provisions in reference to..... 3399-3401
Officers, between, and publishers for legal notices; when void..... 3046
Overseers, may make, for timber for public roads..... 2475
Personal property, for conditional sale, lease, etc., of, void unless in writing, and recorded, when; where and when recorded..... 1017
if removed to this state or from county to county, must be again recorded..... 1017
Physician, for services of; when void..... 3266
provisions of chapter do not apply to midwives..... 3267
Pooling, for, between railroads; when void..... 3464
Publication of general and public laws in newspaper, provisions as to..... 3399-3401

CONTRACTS—*Continued.* SECTION

Public lands, not to bid at any sale of; unlawful and void.....2159–2161
to bid off, under agreement to transfer, unlawful and void..2160, 2161
penalty for making such contracts..... 2161
improvements on, may be sold 2162
Public printing, for; provisions in reference to..... 3385–3394
Public roads, for timber for, may be made by overseers..... 2475
Public schools, with teachers of; how made and executed 3569
when contracts for, invalid..... 3606
Railroad commissioners and clerks not to contract with railroads 3488
for pooling between; when void..... 3464
rolling-stock, etc., for conditional sale of, to be recorded..... 1016
contract or certified copy, as evidence..... 1018
Railroad companies, for consolidation of..... 1166–1169
Remedies for recovery of money or thing lost at gambling..... 2163–2169
Schools, public, for, when invalid..... 3606
Sign-boards and mile-posts, for; by whom made; payments..... 2474
Spirituous, vinous or malt liquors, for sale or exchange of; when void..... 3524
Stationery, fuel, etc., for state, for; by whom made on behalf of state..... 1978
to be furnished under contract, etc.—
Const., Art. IV., §30, p. 75.
what officers not to be interested in contract for.....Ib.
Statute of frauds; what, void unless in writing..... 2150–2155
auctioneer's memorandum sufficient to take without..... 2153
officer's return or report of judicial sale sufficient..... 2154
Substitution of lost contract, etc., by law required to be recorded 2650, 2651
Sunday, made on; when void..... 2170
Teacher of public school, with; how made and executed 3569
Timber for public road, for, may be made by overseer..... 2475
Void unless in writing, when; statute of frauds..... 2150–2155
When devise not revoked by contract for conveyance of property devised..... 4254
Wife's power to contract..... 2526, 2528, 2529, 2532
Work, contract for, or anything to be sold and delivered, to be construed in reference to standard of weights and measures established by congress..... 4231
Written contracts for conveyances of land; how executed on death of vendor— 1069–1072

CONTRACTOR.

Lien of, for building or improvement on land..... 2723–2752

CONTRIBUTION.

Between creditors of insolvent estate..... 323–325
sureties on bond of executor or administrator..... 106
public officer..... 3118
in other cases..... 3880, 3882

CONVENTION.

Constitutional, called only by vote of the people.Const., Art. XVII., §2, p. 104.

CONVEYANCES.

Execution.

Acknowledgment dispenses with necessity of witnesses..... 984
By personal representatives under order of probate court; when, by and to whom made..... 179
or to personal representative of partnership land; proceedings for..... 188–200
sheriff, of lands sold by predecessor; order for..... 1915
Commissioner may execute under decree of chancery, when..... 849
Contract for, written; how executed after death of vendor..... 1069–1072

CONVEYANCES—*Continued.* SECTION

Execution—*Continued.*

Decree of chancery court for; when operates as ... 849
must prescribe time ... 853
may be executed by commissioner, when ... 849
Dower, relinquishment of; how executed ... 1509–1513
power of wife to make; when husband must join ... 2528
Homestead, of; how executed ... 2034
Lands, who may convey by deed or will ... 981
of, to be in writing; how signed ... 982
seal not necessary ... 983
when instrument effectual to pass legal title ... 983
acknowledgment dispenses with necessity of witnesses ... 984
by sheriff; time within which to be made ... 1914
sold by predecessor; order for ... 1915
grants of, by state made by patent; how signed ... 2699
purchasers of, from state entitled to patents, when ... 2701, 3652–3654
Partnership land, by or to personal representative of; proceedings for ... 188–200
Patents, grants by state made by; how signed ... 2699
purchasers from state entitled to, when ... 2701, 3652–3654
Personal representative, by or to of partnership land; proceedings for ... 188–200
under order of probate court; when, by and to whom made ... 179
Powers of attorney to make; how proved or acknowledged ... 995
Relinquishment of dower; how executed ... 1509–1513
power of wife to make; when husband must join ... 2528
Seal not necessary ... 983
Sheriff, by, of land; time within which, to be made ... 1914
sold by predecessor; order for ... 1915
Vendor; written contract for, how executed after death of ... 1069–1072
Who may convey lands by deed or will ... 981
Written contracts for; how executed after death of vendor ... 1069–1072

Acknowledgment and probate.

Acknowledgment, form of, generally ... 996
of conveyance of homestead ... 2034
must comply substantially with form ... 998
dispenses with necessity of witnesses ... 984
Admitted to record on proof, must be attested by two witnesses ... 998
Form of acknowledgment, generally ... 996
of conveyances of homestead ... 2034
Form of probate ... 997
Officers authorized to take, etc., within the state ... 993
without the state ... 994
Power of attorney, of, to convey property, or to enter satisfaction of mortgage, etc ... 995
Probate, form of ... 997
must comply substantially with form ... 998
When acknowledged or proved, and recorded within, etc., are self-proving ... 992
Within the state, what officers may take ... 993
Without the state, what officers may take ... 994

Registration.

Access to books of record allowed to all persons ... 988
Admitted to record on proof, must be attested by two witnesses ... 998
Assignment, deeds of, for benefit of creditors; when and where recorded ... 1004
operative from day of delivery to the judge ... 1004

CONVEYANCES—*Continued.* SECTION

Registration—*Continued.*

Books kept for recording; how recorded ... 986
Certified copies to be made when required, on payment of fees ... 988
Certificate of record; contents ... 986
Choses in action; transfers of not to be recorded ... 1002
Conditional sale, lease, rent or hire, contract for, to be recorded ... 1016, 1017
Conveyances to be recorded, when required, in office of judge of probate ... 985
creating estates in personalty for life; when and where recorded ... 1001
when property brought into this state ... 1001
when and where recorded when property is removed to another county ... 1001
effect of failure to record such conveyances as to purchasers, etc.. 1001
Deeds of assignment for benefit of creditors; when and where recorded ... 1004
operative from day of delivery to the judge ... 1004
Delivery to the judge for record operates as a record thereof ... 987
Fees for, may be required to be paid before marking "filed" ... 986
Judge of probate, liability of, for neglect in recording; penalty ... 989
Lands, of, to be recorded in county where lands lie ... 990
Liability of judge of probate for neglect in recording; penalty ... 989
Mortgages, etc., of personal property; where recorded ... 999
within what time recorded on removal of property to another county ... 999
when and where recorded when property brought to this state 1000
Of lands to be recorded in county where lands lie ... 990
Patents by state recorded by secretary of state ... 2700
or United States may be recorded in probate office; evidence.. 1003
Personal property, mortgages, etc., of; where recorded ... 999
within what time, on removal of, to another county ... 999
when and where, when, brought to this state ... 1000
contracts for sale, lease, rent, etc., of, when and where recorded ... 1017
if such, removed into state or from county to county, must be recorded, etc ... 1017
Record in office of judge of probate, when required to be recorded ... 985
certificate of; contents ... 986
delivery to judge of probate for, operates as ... 987
access to books of, allowed to all persons ... 988
certified copies of, to be made when required, on payment of fees ... 988
operates as notice, though neither acknowledged nor probated ... 991
Recording, books kept for; mode of recording ... 986
certificate of; contents ... 986
fees for, may be required to be paid before marking "filed" ... 986
Substitution of lost records of ... 2650
When acknowledged or proved, and recorded within twelve months are self-proving ... 992
prior to December 15, 1895, are self-proving ... 992
certified transcript admissible in evidence, when ... 992

Protection to purchasers, creditors, etc., against dormant conveyances.

Conditional sale, lease, etc., of personal property; when void, unless in writing 1017
when and where to be recorded ... 1017
contract for, or certified copy as evidence, etc ... 1018

CONVEYANCES—*Continued.* SECTION

Protection to purchasers, creditors, etc., against dormant conveyances—*Continued.*

Contract for conditional sale of railroad rolling-stock; effect of failure to record 1016
when acknowledged and recorded, original, or certified copy evidence... 1018
Conveyances of lands with defeasance, unless defeasance recorded..... 1007
or wills creating estates in lands in remainder, etc., unless recorded within five years after possession of life-tenant..... 1008
of personalty to minor; when parent in possession vested with absolute estate..... 1014
other, of personal property on condition, in reversion, etc.; effect of failure to record..... 1012
Lands, conveyances, mortgages, etc., of, securing debts created at date thereof, unless recorded in thirty days..... 1005
other debts, unless recorded before accrual of their rights..... 1006
of, with defeasance, unless defeasance recorded..... 1007
or wills creating estates in, in remainder, etc., unless recorded within five years after possession of life-tenant 1008
Loans of personalty for three years; when absolute title vested by..... 1013
Mortgages, etc., of lands securing debts created at date thereof, unless recorded within thirty days..... 1005
other debts, unless recorded before accrual of their rights..... 1006
personal property until recorded..... 1009
unless property brought into state subject to, to be recorded within three months 1009
if such property is removed to another county, to be recorded within six months 1009
preceding section applies to absolute conveyances with defeasance, defeasance to be recorded..... 1010
Marriage settlements of personal property, unless recorded within twelve months..... 1011
when to be recorded if property removed to another county... 1011
Parol gifts of personalty; when void..... 1015
possession of parent considered possession of child.. 1015
Personalty, loans of, for three years; when absolute title vested by..... 1013
conveyances of, to minors; when parent in possession vested with absolute estate..... 1014
parol gifts of; when void..... 1015
possession of parent considered possession of child.. 1015
Railroad, contracts for conditional sale of rolling-stock of; effect of failure to record..... 1016
when contract acknowledged and recorded, original or certified copy admissible in evidence..... 1018

Construction and operation.

Absolute power of disposition to owner of estate for life or years; effect of.... 1046
other than owner of such estate; effect of.... 1047
when donee of such power takes fee..... 1048
when power of disposition deemed..... 1049
general and beneficial power to devise given to tenant for life or years deemed..... 1049
Accumulation, trusts for, merely; limitation upon extent of..... 1031
Actual notice, when record of declaration of trust equivalent to..... 1043

CONVEYANCES—*Continued.* SECTION

Construction and operation—*Continued.*

Assignee of debt, or representative, power in mortgages, etc., to sell lands passes to 1040
Assignment of breaches of warranty implied from "grant," "bargain," or "sell" 1035
Attornment of tenant, conveyances of realty effectual without 1019
Birth of posthumous child, effect of, on estate limited to heirs, issue, or child.. 1024
Claims of creditors, what powers liable in equity to 1062
Contingent remainder in lands operates as executory devise 1022
Conveyance of realty effectual without attornment of tenant 1019
lands construed as fee unless expressly limited 1020
greater estate by tenant for life or years passes his estate 1038
under power is good to extent of power 1051
by husband, wife joining in, when not bound by warranty 1514
County, deeds to officer or person for benefit of county vests title in 1401
Deeds to officer or person for benefit of county vests title in county 1401
Disposition, when power of, deemed absolute 1049
power of, by will; how executed 1053
under power to be made to several, to what shares parties entitled 1055
if to be distributed as trustee thinks proper, distribution cannot be impeached 1055
Execution of power, when directed to be executed by insufficient instrument, power not void 1054
to trustee, with right of selection on his death, may be decreed in equity 1056
when consent of third person to, required, how expressed 1057
Executory devise, contingent remainder in lands operates an 1022
Fee tail equivalent to fee simple 1021
General and beneficial power to devise given to tenant for life or years deemed absolute 1049
Grandchildren, when, or other descendants take under power directing disposition among children 1058
"Grant," "bargain," or "sell," warranty implied from; assignment of breaches of 1035
Grantor, what powers may reserve to himself 1050
reservation of right of revocation by, for his benefit; effect of 1045
Husband, wife joining in conveyance by, when not bound by warranty 1514
If perpetuity not created, lands conveyed for such terms as owner wishes 1029
Joint tenants, no survivorship between; descent of 1033
power executed by survivor in case of death of one or more 1061
Lands, conveyances of, construed as fees unless expressly limited 1020
contingent remainder in, operates an executory devise 1022
remainder in, or personal property limited after death without heirs or issue, etc.; how construed 1023
conveyed for such terms as owner wishes, if perpetuity not created 1029
time for which, conveyed to wife, children, etc.; perpetuity forbidden 1030
power in mortgages, etc., to sell, passes to assignee of debt, or representative 1040
trusts in, to be in writing; exception 1041
when void as to creditors or purchasers 1042
sale of, devised to executors to be sold, or when power of sale given them; by whom made 1060
simple power of attorney to convey, provisions of article not applicable to 1063
Lease limited to twenty years 1032
Livery of seizin dispensed with 1037
Mortgage of unplanted crops conveys legal title, when 1064

CONVEYANCES—*Continued.* SECTION

Construction and operation—*Continued.*

No estate defeated, etc., by act of person having possessory or ulterior interest; exception ... 1026
survivorship between joint tenants; descent ... 1033
Perpetuity, if, not created, lands conveyed for such terms as owner wishes ... 1029
Personal property, remainder in, limited after death without heirs or issue, etc.; how construed ... 1023
Persons paying money to a trustee not responsible for its application ... 1039
Possessory or ulterior interest, no estate defeated, etc., by act of person having; exception ... 1026
Posthumous child, birth of; effect of on estate limited to heirs, issue, or children 1024
Power in mortgages, etc., to sell lands passes to assignee of debt, or representative ... 1040
to dispose of real estate; how executed ... 1052
of disposition by will; how executed ... 1053
... 1059
Powers, when, irrevocable ... 1063
Provisions of article not applicable to simple power of attorney to convey lands
Record of declaration of trust; when equivalent to actual notice ... 1043
Remainder limited after death without heirs or issue, etc., how construed ... 1023
Remainder-men, etc., warranties by tenant for life void against ... 1034
Rent, when tenant not liable for ... 1019
Reservation of right of revocation by grantor for his benefit; effect of ... 1045
Revocation, reservation of right of, by grantor for his benefit; effect of ... 1045
Rule in Shelley's case abolished ... 1025
Sale of lands devised to executor to be sold, or when power of sale given them, by whom may be made ... 1060
Sealed, writings importing to be, so considered ... 1036
Shelley's case, rule in, abolished ... 1025
Survivor, joint power executed by, in case of death of one or more ... 1061
Survivorship; none between joint tenants; descent of ... 1033
Tenant, conveyance of realty effectual without attornment of ... 1019
when, not liable for rent ... 1019
for life, warranties by, void against remainder-men, etc ... 1034
conveyance of greater estate by, or years, passes his estate ... 1038
general and beneficial power to devise given to, or years deemed absolute ... 1049
Time for which lands conveyed to wife, children, etc.; perpetuity forbidden ... 1030
Trustee, person paying money to, not responsible for its application ... 1039
nor can title derived from, be impeached on account of misapplication; exception ... 1039
trust estate does not descend, on death of, to his heirs or representatives 1044
record of declaration of; when equivalent to actual notice ... 1043
Trust for accumulation merely; limitation upon extent of ... 1031
inlands to be in writing; exception ... 1041
when void as to creditors or purchasers ... 1042
Uses, trusts, etc., for mere benefit of third persons prohibited; how operative. 1027
but does not prohibit creation of trusts vesting legal title in trustee ... 1028
Warranties by tenant for life void against remainder-men, etc ... 1034
Warranty implied from "grant," "bargain," or "sell;" assignment of breaches of 1035
when wife joining in conveyance by husband not bound by ... 1514
What powers grantor may reserve to himself ... 1050
liable in equity to claims of creditors ... 1062
When power of disposition deemed absolute ... 1049
consent of third person to execution of power required, how expressed ... 1057
grandchildren or other descendants take under power directing disposition among children ... 1058
powers irrevocable ... 1059

CONVEYANCES—*Continued.* SECTION

Construction and operation—*Continued.*

Wife, when, joining in conveyance by husband not bound by warranty 1514
Will, power of disposition by; how executed 1053
Writings importing to be sealed, so considered 1036

CONVICTION.

No conviction shall work corruption of blood or forfeiture of estate—
Const., Art. I., §20, p. 64.

CORN.

In ear, weight per bushel, seventy pounds 4240
shuck, weight per bushel, seventy-five pounds 4240
Shelled, weight per bushel, fifty-six pounds 4240

CORONER.

Additional bond; when may be required of, proceedings 3112–3118
may be required when he acts as sheriff 1081
failure to give vacates office; vacancy certified 1081
Bond of; where filed 1075
sureties on, discharge of, when; new bond 3124–3132
Dueling oath, required to take 3062
Election of, time of, etc 1073, 1573, 1574, 1576
Execution directed to, and executed by, when 1887
Fees and commissions, general provisions as to 1353–1369
what entitled to 1378
Impeachment; grounds of ..... Const., Art. VII., §3, p. 88.
Inquests, duty of, to hold 1076
Jailer, when to discharge duties of 1077
Liability for neglect of duty 1082
Limitation of actions against 2795
sureties on bond of 2796
Oath of office; filing of ..... Const., Art. XV., §1, p. 103; 3066
Official acts of, valid, though process directed to sheriff, etc 1080
Sheriff, when to discharge duties of 1078, 1079, 3746
Special coroner, when and by whom appointed 1083
duties of 1084
Summary proceedings against 3763–3767, 3768–3781
in favor of 3782
Term of office of 1073
Vacancy filled by governor 1074, 3061

CORPORATIONS.

General constitutional provisions.

All general or special laws creating may be amended, or repealed—
Const., Art. XIV., §1, p. 99.
Appeal from preliminary assessment of damages to, or property, protected—
Const., Art. XIV., §7, p. 101.
Charters and grants of special or exclusive privileges at adoption of constitution; when invalid ..... Const., Art. XIV., §2, p. 99.
general assembly prohibited from remitting forfeiture of, etc.—
Ib. §3, p. 99.
power of to alter, amend or revoke charter of—
Const., Art. XIV., §10, p. 101.
Dues from; how secured; liability of stockholders.. Const., Art. XIV., §8, p. 101.
Foreign corporation prohibited from doing business in state without known place of business and authorized agent therein.. Const., Art. XIV., §4, p. 99.
Foreign corporation may be sued in any county where it does business; service of process ..... Ib.

CORPORATIONS—*Continued.* SECTION

General constitutional provisions—*Continued.*

General assembly may secure to, right of way over lands, etc.—
Const., Art. I., §24, p. 66.
General assembly prohibited from remitting forfeiture of charter of existing corporation, or altering same, or passing any law for benefit of such corporation, except upon stated condition.....Const., Art. XIV., §3, p. 99.
General assembly, power of, to alter, revoke, or amend charter of—
Const., Art. XIV., §10, p. 101.
Have right to sue, and subject to be sued as natural persons—
Const., Art. XIV., §12, p. 102.
Just compensation to be made for property taken, injured or destroyed—
Const., Art. XIV., §7, p. 101.
appeal from preliminary assessment of damages protected.....Ib.
May be formed under general laws, but not by special act; exceptions—
Const., Art. XIV., §1, p. 99.
Meaning of term "corporation," as used in this article—
Const., Art. XIV., §13, p. 102.
No law shall create, renew, or extend charter of more than one—
Const., Art. XIV., §10, p. 101.
No power to levy taxes to be delegated to private corporations—
Const., Art. XI., §2, p. 94.
No special or local law to be enacted for benefit of, in cases which can be provided for by general law.....Const., Art. IV., §23, p. 74.
Operation of a general law not to be suspended for benefit of.....Ib.
Preferred stock not to be issued without consent of owners of two-thirds of stock.....Const., Art. XIV., §9, p. 101.
Private corporations, property of; how taxed.....Const., Art. XI., §6, p. 95.
no power to levy taxes to be delegated to—
Const., Art. XI., §2, p. 94.
property cannot be taken for use of; exception—
Const., Art. I., §24, p. 66.
just compensation for, to be made, etc.....Ib.
damages to, or for, to be assessed by jury on appeal—
Const., Art. XIV., §7, p. 101.
Property and franchise of, condemned to public use same as individuals—
Const., Art. I., §24, p. 66.
of private corporation; how taxed.....Const., Art. XI., §6, p. 95.
State not to engage in any corporate enterprise....Const., Art. IV., §54, p. 78.
shall not be stockholder in nor loan credit to bank—
Const., Art. XIV., §20, p. 102.
Stock or bonds of, regulation as to issue of; fictitious increase void; how increased.....Const., Art. XIV., §6, p. 100.
Stockholders, liability of.....Const., Art. XIV., §8, p. 101.
Taxation or forced subscriptions for benefit of, prohibited—
Const., Art. I., §24, p. 66.
Taxes, no power to levy, to be delegated to private corporations—
Const., Art. XI., §2, p. 94.

General statutory provisions.

Actions to vacate charters of.....3417-3419
for usurpation of franchise.....3420-3439
Altering and amending charter; proceedings for..... 1283
duties of probate judge and secretary of state 1284
Answer to garnishment; by whom made..... 2190
Attachments, may sue out..... 533
when may be sued out against foreign corporation..... 535

CORPORATIONS—*Continued.* SECTION

General statutory provisions—*Continued.*

Books of, open to inspection of stockholders 1274
By whom property should be listed for taxation 3942
Capital stock of, increase of; preference of stockholders in taking 1272
may be voted by proxy at stockholders' meetings 1281
Change of number of directors or managers; how made 1277
Circulating change-bills held makers; remedy; liability of officers 868
Condemnation of land for public uses 1712–1726
Corporate name not to be that of another corporation nor name of a person or firm 1286
Curing defects in organization of private corporation; proceedings 1282
Failure to elect officers does not dissolve 1276
Foreign corporation, when attachment may be sued out against 535
service of process on 3277
prerequisites for doing business in the state 1316–1324
Forfeiture of franchise by non-user 1273
Franchise tax to be paid by 1271
Garnishment, answer to; by whom made 2191
unpaid subscription to stock subject to, by judgment creditor 3182
How and by whom property of, listed for taxation 3936, 3942
Included in term "person" or "party" within meaning of revenue law 3906
Increase of capital and bonded debt of, organized under special charter 1270
proceedings for; publication; how made 1270
secretary of state, report of, made to 1270
must make record of 1270
fictitious increase of stock or indebtedness void 1270
franchise tax on 1271
Increased capital stock, preference of stockholders in taking 1272
Majority of board, etc., when may exercise corporate powers 1275
Officers of, failure to elect, does not dissolve 1276
but those in office hold until qualification of successors 1276
purchase of stock or bonds by; how held and considered 1278
actions by, calculated to depreciate value of securities; misdemeanor 1279
remedy of bond or stockholder; pleadings 1279
Probate judge, duty of, as to declaration altering or amending charter of 1284
Preferred stock; how issued; proceedings; notice; publication, etc 1269
proceedings reduced to writing and recorded in office of probate judge 1269
stockholders first entitled to take 1269
Process, service of, on; how perfected 3274–3277
in chancery ..... Ch. R. 21, p. 1206.
Property of, how and by whom listed for taxation 3936, 3942
Record of declaration, etc., to be kept by probate judge; fees 1285
Required to give receipt for collaterals 946
Secretary of state, duty of, as to declaration altering or amending charter of .. 1284
Shares of stock—
personal property; how transferred 1261
when required to be transferred on books; transfer not valid without notice, when 1262
must require register of transfer on books; transfer not registered void ... 1263
transfers, mortgages, etc., not registered on books void, etc., when 1263
may be made by personal representative 1264
dividends on, may be paid to personal representative 1264
subject to levy and sale on execution or attachment; proceedings 1265
statement of, must be furnished officer making levy, when 1266
lien of corporation on shares of stockholders 1268

CORPORATIONS—*Continued.* SECTION

General statutory provisions—*Continued.*

Shares of stock—*Continued.*
stock record-books showing stockholders, transfers, mortgages, etc., must be kept by 1267
taxation of ..... Subds. 8, 9, 3911
Stockholders' meetings—
time, place and notice of 1280
power of board to call special meetings 1280
each stockholder entitled to one vote for each share held by him 1280
failure to hold annual meetings or to elect directors not a forfeiture 1280
capital stock voted by proxy at 1281
Stock record-books showing stockholders, transfers, liens, etc., must be kept by 1267
Sued in any county where it does business 4207
Summons, service of, on 3274
person or corporation operating railroad of domestic corporation 3275
publication against domestic corporation, other than railroad corporation, when 3276
service on designated agent of foreign corporation; proof of agency 3277
Taxation of shares and property of ..... Subd. 9, 3911

Banks and banking.

Banks of deposit and discount—
how incorporated 1085
stockholders, number; amount of capital stock 1086
declaration filed with probate judge; contents 1087
certified copy of, filed with secretary of state 1088
powers of corporation 1089
board of directors 1090
capital stock may be increased or decreased 1091
existing banks or loan associations may reorganize, when 1092
having capital less than fifty thousand dollars may increase and reorganize 1093
certificates of deposit not to be reissued 1094
married women and minors, deposits by 1095
Bills and notes issued as money redeemable in gold and silver—
Const., Art. XIV., §16, p. 102.
Counterfeit bank-notes may be defaced 1098
Discounting paper at more than eight per cent. forfeits all interest 2631
Foreign bank, how, must exercise privilege of banking 1096
General assembly prohibited from incorporating banks to issue bills of credit, etc., except under conditions prescribed by constitution—
Const., Art. XIV., §14, p. 102.
Holders of bank-notes and depositors entitled to preference, when—
Const., Art. XIV., §17, p. 102.
Interest, rate of, no greater than allowed to individuals—
Const., Art. XIV., §19, p. 102.
banker discounting paper for more than eight per cent. forfeits all... 2631
Limit of corporate existence, unless extended; exception—
Const., Art. XIV., §18, p. 102.
Not to be established except under general banking law and upon specie basis—
Const., Art. XIV., §15, p. 102.
Penalty for failing to comply with law 109
Specie payment, no law to be passed sanctioning suspension of—
Const., Art. XIV., §16, p. 102.
State prohibited from being stockholder in ..... Const., Art. XIV., §20, p. 102.
credit of, shall not be given or loaned to bank—
Const., Art. XIV., §20, p. 102.

CORPORATIONS—*Continued.*

Banks and banking—*Continued.* SECTION

Taxation of shares in, and property of; how taxed; where assessed and collected.....Subd. 8, 3911

Building and loan associations.

Annual report by; contents of; filed with auditor..... 1129
fee to be paid on filing; penalty for failure to report..... 1130
"Building and loan association," the name, defined..... 1128
Declaration for incorporation of, filed in office of probate judge; contents..... 1123
to be recorded; certificate of incorporation... 1124
Fines and penalties may be imposed by; limitation..... 1133
Foreign associations, requirements of; exception..... 1138
unlicensed, unlawful to do business for..... 1132
Hypothecation of securities by, prohibited, unless organized prior to February 7, 1893..... 1127
Increase of capital stock, proceedings for; notice by publication..... 1126
reduced to writing and recorded in probate office..... 1126
valuation of shares of associations incorporated prior to Code of 1876..... 1126
May be incorporated..... 1122
Non-resident associations must file statement and pay fee..... 1131
Officers of, must give bond..... 1137
On foreclosure of mortgage by, what credits must be given..... 1135
Powers of..... 1125
Premiums upon loans must be fixed by by-laws; limit of..... 1134
Shares of stock one year old must have definite withdrawal value, etc..... 1136
Taxation of; privilege and property..... 3916
Unlawful to do business for unlicensed foreign association; misdemeanor..... 1132

Business corporations not specially provided for.

Any industrial business or lawful enterprise may be incorporated..... 1251
Board of directors; election; powers of..... 1257
Capital stock; how increased..... 1259
Commission to open books of subscription; by whom issued..... 1253
Declaration; contents; where filed..... 1252
Organization of..... 1255
Powers of..... 1256
Renewal of corporation..... 1260
Stockholders meet annually..... 1258
Subscription for stock, in what payable..... 1254

Dissolution of business corporations.

Administration of affairs, by managers, on dissolution, when others not appointed..... 1299
Appeal from decree of..... 1297
Authority of officers..... 1300
Dissolution, when, decreed..... 1293
Notice to stockholders by subpœna, when..... 1292
non-resident stockholder by publication, when..... 1292
Petition for, filed in chancery court; contents..... 1291
Powers of corporation after..... 1298
Receiver appointed upon decree of; duties of..... 1294
how selected; bond required..... 1295
pays debts; contested claims..... 1296
Time for settling may be extended by chancellor..... 1301

CORPORATIONS—*Continued.* SECTION

Foreign corporations.

Admission fees required of; amount and to whom paid 1321
to be paid but once; failure vitiates contracts..... 1323
Agent and known place of business in state, must have—
Const., Art. XIV., §4, p. 99.
Attorney-general, duty of, as to enforcing penalties against..... 1320
Instrument of writing designating agent and place of business, must be filed.. 1316
where filed.... 1317
Interstate commerce, corporations engaged solely in, excepted,..... 1324
Penalty for doing business before filing such instrument..... 1318
acting as agent for non-complying corporation 1319
Process against, may be served on agent anywhere in state—
Const., Art. XIV., §4, p. 99.
designated agent; proof of agency..... 3277
of attachment against, may issue, when..... 535
Solicitor; duty of as to enforcing penalties against..... 1320
Statement giving name, where incorporated, amount of capital, etc., to be filed 1322
United States chartered corporations excepted..... 1324
Venue of suits against, in any county where corporation does business by agent 4207

Insurance companies; life, accident, fire, marine.

Annual sworn statements of the assets, condition, etc., made to the auditor... 1109
Capital stock, amount of, required..... 1100
increase or decrease of, proceedings; notice, etc..... 1105
proceedings reduced to writing; record in probate office 1105
certified copy filed and recorded in office of secretary of state..... 1105
Cash capital stock required of all companies doing business in this state..1100, 1109
Certificate of incorporation, etc., issued by secretary of state..... 1102
Certified transcript of record, etc., filed in office of secretary of state 1102
Conditions upon which foreign corporations are permitted to do business in state 1316–1324
Consolidation of, corporations..... 1110
how proposal for, adopted; entry on minutes 1111
consummated..... 1112
new corporation, name and charter of; changes in stock, etc. 1113
property, rights and liabilities of; pending suits 1114
Corporations for, may be formed 1099
Declaration filed in office of judge of probate; contents..... 1101
certified transcript of, filed in office of secretary of state..... 1102
Dissimilar corporations cannot consolidate..... 1115
Fire, fire marine and marine companies, prerequisites for doing business in state 2614–2618
Foreign company, when considered as doing business in this state..... 2606
prerequisites for doing business in this state..... 1316–1324
Judge of probate, duty of, on declaration being filed in his office..... 1101, 1102
Mutual plan, may adopt or abandon; proceedings..... 1106
Powers of 1103
Renewal of incorporation..... 1104
Required to have principal place of business within state 1108
Secretary of state, duty of, when transcript of declaration filed in his office... 1102
to issue certificate of incorporation, etc..... 1102
Stockholders, number of..... 1100
Stockholders' and directors' meetings may be held without state; provisions for 1107
Taxation of..... 3917, 3918

CORPORATIONS—*Continued.* SECTION

Macadamized, turnpike and other toll-road companies.

Application for authority to locate road 1214
notice of; how given 1215
when granted 1216
Articles of association, certified copy of by secretary of state, evidence 1206
Board of directors; election of; term of 1208, 1209
Book of officers, stockholders and shares of stock held by each, to be kept 1235
transfer of stock invalid, etc., unless registered upon 1236
transcript of; who entitled to, etc., penalty for not furnishing 1237
such book or certified transcript of evidence 1238
penalties for failure to keep such book and allow inspection of 1239
Branch roads; when may be constructed 1221
Capital stock, increase of; proceedings; notice; how given 1212
Corporation for, mode of creating 1205
Directors, when personally liable for debts and liabilities of corporation 1211
Forfeiture of franchise on failing to prosecute work 1240
Gatekeeper, liability of, for charging toll on road out of repair 1231
Office of corporation 1233
Penalty for failure to keep book, etc., and allow inspection of 1239
Powers of corporation 1207
Process, how served 1234
Purchasers of road may become incorporated 1241
incorporation by, mode of 1242
certificate of, recorded, where 1243
certified copy evidence 1243
Road, how laid out 1217
width of 1218
changes in by county commissioners 1220
Road commissioners, appointment and term of 1228
must examine roads and open gates, when 1229
report road when in order 1230
pay of; by whom paid 1232
Stock; payment for; forfeiture of, etc 1210
transfer of, on book, when valid, etc 1236
Stockholders, individual liability of, for debts and liabilities of 1213
Tolls, bridges and gates 1222
who exempt from paying 1223
fixed by county commissioners 1224
penalty for overcharge of 1225
evading gate 1226
proceedings for enforcing 1227
Towns may convey land to 1219
Turnpike, bridge or railroad company must not pay out change-bills 867

Mining, quarrying and manufacturing companies.

Board of directors; election; powers 1152
Capital stock, increase of; proceedings for; notice 1154
subscriptions for 1142
Commission issued by judge of probate 1141
Consolidation of 1147
how proposal adopted; entry on minutes 1148
consummated 1149
new corporation, name and charter of; changes 1150
property rights and liabilities of 1151
suits pending at time of 1151
Corporations for, how formed 1139
Declaration filed in office of probate judge 1140

CORPORATIONS—*Continued.* SECTION

Mining, quarrying and manufacturing companies—*Continued.*

Organization of 1143
Powers of 1144
additional 1145, 1146
Provisions applicable to corporations organized under special charter 1155
Public roads, streets and navigable waters, crossing by 1146
Stockholders meet annually 1153

Municipal corporations.

Exception to provision that private property cannot be taken for use of corporations ..... Const., Art. I., §24, p. 66.
prohibiting taxation or forced subscription for benefit of corporations ..... Ib.
creation of corporations by special act— Const., Art. XIV., §1, p. 99.
General assembly prohibited from authorizing to lend credit, etc.— Const., Art. IV., §55, p. 78.
authorities of, to pass laws inconsistent with general laws of state ..... Ib. §50, p. 77.
requiring payment of charges payable out of state treasury .. Const., Art. XI., §9, p. 96.
May appoint officers for inspection or measure of merchandise, etc., when authorized by law ..... Const., Art. IV., §38, p. 76.
Mayor or intendant of, may be impeached ..... Const., Art. VII., §3, p. 88.
Maximum rate of taxation by, prescribed; exception .. Const., Art. XI., §7, p. 96.
Must make just compensation for private property taken— Const., Art. XIV., §7, p. 101.
Property of, not to be taxed ..... Const., Art. IV., §52, p. 78.
Street passenger railway not to be constructed within limits of, without consent of local authorities— Const., Art. XIV., §24, p. 103.
declaration for incorporation of, to be accompanied by consent, in writing, of authorities 1189
may contract with authorities in reference to use of streets, etc 1194
Aldermen, number of; increase of 2942, 2949
Appeal from judgments of conviction for violation of ordinances or by-laws ... 2969
Board of aldermen, quorum for transaction of business 2948
what vote required to remove officers 2948
By-laws and ordinances, printed book of, admissible in evidence, when 1822
Change of name or boundaries of; proceedings for 2967
Citizens of, competent jurors in actions by and against 2657
Deed to purchaser of real estate sold for taxes; by whom made 2963
Engineer of railroad, duty of, as to ringing bell and blowing whistle within limits of 3440
Election for intendant, aldermen, etc 2942–2949
Female not to be punished by subjecting her to work on streets 2968
Hospitals, quarantine, etc., authority to establish 2392–2442
Incorporation of towns; mode of 2937
petition for, where filed; contents; by whom signed .. 2937
election directed 2938
who may vote at 2939
how conducted 2940
inspectors certify result of 2941

CORPORATIONS—*Continued.* SECTION

Municipal corporations—*Continued.*

Incorporation of towns; petition for; election; if majority for corporation, town declared incorporated 2941
Inhabitants exempt from road duty 2966
Intendant and aldermen, corporate authority vested in 2942
who eligible to office of 2943
sheriff appoints time and place for election of; notice 2944
inspectors of election 2944
qualification of electors and oath of inspectors 2945
subsequent elections, etc., ordered by corporate authorities 2946
Intendant acts as justice of peace 2951
License, authority to regulate 2954
Magazine for storage of gunpowder, etc., to be built 2971
Marshal of, power of 2952
May regulate running of railroad-trains, etc 2970
Mayor or intendant has power to close certain places in case of riot 2972
Officers hold over on failure of election 2947
removal of by board of aldermen; vote required 2948
Ordinances not enforced until published 2953
printed book of, and by-laws, admissible in evidence, when 1822
Powers of corporate authorities 2950
Property of, exempt from taxation 3907
levy and sale under process 2040
Qualification of electors in state or county elections in 1556
Quarantine, etc., authority as to 2392-2442
Railroads prohibited from discriminating against 3464
Real estate, certificate of purchase of 2962
deed to purchaser of; when and by whom made; as evidence 2963
redemption of, sold for taxes 2964
by infants, married women, etc 2965
Special tax of, to be kept separate 2973
Street-railways, authority, etc., as to 1189, 1194
Taxation, powers of 2954
assessment for, annual 2955
to be returned to intendant 2956
errors in, time for correction of; notice 2956
corrected and assessment approved 2957
when, approved has force of judgment and execution 2958
taxes, collection of, by levy and sale 2958
notice of sale for 2959
contents of 2960
hours of sale for 2961
deed to purchase of real estate sold for taxes 2963
Towns may be incorporated, when 2937

Mutual aid associations.

Exemptions in favor of beneficiaries 1121
Life-insurance companies, Masons and like orders not affected 1120
Must designate principal place of business and agent for service of process 1118
Must obtain license from auditor before commencing business 1118
Report to auditor, when 1117
Visitation by auditor, subject to 1119
What are 1116

Navigation companies.

Mode of incorporating 1247

CORPORATIONS—*Continued.* SECTION

Navigation companies—*Continued.*

Powers of 1248
Provisions for winding up affairs of 1250
Special meetings; notice 1249

Railroad companies.

Aid to, or purchase and lease of other roads 1170
by foreign company; power to purchase or lease 1171
Annual meeting of stockholders 1176
Board of directors; election of; term 1178
Bonded indebtedness, increase of; proceedings for 1175
Books of subscription, notice of time and place of opening 1159, 1160
Branch roads may be constructed 1172
mode of construction of 1173
Capital stock, increase of; proceedings for 1174
subscriptions for 1159, 1160
how payable 1184
Commission for opening books of subscription 1158
Consolidation of; proceedings for 1166
new corporation, old ones merged in 1167
properties and franchises vested in 1168
subject to liabilities of each 1168
Crossing or intersection of other railroads or street-railways 1165
Declaration filed in office of secretary of state; contents 1157
recorded by secretary of state; fees 1162
Domestic, may sell its property and franchise to foreign corporation 1169
Forfeiture of stock; suits to recover subscriptions 1185
franchise by non-user 1187
Franchise, forfeiture of by non-user 1187
Lines may be extended, or branch roads constructed 1172
Navigable streams, right to cross 1164
Organization of; proceedings; certificate of incorporation 1161
Powers of 1163
Principal place of business and an agent within state required 1180
Public roads, right to use, cross, or change 1164
Purchasers of railroads may organize as corporation 1181
mode of organization 1182
sold under power in mortgage may organize as corporation 1183
Stock, subscription for, how payable 1184
forfeiture of; suits to recover subscriptions 1185
issue and transfer of 1186
Stockholders, quorum of; votes 1177
Stockholders' or directors' meetings may be held without state 1179
Required to have principal place of business and agent within state 1180
Taxation, return and assessment of property of, for 3964–3976
license, for support of railroad commission 3489

Religious, educational, benevolent and burial societies.

Burial societies, special privileges of 1308
chairman of board 1309
Certificate filed by trustees in office of judge of probate; contents 1303
Charter of, may be altered or amended, how 1314
Incorporation complete on filing certificate, etc 1303
Mortgage by, provisions for execution of 1306
recital in minutes of proceedings as to, evidence 1307

CORPORATIONS—*Continued.* SECTION

Religious, educational, benevolent and burial societies—*Continued.*

Powers of 1304
Property of, what, exempt from taxation 1311
Suits against, how commenced 1305
Trustees, election of 1302

Social and literary societies.

Charter forfeited for permitting games for wager 1312
may alter and amend 1314
declaration must be verified 1315
duties of probate judge or secretary of state 1315
Membership may be increased, how 1313
Mode of incorporation 1310
Property of, what, exempt from taxation 1311

Street-railway companies.

Board of directors; election; powers 1195
Books of subscription, commission for opening 1190
Capital stock, increase of; proceedings for 1197
Certificate of incorporation; by whom issued 1192
Consolidation of, with electric-light or gas companies 1202
agreement to consolidate; recommendation of directors 1203
name, rights and obligations of consolidated corporation 1204
Construction of, within any city or town without consent of authorities, prohibited ..... Const., Art. XIV., §24, p. 103.
Contract with municipal and county authorities; compensation 1194
Corporation for, how formed 1188
Declaration filed in office of judge of probate 1189
Organization of subscribers 1191
Powers of corporation 1193
Purchasers of may organize as a corporation 1199
mode of organization 1200
under power in a mortgage or deed of trust; rights of 1201
Right of way; how may acquire 1198

Telegraph companies.

Assessment for taxation 3974-3976
Cannot consolidate with or hold controlling interest in stock or bonds of other competing telegraph company ..... Const., Art. XIV., §11, p. 101.
Cannot acquire by purchase or otherwise any other competing line ..... Ib.
Foreign companies may acquire easement in this state for extending lines 1723
Power to contract for easement; right of way 1245, 1246
Private or public roads, duty as to, and liability for wires falling on 2488, 2489
Right of way along railroads and public highways granted 1244, 2490
to construct lines, and to connect same with other lines— Const., Art. XIV., §11, p. 101.
Taxation, return and assessment of property of 3964-3976
privilege tax to be paid to state treasurer 3913

COSTS.

Abatement, on, by death of defendant, plaintiff pays 1332
Appeal, execution for costs on 456, 462, 469
Arbitration, in cases of 520
Attorneys, in proceedings for removal of 608
of summary proceedings against 3811
Beneficial plaintiff, when recovered of 1330
Bills of, to accompany execution 1883

COSTS—*Continued.* SECTION

Bills of, to be given on demand 1359
Clerk must collect sheriff's costs and commissions, when 937
Condemnation of lands for public uses, of proceedings for 1725
Commissions, not allowed on 1360
County surveyor, when fees of taxed as 3894
Defendant, as to whom plaintiff fails, recovers 44, 1331
Distribution of decedent's estate, of application for 272
Dower of insane woman, of proceedings for relinquishment of 1513
Ejectment, when on judgment by default, plaintiff taxed with costs 1548
Exemptions set apart to widow, of exceptions to 2088
Executors and administrators, of application for additional bond or removal of .. 98
contest on settlement of accounts of 213
Forcible entry, or unlawful detainer, in cases of 2133, 2134
Forfeited bond in detinue, execution for, on 1479
trial of right of property, execution for, on 4144
Forfeited claim bond from justice's court, execution for, on 4144
Forfeited forthcoming bond, execution for, on 1917
from justice's court 1942
Garnishee, fee for attendance allowed, when 2206
Guardianship of person of unsound mind, of contest of application to revoke letters of 2265
Indorsers or assignors, of actions brought to charge 896
Insolvent estates, of trial of objections to claims against 313, 314
creditors of, of actions against under section 323 325
execution for, against plaintiff, when 319
Insolvency of decedent's estate, of report of, when dismissed 297
Interest not allowed on judgments for 2628
Judgments or decrees, of applications to set aside, amend, or enter satisfaction of 3338
Justices of the peace, of suits before 2686
Law of fees and costs, held penal 1353
Local laws allowing greater fees than prescribed by Code repealed 1370
Nuisances to health, of executing warrant for and removing 2394
No fee demandable unless expressly authorized by law 1353
Partition fences, etc., of assessing value of 2119
of property, of application for 3175
crops, of application for 3203
Partnership land, of application by personal representative to sell 195
Plaintiff, against, on failure to prove presentation of claim 135
execution against for, in suit against insolvent estate, when 319
on return of "no property" against defendant 1361, 1889
Plea, "since last continuance," recovery of, on 1335
of tender, on 1443
Publication of notices in newspaper 3045
Public roads, of establishing under section 2492 2494
Railroads, of suits against, for extortion 3460
proceedings in chancery to settle disagreement between connecting 3472
Relatives of poor, of actions by county against, for reimbursement 3235
Remedial writs, of application for 2832
Retaxation of, motion for, when party may move for 1344
when sheriff ordered not to collect items of 1345
Sale of land of decedent, of application for in probate court 168
Security for costs—
appeals, on, generally 439
in contests of election 1703
from decrees or judgments of probate or circuit court 464
assessment of damages in ad quod damnum proceedings 1720

COSTS—*Continued.* SECTION

Security for costs—*Continued.*
appeals, on, married women, when relieved from giving ... 446
mill-dams, etc., from judgment on application to erect ... 1748
receivers, from orders appointing or refusing ... 445
usurpation of office or franchise, from judgment in action for ... 3437, 3438
attachment suits, how given in ... 534
attorney, in proceedings by relator to remove ... 607
bringing suit liable for, when ... 1349
chancery courts, in ... 1347
condemnation of land, on application for ... 1713
corporations, in actions to vacate charters of ... 3418
election, in contests of ... 1688
certain county officers ... 1697
chancellor ... 1693
circuit judge ... 1695
judge of probate ... 1696
members to general assembly ... 1689
state officers ... 1672
justices of the peace, in suits before ... 1352
money may be deposited as ... 1348
non-residents must give ... 1347
plaintiff, required of, on removal from state ... 1350
probate court, in, or before justice ... 1352
road-hands, not required in proceedings against defaulting ... 2482
surety for costs, judgment against, when ... 1351
usurpation of office or franchise, in actions for ... 3421
Set-off, on plea of, when defendant recovers his costs ... 1329
full costs ... 3729
Sheriff, when ordered not to collect items of ... 1345
clerk collects costs and commissions of ... 937
Special laws allowing greater fees than prescribed by Code repealed ... 1370
Substituting file of court papers lost by attorney; by whom paid ... 2646
of, records or papers lost or destroyed ... 2651
Successful party entitled to full costs; judgment for ... 1325
Superintendent of education, payment of, if cast in suit against defaulters ... 3546
Surety, judgment for costs against, when ... 1351
Taxing or furnishing copy of, no fee allowed for ... 1359
Torts, rule for recovery of, when verdict for less than twenty dollars ... 1326
Township, payment of costs against ... 1346
superintendent of education may request auditor to pay, etc ... 1346
Transcripts and certificates, costs of, when taxed as ... 1333, 1334
Trespass by stock; tender of damages; when plaintiff taxed with costs ... 1327
Usurpation of office or franchise, of actions for ... 3432–3438
Usury, defendant proving, recovers full costs ... 1328
Wills, of proceedings for dissent of insane, minor, or deceased widow ... 4262
contests of, how taxed and enforced ... 4294
on change of venue ... 4297
Witnesses, fees of ... 1336–1339
taxed, collected and paid to clerk ... 1340
when refused, excused from further attendance ... 1341
for two witnesses taxed to prove one fact; exception ... 1342
motion for instruction to clerk, in such case ... 1343
only to charge one party ... 1339

COTTON.
Compensation for sampling ... 1394
Compresses, tax on gross receipts ... Subd. 2, 3912

COTTON—*Continued.* SECTION
Cottonseed; weight per bushel, thirty-two pounds 4240
Cottonseed-oil mills, tax on ..... Subd. 2, 3911
Damages for concealing or changing marks 4229
Deductions may be made by consent on wet or damaged bales 1390
Delivery of to compress; when delivery to carrier, etc 4220
Factories, exemption of, from county and municipal taxation 3908
application for; how made and granted 3909
from state, county and municipal taxation, when—
Note, pp. 1071, 1072.
Gins, tax on gross receipts of ..... Subd. 2, 3912
public; lien of owners for price of ginning and baling 2788–2791
Not removed without seller's consent until weighed 1393
Penalty for deducting from actual weight of, or using untested weights 1390
Pickeries, tax on gross receipts of ..... Subd. 2, 3912
Public ginners; lien for price of ginning and baling 2788–2791
Rejected on resampling must be returned 1391
Sampling; amount taken before and after selling and weighing 1392
Unlawful for purchaser to deduct from actual weight, or to use untested weights 1389
Warehouseman or common carrier, on receiving, to state in receipt condition. 4218
Warehouses, tax on gross receipts of ..... Subd. 2, 3912
Warranty on sale by planter or owner; what implied 1395

COTTONSEED.
Weight per bushel, thirty-two pounds 4240

COTTONSEED-OIL MILLS.
Subject to taxation ..... Subd. 2, 3911

COUNTERFEIT.
Bank-note may be defaced by any person; liability for mistake 1098

COUNTIES.

Constitutional provisions.

Boundaries of, existing, ratified ..... Const., Art. II., §2, p. 68.
general assembly, power of, to establish and change ..... Ib.
Each county entitled to at least one representative.. Const., Art. IX., §3, p. 89.
General assembly, duty of, to require, to make provision for the poor—
Const., Art. IV., §49, p. 77.
shall not tax property of ..... Ib. §52, p. 78.
no power to authorize any county to lend its credit, etc., or become a stockholder in a corporation ..... Ib. §55, p. 78.
prohibited from requiring counties to pay any charges now payable out of state treasury ..... Const., Art. XI., §9, p. 96.
Limit of rate of taxation ..... Ib. §5, p. 95.
Merchandise, may appoint officers to inspect or measure, when—
Const., Art. IV., §38, p. 76.
New counties, limit of, six hundred square miles ..... Const., Art. II., §2, p. 68.
not to be formed unless population sufficient to entitle it to one representative and leave old county like number ..... Ib.
No old county to be reduced to less than six hundred square miles ..... Ib.
No county shall be divided between two senatorial districts, nor shall any district be made of counties not contiguous ..... Const., Art. IX., §4, p. 89.
Representatives, number of, in house of representatives to which counties entitled ..... Const., Art. IX., §6, p. 90; 2213

Statutory provisions.

Books of county treasurer provided at expense of county 1431
and stationery of register, clerk, probate judge and sheriff paid for by 661, 940, 3384, 3747

COUNTIES—*Continued.* SECTION

Statutory provisions—*Continued.*

Citizens of, not disqualified as jurors in suits by or against 2657
Claims against; must be audited, registered, etc., by county commissioners... 1416
barred if not presented in twelve months, etc 1420
when, if records burnt 1421
how verified when filed by executor, etc., guardian or trustee 1418
must be itemized, proved, entered and filed 1417
presented and disallowed or reduced before suit maintained.. 13
when claimant may withdraw 1419
paid though prior claims outstanding 1430
Commissioners have custody of property of, and may sell 958, 1402
Cotton-factories; how and when may be exempted from taxation by—
Note, p. 1071; 3908, 3909
County buildings to be erected and kept in repair under direction of commissioners 1403
County jail, how constructed and arranged 1407
tax for building or repairing; proposals for same 1408
special appropriation for heating, supplying with water, etc 1411
special term for making, etc.; notice of.... 1412
duty of court at such 1413
sheriff, duty of, after receiving payment of. 1414
examination of, weekly, by probate judge and circuit clerk 1415
Court-house, jail and other necessary county buildings, erection of 1405
special tax for, authority to levy 1405
how levied 1410
Court-house, when, cannot be occupied, courts and offices held elsewhere..... 1406
sheriff has charge of; must prevent trespasses, etc.; report repairs required 1404
Deeds to others for use of county; effect of 1401
Each county a body corporate 1397
Elector, right of to vote in new county, for what officers 1660
Entitled to half the forfeiture against steamboats under this section 3445
Indebtedness of, may be funded 1424
Lights and fuel for courts, duty of sheriff to furnish 1422
commissioners to allow compensation for 1422
Local laws of, may be codified; what not to embrace 1425
what officers entitled to copy of county code 1425
Navigable streams, jurisdiction of, over 1400
New counties; suffrage; representation; considered as part of old, when..... 1659
right of elector to vote in 1660
returns of elections to congress and general assembly in..... 1661
share of debts of old county to be paid by 1398
how ascertained, and proceedings thereon..... 1399
venue of suits by and against residents of 4206
Number and names of counties 1396
Preferred claims against; what are 965, 1413, 1423
Property of, commissioners have custody and control of and may sell..... 958, 1402
exempt from levy and sale under process, judgment or decree.... 2040
taxation 3907
Representatives, number of, each entitled to in house of representatives..... 2213
Residents of new counties; venue of suits by and against 4206
Share of debts of old, to be paid by new counties on formation 1398
how ascertained; proceedings thereon 1399
Special tax, for building or repairing court-house or jail 1409
disposition of surplus of 1409
how levied 1410

COUNTIES—*Continued.* SECTION.

Statutory provisions—*Continued.*

Summary proceedings in favor of, against clerks and registers..... 3790, 3791
county treasurer..... 3802
tax-collector, probate judge, sheriff, clerk, etc..... 3803
Suits against; presentation and rejection or reduction of claim necessary..... 13
Weights and measures, standard of, to be furnished each county..... 4232
expense of obtaining; how defrayed..... 4235
furnished in case of destruction, when..... 4233
must be furnished new counties..... 4234

COUNTY COMMISSIONERS.

Commission of; when to be issued..... 3058–3060
Compensation of..... 967
Dueling oath, required to take..... 3062
Election of..... 1573, 1574, 1576
Ineligible to certain offices..... 953
Oath of office of, where filed..... 3066
Term of office of..... 3055
Vacancies; how filled; term of appointee..... 952, 3061

COUNTY COMMISSIONERS, COURT OF.

Assessment of taxes, duties and powers as to..... 3977–3992
Authority of, general..... 958
Books, duty to purchase, when records destroyed by fire..... 964
Books and stationery, must allow to register amounts expended for..... 661
circuit clerk amounts expended for..... 940
Books, stationery, etc., for county officers, from whom purchased..... 963
Bridges, causeways and ferries, powers as to..... 2498–2514
Census enumerators, must pay for binding reports of.....Subd. 10, 3365
Claims against county, must audit, and register when allowed..... 1416
not to be allowed unless itemized and sworn to..... 1417
when allowed, to be entered in book in order allowed.. 1417
Confederate soldiers and sailors, indigent, may appropriate money in aid of... 3236
County buildings, must make necessary orders for erecting or repairing..... 1403
County jail and other necessary buildings, duty to erect..... 1405
authorized to levy special tax for same..... 1405
County property, have control of; power of disposal.....958, 1402
surveyors, authorized to appoint two and to remove one or both..3889, 3890
treasurer, to fill vacancy in office of,..... 1427
bond of, must fix penalty of..... 1428
accounts of, duty and authority as to.....1432–1434
compensation of, authority to allow..... 1435
Court-house and jail, to levy special tax to build or repair..... 1409
special tax for; disposition of surplus..... 1409
levy of; how made..... 1410
jail and other necessary county buildings, duty to erect..... 1405
special tax for, authority to levy..... 1405
Court of record; how constituted..... 951
Field-notes, authorized to contract for copies of; provisions as to..... 965
Have custody and control of property of county, and may sell.....958, 1402
Health and quarantine, powers and duties as to.....2392–2442
Indebtedness of county, authority to fund..... 1424
Jail, building or repairing of, duty to levy special tax for.....1408, 1409
special tax for, how levied; disposition of surplus.....1410, 1409

COUNTY COMMISSIONERS, COURT OF—*Continued.* SECTION

Jail, special appropriation for heating, etc., duty to make 1411
special term called for making, when; notice of.... 1412
duty of court at such 1413
Jurisdiction, original 957
Laws applicable to courts of like jurisdiction 966
Lights and fuel during sessions of, duty of sheriff to furnish 1422
must make sheriff reasonable compensation for 1422
May make appropriation for expenses of military company 2864
New county, duty and authority as to indebtedness on formation of 1399
Paupers, powers and duties as to 3232–3241
Private roads, powers and duties as to 2496, 2497
Proceedings of, to be recorded 959
when probate judge absent 960
when court is divided 961
Publication, semi-annual, of receipts and disbursements, to make 962
Public roads, powers and duties as to 2443–2495
Quorum of, what constitutes 954
Receipts and disbursements, duty to make publication of 962
Recopy of books, must allow register compensation for 664
circuit clerk compensation for 936
probate judge compensation for 3366
Sheriff, duty of to furnish lights and fuel for sessions of 1422
reasonable compensation to be allowed 1422
must attend sessions of court, when 3739
Terms of, regular 955
special, when and by whom called; notice of 956 1412
Turnpike company, may fix rates of toll of 1224
Watercourses, powers and duties as to 2516–2518
Witnesses, fees of, before court 1387

COUNTY COURT, JUDGE OF.

Bond of; by whom approved 3079
when may be declared insufficient and new bond required 3119–3123
additional bond may be required, proceeding 3111–3118
Discharge of sureties on bond and new bond required 3124–3132
Sheriff must attend county court 3739

COUNTY SUPERINTENDENT.

Annual report, etc., required to make ..... Subd. 6, 3556
forfeiture for failure to make 3557
Appeal from township trustees, decision on final 3565
Appoints three township trustees for each township or other school district.... 3560
members of county board of education 3583
Apportions funds unused for two years; report of 3619
Approves contracts with teachers 3569
Authority to employ counsel 3805
Board of education, county, president of 3583
members of, appointed by 3583
Bond of; amount fixed by superintendent of education; conditions, etc 3552
approval, filing and record of 3553
new or additional, may be required; effect of notice to give 3554
Books and accounts of, may be examined by superintendent of education, etc.. 3558
Compensation of, when may be used by, etc 3555
Counsel, authority to employ 3805
County board of education, president of 3583
members of, appointed by 3583
Decision on appeal from township trustees final 3565
Dueling oath, must take 3062

COUNTY SUPERINTENDENT—*Continued.* SECTION

Duties of, generally ... 3556
as to bonds of township trustees, when lands about to be sold or leased ... 3659
Election of, unless special act for appointment ... 3550
by qualified electors; time of ... 1573, 1577
term of office; superintendent of education may remove, etc ... 3551
Enumeration of children, must make, to superintendent of education, when ... 3573
Funds unused for two years apportioned by; report of ... 3619
Judgment, summary, in favor of ... 3804–3808
against, in favor of teachers ... 3809
Must make to superintendent of education report of enumerations ... 3573
Oath of office and bond ... 3552
dueling, must take ... 3062
President of county board of education ... 3583
teachers' institutes ... 3591
Summary judgments in favor of ... 3804–3808
against in favor of teachers ... 3809
Teachers, approves contracts with ... 3569
institutes, president of ... 3591
summary judgments against in favor of ... 3809
Term of office of; may be removed by superintendent of education, when ... 3551
Township trustees; appoints three for each township or other school district ... 3560
decision on appeal from, final ... 3565
duty as to bonds of, when lands about to be sold or leased by ... 3659
Vacancies in office of; how filled; term of appointees ... 3559

COUNTY SURVEYORS.

Appointment of two, by county commissioners ... 3889
for three years; qualifications ... 3889
Bond approved, filed and recorded by judge of probate ... 3891
Compensation of surveyors and assistant fixed by commissioners ... 3897
Duties ... 3892, 3893
must swear chain-bearers; form of oath ... 3893
Fees fixed by commissioners ... 3897
when taxed as costs in pending suit ... 3894
Liability for damages caused by wrong survey or plat ... 3896
Oaths; filed in office of judge of probate ... 3062, 3891
Plat evidence of survey when made upon notice to opposite party ... 3895
Removal of, by county commissioners ... 3890
Survey changing lines does not affect right to fences and buildings ... 3898
Surveyor of adjoining county eligible to appointment ... 3889

COUNTY TREASURER.

Annual account of, when approved, recorded; copy posted ... 1432
Bond of; condition, approval and filing ... 1428, 3079
a lien ... 3078
additional, when required; proceedings ... 3112–3118
discharge of sureties from, and new bond required ... 3124–3132
time of filing ... 3082
when may be declared insufficient and new bond required; proceedings ... 3119–3123
with whom filed ... 1428
Claims paid by, though prior claims outstanding, when ... 1430
Commission, must obtain before entering on duties of office ... 3058
when issues ... 3060
Compensation of; by whom allowed ... 1435

COUNTY TREASURER—*Continued.* SECTION

Delivery of books, papers, etc., to successor, proceedings to compel..... 3133–3139
Dueling oath, required to take..... 3062
Duties of..... 1429
Election of..... 1426, 1573, 1574, 1576
Expert accountant to examine books and vouchers, appointed by probate judge. 1433
Form of accounts of..... 1436
Oath of office.....Const., Art. XV., §1, p. 103; 3062
with whom filed..... 3066
Office vacated from failure to elect, at end of term..... 3143
Settlement by, or representative on death, or termination of office..... 1434
Summary proceedings in favor of..... 3790, 3791, 3803
against..... 3800, 3802
Term of..... 1426
Vacancy filled by county commissioners..... 1427

COURT-HOUSE.

Erection of..... 1405
special tax for..... 1405
how levied..... 1410
Exempt from levy and sale..... 2040
taxation.....Subd. 2, 3907
Sheriff has charge of; duties as to..... 1404
When cannot be occupied, courts and offices held elsewhere..... 1406

COURTS.

All courts shall be open; every person for injury done him, etc., shall have a remedy by due process of law.....Const., Art. I., §14, p. 64.
Attachment, powers to issue and inflict summary punishments for contempts.. 2638
City, jurisdiction and powers coextensive with circuit and chancery, when.... 944
Contempts, powers to issue attachments and inflict summary punishments for.. 2638
File of pending suit, taking, from office; rule as to.....S. C. R. 20, p. 1190; 2646
Inferior, general assembly may clothe with jurisdiction of misdemeanors—
Const., Art. I., §9, p. 62.
judicial power, in part, vested in such as general assembly may establish.....Const., Art. VI., §1, p. 82; 2636
judges of, to be elected or appointed in such mode as general assembly may prescribe.....Const., Art. VI., §13, p. 85.
Judicial power; in what tribunals vested.....Const., Art. VI., §1, p. 82; 2636
Judge, when incompetent, must not sit without consent of parties, etc..... 2637
Judges; by whom and when elected.....Const., Art. VI., §12, p. 85; 1573, 1574, 1578
are conservators of the peace.....Ib. §16, p. 85.
grounds of impeachment of.....Const., Art. VII., §2, p. 87.
oath of office of; where filed..... 3064–3066
of city courts; jurisdiction and powers of..... 944
Legal notices, publication of..... 3040–3051
Lost papers and records, substitution of.....G. R. 6, p. 1186; 2647–2653
May punish for contempts..... 2640
Minutes, reading and signing of..... 2641
orders, judgments and decrees on, not to be copied in final record.... 2642
No records or papers to be removed from county; exception..... 2643
Original pleadings, etc., to be recorded on filing..... 2644
when such record may be used on trial of cause..... 2645
Other powers of..... 2639
Pending suit, taking file of, from office; rule as to.....S. C. R. 20, p. 1190; 2646
Pleadings, original, etc., to be recorded on filing..... 2644
record of, may be used on trial of cause, when..... 2645
Powers, to issue attachments and inflict summary punishments for contempts.. 2638

COURTS—*Continued.* SECTION
Powers, other 2639
Right and justice shall be administered without sale, denial, or delay—
Const., Art. I., §14, p. 64.
Substitution of lost papers and records ..... G. R. 6, p. 1186; 2647–2653
Taking file of pending suit from office; rule as to ..... S. C. R. 20, p. 1190; 2646

COURT, CHANCERY. See CHANCERY.

COURT, CIRCUIT. See CIRCUIT COURT.

COURT OF COUNTY COMMISSIONERS.
County commissioners, court of, *see* 951–967

COURT OF PROBATE. See PROBATE COURT.

COURT, SUPREME. See SUPREME COURT.

COURTS MARTIAL.
Findings of, to be approved by the governor; expenses; procedure 2886

COVENANT.
Forms of complaint on ..... Nos. 8, 9, p. 944, 3352
Warranty of, implied by use of words "grant," "bargain," "sell" in conveyance 1035

CREDIT.
Of county, city, town, etc., not to be loaned to any individual, association or corporation ..... Const., Art. IV., §55, p. 78.
state, shall not be loaned in aid of works of internal improvement—
Const., Art. IV., §54, p. 78.
pledged for payment of interest on fund of Agricultural and Mechanical College 3688
University of Alabama 3670
public-school fund 3658

CREDITORS' BILLS.
Bill of discovery, *see* 814–823
Chancery, *see* 814–823

CRIMINAL PROVISIONS.
Actions by officers calculated to depreciate securities of corporations, a misdemeanor 1279
Bill of exception, failure or refusal by judge to sign, a high misdemeanor, when 621
Building and loan association, foreign, doing business for unlicensed, a misdemeanor 1132
Combustible material, etc., refusal to remove from building, etc., a misdemeanor 2610
Corporations, actions by officer calculated to depreciate securities of, a misdemeanor 1279
Cotton, deducting from weight of, or using untested weights, etc., a misdemeanor 1389, 1390
Courts martial, party, without lawful excuse, failing to appear before and testify, a misdemeanor 2886
Deducting from weight of cotton, or using untested weights, etc., a misdemeanor 1389, 1390
Doing business for unlicensed foreign building and loan association, a misdemeanor 1132
Erasing indorsement of refusal to grant injunction, a misdemeanor 792
Escapes from quarantine may be arrested; when and how 2402
Failure or refusal of judge to sign bill of exceptions a high misdemeanor, when 621
Foreign insurance company, doing business for unlicensed, a misdemeanor 2603

CRIMINAL PROVISIONS—*Continued.* SECTION

Grand jury may be dispensed with, and prosecutions had for misdemeanors before justices and other inferior courts.....Const., Art. I., §9, p. 62.
Injunction, erasing indorsement of refusal to grant, a misdemeanor..... 792
Insurance commissioner, failing to appear before, or obstructing examination by, etc., a misdemeanor..... 2578
company, allowing rebates by, etc., a misdemeanor..... 2602
foreign, acting for unlicensed, a misdemeanor..... 2603
life, foreign, making oath to false statement, etc., guilty of perjury..... 2584
domestic, liable to same penalties, etc..... 2594
Judge of probate failing to keep abstract of mortgages and file with assessor, etc., a misdemeanor..... 3990
Life-insurance company, foreign, making oath to false statement, etc., guilty of perjury, etc..... 2584
domestic, subject to same penalty..... 2594
Medical supplies for military, surgeon filing false or fictitious claim as to, a misdemeanor..... 2888
Military property, selling or detaining without right, a misdemeanor..... 2881
medical supplies for, surgeon filing false or fictitious claim as to, a misdemeanor..... 2888
Quarantine, removing vessel from, without permission, a misdemeanor..... 2420
person ordered to remain in, escaping before discharged, a misdemeanor..... 2420
Refusal to remove combustibles, etc., from building when, etc., a misdemeanor 2610
or failure by judge to sign bill of exceptions, etc., a high misdemeanor 621
Selling or detaining military property without right, a misdemeanor..... 2881
Surgeon filing false or fictitious claim as to medical supplies for military, guilty of a misdemeanor..... 2888
Travelers may be compelled to perform quarantine; when and how..... 2403
Vessel removing from quarantine without permission a misdemeanor..... 2420

CROPS.

Commenced by decedent may be completed by representative..... 150
proceeds of, assets in hands of representative; sale of 150
Exempt from taxation, when..... 3907
Growing or ungathered, exempt from levy and sale under process..... 1891
If land recovered with growing crops; possession retained on giving bond..... 1552
Lien on, in favor of landlord; how enforced..... 2703–2715
tenants in common; how enforced..... 2760, 2761
agricultural superintendents, laborers, etc.; how enforced..... 2762–2773
Mortgage of unplanted, conveys legal title, when..... 1064
Partition of, in probate court..... 3188–3206
Protection of tenant having crop planted on lands decreed in equity to be sold 850

CROSS-BILL.

Answer to bill in chancery may be made..... 720
How and when must be answered..... 721

DAMAGES.

Actions for, which survive..... 35
in real, when several defendants, may be assessed in severalty, etc. 1550
must be computed to time of trial..... 1555
persons holding bona fide under color of title liable for damages not more than one year..... 1540
on suggestion of adverse possession for three years... 1537–1539
Affirmance, on, of judgment on appeal..... 478
by claimant in trial of right of property 479
for recovery of personal property..... 480

DAMAGES—*Continued.* SECTION
Against sheriff for levy released by claim 4151
Animal, for injuring or destroying, trespassing on lands not inclosed with lawful fence 2115–2117
killing domestic, while hunting deer by fire 420
Appeal bond, against clerk, register or probate judge for taking insufficient ... 447
on affirmance of judgment on 478
from justice for delay 491
Assessment of, on demurrer to evidence 3325
Attachment, for wrongfully or maliciously suing out 565
for recovery of what damages, will lie in circuit court 524
against foreign corporations 535
before justices of the peace 571
Bill of exchange, for breach of promise to accept 883
on, protested for non-acceptance or non-payment 885–889
Boat, canoe, or other water-craft, for injuring 4217
Bond, on, for writ of seizure in equity 779
Bridge or causeway erected under contract with county, for injury caused by defect in 2512
Canoe, boat, or other water-craft 4217
Causeway or toll-bridge, for breaking or injuring any gate to 2510
injuring, etc., or avoiding toll thereon 2510
Charging, for, excessive tolls at public ferry, toll-bridge, or causeway 2509
Chattels, for detention of, in detinue 1476
Clerk, against, register, or probate judge for taking insufficient surety on appeal bond 447
delay in furnishing transcript, etc. 453
Common carrier, against, warehouseman, or wharfinger, for false receipts, etc. 4223
Costs, recovery of, in actions for tort, when damages recovered less than twenty dollars; exception 1326
Dam or obstruction, for building or raising, across watercourse without authority 1745
Defaulting witnesses, against, before arbitrators 518
commissioners to take deposition 1838
justice of the peace 2685
Delay, for, in trial of right of property 4143
before justice of the peace 4143
on appeal from justice 491
Demurrer to evidence, assessment of, on 3325
Destroying, for, injuring, or removing cypress and other designated trees 4137
or injuring fruit or ornamental trees 4139
Detainer, for, of possession after expiration of lease 2137
Detention, for, at public ferry, toll-bridge, or causeway 2508
Dissolution, on, of injunctions 793, 794
Dog, for killing or injuring stock by, known to kill or worry sheep or stock 421
Domestic animal, for killing, while hunting deer by fire 420
Exempt property, when sheriff not liable to, for levying on 2066
Extortion, for, by railroads 3460–3462
Fees, against officer for knowingly receiving other or higher than those prescribed 1367
Fire-hunters; for killing domestic animals while hunting deer 420
For recovery of what damages attachment will lie in circuit court 524
before justices of the peace .. 571
against foreign corporations 535
Injunction, on dissolution of 793, 794
Injuries, for, to person or reputation of married woman, her separate property 2523

DAMAGES—*Continued.* SECTION

Injuries, for, to person or reputation of married woman, suits by and against her for ... 2527
Injury, for, to minor child ... 25
resulting in death ... 26
from wrongful act, omission, or negligence, causing death ... 27
to servant or employe in service or business of master or employer ... 1749–1751
by railroad to personal property ... 3443
Injuring, for, or destroying animal trespassing on lands not inclosed with lawful fence ... 2113
canoe, boat, or other water-craft ... 4217
In real actions, when several defendants, may be assessed in severalty against each defendant ... 1550
must be computed to time of trial ... 1555
persons holding bona fide under color of title liable for damages for not more than one year ... 1540
on suggestion of adverse possession for three years ... 1537–1539
Judgments, on affirmance of, on appeal ... 478
by claimant in trial of right of property 479
for recovery of personal property ... 480
by default, when computed by clerk ... 3316
Judge of probate, against, for failure to take bond, or taking insufficient bond from personal representative ... 76
Judge of probate, against, for failure to take bond, or taking insufficient bond from guardian ... 2283
taking insufficient surety on appeal bond ... 447
delay in furnishing transcript, or for imperfection in record ... 453
failing to take good sureties on bond ... 3359
Lease, for detainer of possession after expiration of ... 2137
Minor child, for injury to ... 25
resulting in death ... 26
Married woman, for injuries to person or reputation, her separate property ... 2523
suits by and against her for ... 2527
Officer, against, for knowingly receiving other or higher fees than those prescribed ... 1367
On dissolution of injunction ... 793, 794
judgment by default, when computed by clerk ... 3316
petition for rehearing at law ... 3348
appeal from justice for delay ... 491
bond for writ of seizure in equity ... 779
affirmance of judgment on appeal ... 478
by claimant in trial of right of property ... 479
for recovery of personal property ... 480
bills of exchange protested for non-acceptance or non-payment ... 885–889
Parent, by, for seduction of daughter ... 24
Personal representative, against, for failing, on settlements, to file statement of heirs, etc ... 204
failure to give notice of his appointment 124
Petition, on, for rehearing at law ... 3348
Public ferry, for detention at, toll-bridge, or causeway ... 2508
charging excessive tolls at, toll-bridge, or causeway ... 2509
Railroads, for injury by, to person or property ... 3443
extortion by ... 3460–3462
Realty, damages to, survive; in whose favor and against whom ... 36, 335

DAMAGES—*Continued.* SECTION

Recovery of costs in actions for tort, when damages recovered less than twenty dollars ... 1326
Register in chancery, against, clerk, or probate judge for taking insufficient surety on appeal bond ... 447
delay in furnishing transcript, etc.. 453
Rehearing at law, on petition for ... 3348
Seduction, by unmarried woman for her own ... 23
parent for, of daughter ... 24
Set-off, what damages may be, at law ... 3728
Sheriff, against, for levy released by claim ... 4151
when not liable to, for levying on exempt property ... 2066
Stock, for trespass by, upon lands inclosed with lawful fence ... 2115–2117
injuring or destroying animal trespassing on lands not inclosed with lawful fence ... 2113
killing or injuring, by dog known to kill or worry sheep or stock ... 421
domestic animal while hunting deer by fire ... 420
Summary judgments, *see* ... 3763–3824
Toll-bridge, for detention at, public ferry, or causeway ... 2508
charging excessive toll at, public ferry, or causeway ... 2509
breaking or injuring any gate to, or causeway ... 2510
obstructing, injuring or destroying any, or causeway, or avoiding toll thereon ... 2510
Tort, recovery of costs in actions for, when damages recovered less than twenty dollars; exception ... 1326
To realty survive; in whose favor and against whom ... 36, 335
Transcript, against clerk, register or probate judge for delay in furnishing, etc. 453
Trees, for destroying, injuring or removing cypress and other designated ... 4137
or injuring fruit or ornamental ... 4139
Trespass, for, by stock upon lands inclosed with lawful fence ... 2115–2117
injuring or destroying animal trespassing on lands not inclosed with lawful fence ... 2113
Trial of right of property, for delay in ... 4143
before justice of the peace ... 4143
Unmarried woman, by, for her own seduction ... 23
Warehouseman, against, common carrier, or wharfinger, for false receipts, etc. 4223
Watercourse, for building or raising dam or obstruction without authority ... 1745
Water-craft, for injuring canoe, boat, or other ... 4217
What damages may be set off by defendant at law ... 3728
Witness, against, defaulting before arbitrators ... 518
commissioner to take deposition ... 1838
justice of the peace ... 2685
Words, for, falsely imputing to a woman want of chastity ... 1440–1443
Writ of seizure, on bond for, in equity ... 779

DAMS.

Eminent domain, *see* ... 1727–1748

DAYS.

Grace, days of ... 870, 871
Holidays ... 872
Scholastic day not less than six hours ... 3598
What days included and excluded in computation of time..Ch. R. 119, p. 1228; 11

DAY'S WORK.

Eight hours required for clerks in state departments ... 1965

DEAF, DUMB AND BLIND. SECTION

Alabama Institute for the Deaf, *see* 3698-3726

DEATHS.

County health officer must make and supervise certificates of 2440
notify coroner of, when 2440
keep register of 2436
board of health must make annual report of 2430
Physician, midwife, etc., in charge of sick must report death and other facts ... 2441
When poison suspected judge of probate may procure analysis of stomach 3368

DE BENE ESSE.

Deposition, when and how taken—
in chancery ..... Ch. R. 54, 55, p. 1212.
at law 1833-1846

DECEIT.

Form of complaint in action for deceit in sale of chattel ..... No. 21, p. 947.

DECREES.

See JUDGMENTS AND DECREES; also CHANCERY, subtitle Decrees.

DEEDS.

Conveyances, *see* 981-1072

DEFAMATION.

Charge of unchastity against any woman actionable without proof of special damages 1440
Complaint in action of, what sufficient 3287
forms ..... Nos. 16, 17, p. 946.
Constitutional provisions as to prosecutions for ..... Const., Art. I., §13, p. 64.
Import of words accusing of false swearing or imputing commission of crime .. 1439
Jurisdiction of circuit court in actions of 918
Justices of the peace have no jurisdiction of such action 2662
Limitation of actions for 2801
Recantation and tender; effect of 1442
Receipt of money tendered bars action; costs 1443
Retraction, etc., may be shown under general issue in mitigation of damages .. 1441
Truth of words spoken or written and circumstances admissible under general issue 1438
charges against public men may be proved, when 1437

DEFAULT, JUDGMENT BY.

Attachment suit; when may be taken 562
Ejectment suit; plaintiff must prove possession to recover costs 1548
Entered without jury when instrument sued on ascertains plaintiff's demand .. 3316
Garnishee; when conditional judgment rendered against 2195
Interest and damages computed by clerk on, when 3316
In vacation default may be entered and advantage claimed at next term—
C. C. R. 9, p. 1196.
party entering not bound to receive plea ..... Ib. 10, p. 1196.
when set aside at next term on affidavit ..... Ib. 11, p. 1197,
Justice of the peace not to enter before twelve o'clock of return-day 2677
Mechanic's lien, in action to enforce; when may be rendered 2740
Time for pleading 3308

DEMURRER.

At law; must be to matter of substance 3303
no objection to be allowed which is not distinctly stated 3303
amendments allowable either before or after judgment on 3304
pleas over after judgment on, not a waiver of error 3305

DEMURRER—*Continued.* SECTION

At law; terms may be imposed for frivolous demurrer ... 3306
to evidence, when allowed ... 3322
testimony to be written out ... 3324
effect of such demurrer ... 3323
if overruled, damages assessed ... 3325
Interlocutory judgment on, appealable by consent in certain cases ... 430
In equity, grounds must be specially set forth, else not heard ... 700
hearing of ... Ch. R. 71, 72, p. 1217.
and exceptions ... Ib. 73, p. 1218.
pleas and motions to dismiss in vacation, on notice— Ib. 74, p. 1218.
multifariousness must be taken by ... 678

DENTISTS.

Board of dental examiners; election; term of office ... 1444
duty and authority of ... 1446
one member of, may grant temporary license ... 1447
qualifications of members of ... 1445
quorum of, what constitutes ... 1451
vacancy in; how filled ... 1444
Contracts for dental services, without license, void ... 1452
Dentistry must not be practiced without license ... 1450
Extraction of teeth does not constitute practice of ... 1450
License to practice, filing and recording of, fee for ... 1448
certified copy of record of, what evidence of ... 1449
proof of, not required without two days' notice ... 1452
temporary, may be granted by one member of board ... 1447

DEPOSITIONS.

At law. See EVIDENCE, subtitle Procuring testimony by deposition.
In chancery. See CHANCERY, subtitle Evidence.

DEPUTIES.

Appointable by clerk of circuit court ... 933
insurance commissioner ... 2577
sheriff ... 3738
tax-assessor ... 3928
tax-collector ... 4002
Oath of office; how taken and filed ... 3067

DESCENTS AND DISTRIBUTIONS.

Advancements—
controversy as to; how issue made up and tried ... 1469
deducted in division and distribution of estate ... 1463
descendant of party receiving takes subject thereto ... 1467
discovery of; application for; citation; notice ... 1470
contest of answer; hearing and notice ... 1472
effect of failure to answer ... 1473
proceedings on death of party receiving ... 1471
how value of, determined ... 1466
if made in real or personal estate, considered part of such estate ... 1465
rule when advancement exceeds, or is less than share ... 1464
what not an advancement ... 1468
Bastards inherit from mother ... 1459
who inherit from ... 1460
Heirs and distributees take as tenants in common ... 1461
Kindred computed by civil law ... 1456
Lineal descendants take ancestor's share ... 1454

DESCENTS AND DISTRIBUTIONS—*Continued.* SECTION

No distinction made against heirs of half-blood; exceptions ... 1457
No representation among collaterals; exception ... 1455
Personal property of person dying intestate, to whom descends ... 1462
Posthumous children, rule of descent as to ... 1458
Real estate of persons dying intestate, to whom descends ... 1453
Widow's share in personal estate ... 1462

DETECTIVE AGENCY.

License required of ... Subd. 57, 4122

DETINUE.

Assessment of value of property and damages for detention ... 1476
Bonds taken to be returned to court in ten days; penalty for neglect ... 1481
Damages on affirmance of judgment of recovery on appeal ... 480
Defendant may require stranger, etc., to come in and defend, when; proceedings ... 2634
Delivery of property recovered compelled by attachment or distringas ... 1483
Forfeiture of forthcoming bond, and execution thereon ... 1479, 1480
Form of complaint in actions of ... No. 25, p. 948; 3352
Interpleader at law in; affidavit; bond; proceedings thereon ... 2634
Interposition of claim by person not a party to suit; proceedings thereon ... 1484
Justice of the peace, jurisdiction of, in ... 2662
judgments before, in ... 2675
Limitation of actions in ... 2796
Mortgagee or vendor, etc., in suits by, secured debt may be ascertained and paid by defendant; proceedings ... 1477
what may be pleaded in such case ... 1478
when debt less than value of property sued for, proceedings ... 1480
Replevy, defendant may, in five days ... 1475
if he does not, property turned over to plaintiff on his giving bond ... 1475
on failure of plaintiff to give bond, etc., property returned to defendant 1475
Value of property and damages for detention assessed on trial ... 1476
When plaintiff is in possesion and suit dismissed or abated; proceedings ... 1482
Writ of seizure issues on plaintiff making affidavit and giving bond ... 1474

DISCHARGE.

Found after trial, when entitles party to new trial ... 3341
In writing, has effect according to intention of parties ... 1805

DISCLAIMER.

In answer to bill to quiet title ... 813
real actions ... 1533

DISCONTINUANCE.

Entered as to parties not served, or alias summons issued ... 42
In supreme court, must be moved for ... 472

DISCOVERY.

At law, by examination of parties ... 1850–1858
In equity, by creditors' bill ... 814–823
bill to quiet title ... 809–813
examination of parties ... 715–719
probate court as to advancements ... 1470–1473

DISMISSAL OF SUIT.

At law, in vacation, allowed ... 3317
by suffering nonsuit ... 614
on failure of party to answer interrogatories ... 1856
when recovery below jurisdiction; exception ... 3315

DISMISSAL OF SUIT—*Continued.* SECTION
In equity, in vacation allowed, when 703
for complainant neglecting to bring in defendant. Ch. R. 27, p. 1208.
failing to appear at hearing ..... Ib. 69, p. 1217.
when suit at law pending for same cause ..... Ib. 114, p. 1227.
equivalent to dismissal on merits ..... Ib. 28, p. 1208.
Security for costs, for want of, when plaintiff a non-resident 1347
on plaintiff removing from state 1350
When brought before justice in wrong precinct 2669

DISSOLUTION.
Of corporations. See CORPORATIONS 1291–1301
injunctions. See CHANCERY 793–797

DISTILLERS.
License required for ..... Subd. 6, 4122

DISTRIBUTEES.
Descents and distributions, *see* 1453–1473

DISTRIBUTIONS.
See ADMINISTRATION OF ESTATES, subtitle Distribution.

DISTRICT OF COLUMBIA.
Included in "United States" 7

DISTRICTS.
Chancery 630–635
Congressional 969–970
Senatorial 2214

DISTRINGAS.
Delivery of property recovered in detinue, compelled by 1483

DIVIDENDS.
Of corporations; how taxed when not divided ..... Subd. 13, 3911
may be paid to personal representative 1264

DIVORCE AND ALIMONY.
Divorce a vinculo—
answer of defendant, not required to be sworn to; effect of 1489
abandonment, when ground is, three year's residence must be alleged and proved 1492
allowance to wife pending suit 1495
on decree of divorce; when to be allowed 1496
when divorce is at suit of wife 1497
husband 1498
bill for, in what court must be filed 1493
by what court and on what grounds granted 1485
custody of children on decree of 1501
defendant, if, a non-resident, a year's residence by plaintiff must be alleged and proved 1494
divorce deprives husband of control over wife's separate estate 1500
of wife, bars her of dower and distributive share 1508
granted to wife for husband's cruelty 1487
husband when wife pregnant at time of marriage 1486
in such case issue is bastardized 1499
not granted on confession of parties 1491
when adultery was committed for purpose of obtaining, with consent of other party 1491

DIVORCE AND ALIMONY—*Continued.* SECTION

Divorce a vinculo—*Continued.*
not granted when both parties have committed adultery ... 1491
there has been a condonation of adultery ... 1491
husband knew of, or connived at wife's adultery ... 1491
procedure to obtain; right to marry again may be granted ... 1488
wife may file bill in her own name without intervention of next friend ... 1490
Divorce from bed and board—
for what causes allowed ... 1502
proceedings therefor same as in other cases ... 1503
power of court as to allowance to wife and custody of children also same ... 1503

DOCKET.

Chancery court ... Ch. R. 66, p. 1216; Ib. 96, p. 1223; 657, 844
Circuit court ... C. C. R. 1, 2, p. 1195; Ib. 15, p. 1197; 934
Justices of the peace ... 2664
Notaries public ... 3039
Probate court ... 3365
in proceeding to sell lands for taxes ... 4047, 4048
Register in chancery ... 4162
Supreme court ... S. C. R. 4, p. 1188; Ib. 16, p. 1189; 3860

DOGS.

Damages against owner of dog known to worry sheep ... 421
No action lies for killing such dog ... 421
Registration of, when ... 423
fee, tax and certificate ... 424
Tax on, appropriated to public schools ... 425

DOMESTIC RELATIONS.

Guardian and ward ... 2247-2391
Husband and wife ... 2520-2537
Legitimating and adopting children ... 364-367
Protection of estates of intemperate persons ... 836-843
Relieving infants of disabilities of non-age ... 829-835
Voluntary separation of parent; custody of children on ... 2536, 2537

DOMINOES.

License for required ... Subd. 14, 4122

DOWER.

Alienee of husband, as against, barred in three years ... 1528
Assignment of, widow entitled to retain dwelling until ... 1515
assigned by metes and bounds in probate court ... 1516
chancery, when, has exclusive jurisdiction ... 1525
commissioners; oath of; duties of ... 1522
day fixed for hearing petition for, when notice not given; proceedings ... 1520
decree, what, must contain, if widow entitled to ... 1521
dwelling-house, when, to be assigned to widow as part of ... 1523
lands, when, lie in different counties, jurisdiction to allot ... 1524
aliened by husband, probate court cannot allot, etc ... 1524
in such case, widow dowable of interest on one-third value of, etc ... 1526
allotted, widow invested with life estate in ... 1522
petition for, what must allege ... 1517
day fixed for hearing; notice ... 1518
minors, guardian ad litem appointed for ... 1519

DOWER—*Continued.* SECTION
Assignment of, petition for, when notice not given; proceedings 1520
to circuit court, when probate judge incompetent.. 1527
Barred in three years as against alienee of husband 1528
Chancery court, when has exclusive jurisdiction; decree in such case.....1525, 1526
Divorce bars wife of dower and distributive share in husband's estate..... 1508
Dower interest, to what lands it attaches and extent of..... 1504, 1505
may be sold with widow's consent, when..... 182
value of, how, in such case, fixed and paid..... 183
extent of..... 1505
Effect of separate estate of wife on right to..... 1506, 1507
Extent of dower interest..... 1505
Of what lands widow dowable..... 1504
Probate court, jurisdiction of, to allot..... 3383
Relinquishment of; how made when wife sane and resident of state..... 1509
non-resident..... 1510
and proceedings for, when wife insane.... 1511–1513
must be witnessed or acknowledged..... 1509, 1510
when joining in deed of husband for, not bound by warranty 1514

DRAWBRIDGE.
Regulations as to passing by steamboats..... 3445–3447

DRUGGISTS.
Pharmacists, *see*..... 3248–3259

DRUNKENNESS.
Divorce, when ground for..... 1485
Impeachment of public officers, when ground for.....Const., Art. VII., p. 87.
Protection of estates of intemperate persons against..... 836–843

DUELING.
Disqualifies for office..... 3056
Dueling oath required of officers..... 3062
Duty of general assembly to pass laws to suppress..Const., Art. IV., §47, p. 77.

DUMMY RAILROAD.
License required of.....Subd. 47, 4122

DWELLING-HOUSE.
Lien of landlord for rent of..... 2716–2721
Widow entitled to retain until dower assigned..... 1515
and minors entitled to retain when homestead incapable of allotment.. 2092
When to be assigned to widow as dower..... 1523

EDUCATION.
Schools, *see*..... 3539–3726

EJECTMENT AND STATUTORY REAL ACTIONS.
Abstract of title; right to demand..... 1531
Action of..... 1529
Action in the nature of; what sufficient allegation in complaint..... 1530
fictitious proceedings omitted in..... 1530
Action for use and occupation..... 2722
Adverse possession, when notice thereof must be filed in probate office..... 1541
declaration of, form of..... 1542
must be recorded..... 1543
or copy thereof evidence..... 1544
until filing of, possession not adverse..... 1545
exceptions..... 1546

EJECTMENT AND STATUTORY REAL ACTIONS—*Continued.* SECTION

Adverse possession, suggestion of, of three years 1536
if rents exceed value of improvements, judgment for excess 1537
if improvements exceed rents, possession retained 1538
plaintiff not paying excess, defendant may pay value of land 1539
Circuit court; jurisdiction in actions of 918
Consent rule in ejectment ..... C. C. R. 24, p. 1199.
Damages may be assessed in severalty against joint defendants 1550
computed to time of verdict 1555
Default admits title, but possession must be proved to recover costs 1548
Defendant liable only for one year's rent, when 1540
Disclaimer of possession 1533
Ejectment or real action in nature of 1529
Form of complaint in statutory ejectment ..... No. 29, p. 948; 3352
General issue, effect of in action in nature of ejectment 1532
Grantee, seal unnecessary to authorize suit by 983
Insolvent estate, personal representative of may sue for recovery of lands, when 328
Justices have no jurisdiction in actions of ..... Const., Art. VI., §26, p. 86; 2662
Landlord made party on his or tenant's application 1534
Limitations, statute of; action barred in ten years 2795
as to recovery of lands purchased at tax sale 4089
Mortgagee, in suit by, against mortgagor, etc.; what may be pleaded; proceedings 1547
Plaintiff in one action of ejectment may notify plaintiff in another for same premises, to defend ..... C. C. R. 25, p. 1199.
having recovered in ejectment, may notify plaintiff in another pending suit for same premises ..... Ib. 26, p. 1199.
after recovery in ejectment, may be admitted to defend another pending suit ..... Ib. 27, p. 1200.
Possession retained to gather crops on giving bond 1552
such bond has force of judgment, when 1553
Redemption or tender, effect, in suit by party claiming under tax title 4087
Rent accruing after judgment, recovered on motion 1551
Seal unnecessary to authorize suit by grantee 983
Tax sale, state or any purchaser at, may bring 4081
books, etc., of probate judge and tax-collector evidence 4088
defendant entitled to judgment for purchase-money, when; though cast in suit for land 4084
limitations, statute of, as to recovery of lands sold for taxes 4089
plaintiff recovers purchase-money, etc., when, though cast in suit for land 4083
redemption or tender, effect of, in suit by party under tax title 4087
statement of claims under tax title made in pleadings 4086
tender by party claiming adversely to tax title, effect of 4085
Tenant liable only for rent in arrear 1535
Two judgments bar further suit, when 1554
Verdict for plaintiff, what should specify 1549

ELECTIONS.

Constitutional provisions.

All elections by the people shall be by ballot; elections by persons in a representative capacity shall be viva voce ..... Const., Art. VIII., §2, p. 88.
Electors, who are qualified ..... Const., Art. VIII., §1, p. 88.
disqualified ..... Const., Art. VIII., §3, p. 88.
when privileged from arrest ..... Const., Art. VIII., §4, p. 88.

ELECTIONS—*Continued.* SECTION

Constitutional provisions—*Continued.*

Liquors, duty of general assembly to pass laws protecting against evils arising from use of intoxicating, on election day.....Const., Art. VIII., §6, p. 89.
Registration of electors, general assembly may provide for—
Const., Art. VIII., §5, p. 89.
when so provided, no person shall vote unless registered.....Ib.
Uniform laws throughout the state, general assembly shall pass, to regulate and govern elections.....Const., Art. VIII., §5, p. 89.

Statutory provisions.

Absent electors, when and how may be registered..... 1564
Advertisement—
of general election by sheriff..... 1590
special election, by sheriff..... 1602
proclamation of governor, when..... 1601
proclamation by governor, as to election of officers, when..... 1647
Adjournment of joint convention of senate and house to try contested election 1674
Affidavits, absent or sick elector, of..... 1564
person challenged, of..... 1630
grounds of contest verified by, etc..... 1673, 1686, 1695, 1697
as to name, residence, etc., of witnesses..... 1690
Alien, oath of person challenged as..... 1630
Amendment to the constitution, counting and returning vote on..... 1662
returns made to secretary of state..... 1663
counted; result proclaimed, how..... 1664
Announcement of result by proclamation of governor, when..... 1647, 1655
Appeal in case of contested, limitations of..... 1702
from order or decree of chancellor or chancery court interfering with, without bond..... 1671
bond and security for..... 1703
suspends judgment or decree..... 1703
Arrests on day of, without process, etc..... 1634
bond and surety..... 1634
drunk or intoxicated, for being..... 1635
liquors, for selling or giving away..... 1636
Attorney-general, elected by the people..... 1573
time of electing..... 1575
election of, how contested..... 1672–1685
Auditor—
elected by the people..... 1573
time of electing..... 1575
election of, how contested..... 1672–1685
draws warrant, when, for per diem and expenses of commission to take testimony in contested election of state officer..... 1676
Ballot—
voting shall be by secret official..... 1605
candidate's names on, description and contents of..... 1607
constitutional amendments; how printed on..... 1608
pay for printing and delivery of, and cards of instruction..... 1609
judge of probate, duty of, relative to printing..... 1606
form, and description of..... 1611
book or block, to be bound in, stub attached to..... 1612
number of, for each voting-place..... 1613
judge of probate failing to perform duties as to; duties discharged by circuit clerk..... 1614
mode of preparing by elector..... 1622
assistance to electors in preparing..... 1623

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Ballot—*Continued.*
when elector spoils, how another obtained ... 1624
mode of casting ... 1625
rejected, marked and laid aside ... 1632
must not be, for technical errors, etc ... 1638
counting of ... 1637
manner of ... 1638
poll-lists and, how disposed of ... 1639, 1640
in what contests may be examined; attachment to get possession of ... 1699
Ballot-boxes, number of, by whom provided ... 1587
Blanks for registration, etc., how furnished ... 1568
Blind voter, assisted how ... 1623
Books and blanks, for registration, when and by whom furnished ... 1568
form of ... 1569
Booths, by whom provided; number and arrangement of; expense of ... 1616
time may be occupied by elector ... 1627
when elector must withdraw from ... 1628
Bond, by contestant; amount; by whom approved; where filed and recorded ... 1672
appeal bond and security for costs of ... 1703
Bribery, conviction of disfranchises ... 1557
Candidates—
certificate of nomination of, contents; with whom filed ... 1606
names of, how certified ... 1606
nominated by petition ... 1606
political parties ... 1606
names of, printed on ballot alphabetically, etc ... 1607
may notify judge of probate that he will accept nomination; when and how 1607
Cards of instruction, provision concerning ... 1617
Certificate of nomination, contents, with whom filed ... 1606
Certificates of election, furnished members of congress and general assembly ... 1650
Certificate of result of contested election of senator or representative; by and to whom made ... 1692
registration, form of, etc ... 1565
Challenge, right of; who may ... 1629
oaths to be administered by inspectors to person challenged ... 1630
penalty for willful and false swearing ... 1630
Challenger, who may exercise right of ... 1629
Chancellors, elected by the people ... 1573
time of electing ... 1578
jurisdiction denied to, in contested election; exception ... 1671
appeal, without bond, when they interfere, etc ... 1671
election of, how contested ... 1686–1703
Chancery courts, jurisdiction denied to, in contested elections; exception ... 1671
Chief justice and associate justices of supreme court—
elected by the people ... 1573
time of electing ... 1578
Citizenship of voter, how determined ... 1630
City, elector removing out of one precinct into another in, when may vote ... 1556
Clerks of, selected by inspectors ... 1593
from list of persons furnished, etc ... 1595
residence of ... 1596
oath of, by whom administered ... 1597
duty of, when elector deposits his ballot ... 1625
compensation of, preferred claim; how paid ... 1643
Clerks of circuit court—
elected by the qualified electors of county ... 1573

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Clerks of circuit court—*Continued.*
time of electing 1578
probate judge failing to have ballots printed, etc., duties must be performed by 1614
election of, how contested 1686–1703
one of board of supervisors of election 1644
with others must provide ballot-boxes for election 1587
Commissioner of agriculture elected by the people 1573
time of electing 1574, 1575
election of; how contested 1672–1685
Commission to take testimony elected by joint convention of senate and house 1675
sitting of; per diem and expenses 1676
powers and duties of 1677–1682
may punish for contempt, etc 1679
Compensation of—
judges of probate and registrars 1570
officers of election 1643
electors for president and vice-president 1658
of sheriffs for services in contested election of state officer 1684
commission to take testimony in contested election of state officers 1676
how and by whom paid 1676
Congress—
members of, elected by the people 1573
time of electing 1579, 1653
special election for members of, when ordered 1598
certificate of election of, by whom furnished 1650
returns of election of, in new counties; to whom made 1661
Constables, elected by the people 1573
time of electing 1576
election of, how contested 1686–1703
Constitutional amendments, how printed on ballot 1608
counting and returning vote on 1662
returns made to secretary of state 1663
returns counted; result proclaimed 1664
Contested—
who may contest; grounds of 1667
election, when, not annulled 1668
voter must answer as to qualifications 1669
answers not admissible on prosecution of 1669
registration and poll list, either party entitled to copy of 1670
certified copies presumptive evidence of, etc 1670
chancery courts and chancellors, jurisdiction of, denied 1671
appeal from any order, etc., of, without bond, etc 1671
in certain cases, limitation of 1702
costs, security for, by whom approved 1703
costs, security for, giving of, suspends judgment 1703
judgment for, by supreme court, when 1703
Contest of state officers—
statement of grounds of contest, with whom filed 1672
bond, condition, how payable 1672
statement, contents of, verification of, service of, amendments 1673
tried by joint convention of house and senate, procedure 1674

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Contest of state officers—*Continued.*
convention may adjourn from day to day ... 1674
testimony, commission elected to take ... 1675
sitting of, per diem and expenses, how paid ... 1676
powers and duties of ... 1677
evidence taken in one case may be used in another, when ... 1677
notice to adverse party of examination of witnesses ... 1678
contempt, commission, power to punish for ... 1679
evidence must be confined to the allegations ... 1680
each party entitled to be present at taking of evidence ... 1681
commission must examine evidence and report conclusion and evidence ... 1682
witnesses, pay of ... 1683
sheriffs, duty of ... 1684
costs, execution for, by whom issued ... 1685
Contest of member of general assembly—
statement of grounds of contest, verification of ... 1686
evidence, notice of nature of ... 1687
contest, when commenced, security for costs ... 1688
of senator or representative, where statement filed; security for costs ... 1689
contestee, notice to; by whom served ... 1689
testimony, how taken; interrogatories; commission, etc ... 1690
depositions; how indorsed; to whom returned, etc ... 1691
and copy of grounds of contest, to whom forwarded by circuit clerk ... 1691
costs, how and by whom taxed; execution for; by whom issued ... 1692
Contest of chancellor—
statement of grounds of contest, where filed; security for costs ... 1693
clerk must enter cause on trial-docket; preferred case, etc ... 1693
issue summons and copy of grounds of contest, etc ... 1694
testimony taken by deposition, proceedings ... 1694
contest to be tried at second term unless judge absent or incompetent 1694
heard without intervention of jury ... 1694
Contest of judge of circuit court—
statement of grounds of contest, where filed; security for costs ... 1695
chancellor sets day for hearing; summons, etc., to contestee, proceedings 1695
Contest of judge of probate—
statement of grounds of contest, where filed; security for costs ... 1696
clerk must enter cause on civil trial-docket; preferred case ... 1696
summons and copy of statement for contestee ... 1696
witnesses, attendance of, may be compelled ... 1696
testimony, oral and by deposition; how taken ... 1696
cause heard without jury ... 1696
Contest of justice of the peace, constable or other office filled by vote of a single county—
statement of grounds of contest, where filed; security for costs ... 1697
trial, day set for, notice to contestee ... 1697
testimony; depositions; witnesses, subpœna for, proceedings to compel attendance of ... 1698
trial by jury, for what causes, when and by whom demanded ... 1698
ballots, in what contests, may be examined ... 1699
attachment may issue to get possession of ... 1699
judgment in favor of party other than contestee, entitled to office ... 1700
when a tie vote, fact of, to whom certified ... 1700
if person elected ineligible, election declared void, and fact certified to appointing power ... 1700

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Contest of justice of the peace, constable or other office filled by vote of a single county—*Continued.*
judgment in favor of contestee if duly and legally elected 1700
when not abated by death of contestant 1701
costs, judgment for, when; execution for; by whom issued 1701
Coroner, elected by the people 1573
time of electing 1576
election of, how contested 1686–1703
Costs in contested election, security for in all cases 1688
for state office; by whom taxed; to whom certified; execution for 1685
for senator or representative; to whom certified; how taxed; execution for 1692
appeal in, bond and security for, by whom approved 1703
Counting votes—
time and manner of counting 1637, 1638
statement of votes and one poll-list certified, sealed up and delivered to returning-officer of precinct 1639
returning-officer must deliver to county returning-officer 1641
ballots and other poll-lists, how disposed of 1640
Counties, when place of residence in two, right to select 1559
elections in new 1659–1661
County commissioners—
election of, by the people 1573
time of electing 1576
fix compensation of probate judge for services relating to registration of electors 1570
registration books, blanks and printing, claim for, allowed by 1570
County superintendents elected by the people 1573
time of electing 1577
election of, how contested 1686–1703
County treasurer elected by the people 1573
time of electing 1574, 1577
election of, how contested 1686–1703
Crime punishable by imprisonment in penitentiary, conviction of, disfranchises 1557
Day of, registrar must be at polling-place on 1564
holding special elections 1599
sheriff may arrest without process on 1634
for what offenses on 1635, 1636
when elector privileged from arrest on; when not—
Const., Art. VIII., §4, p. 88.
duty of general assembly to pass laws protecting against evils arising from use of intoxicating liquors on .....Const., Art. VIII., §6, p. 89.
Depositions in contested elections 1677, 1690, 1691, 1694, 1695, 1696, 1698
of state officers 1677, 1678
senator or representative 1690, 1691
chancellor 1694
judge of circuit court 1695
probate 1696
other officers 1698
Disabled voter, assisted in preparing ballot 1623
Elections, general, provisions for throughout the state 1574
notice of must be given by sheriff 1590
special, when and for what offices held 1598
day for holding of 1599

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Elections, special, ordered by governor 1600
for congress or state officers, proclamation by governor 1601
in county, sheriff to give notice 1602
sheriff must notify probate judge and clerk of circuit court of 1603
how conducted and certificates given 1604
municipal, what duties and when to be performed by mayor of city 1615
Electors, qualification of 1556
registration of, under supervision of probate judges 1556
absent from county or sick, where and when may register 1564
alphabetical list of, furnished inspectors 1567
where, must register 1572
identity of, examination as to, by precinct registrar 1572
must be registered and vote in precinct of residence 1620
mode of preparing ballot 1622
assistance in preparing 1623
time may occupy a booth 1627
when to withdraw from polling-place 1628
ballot, if spoiled by, how another obtained 1624
right of, to vote in new county; when 1660
when privileged from arrest ..... Const., Art. VIII., §4, p. 88.
Embezzlement of public funds, conviction of, disfranchises 1557
Executions for costs; when and by whom issued 1685, 1692
Expenses of—
books, blanks and printing; how paid 1570
ballots, printing and delivery of; how paid 1609
booths, polling-room, etc., provision concerning 1616
compensation of officers 1643
commission to take testimony in contested election of state officers 1676
False swearing, penalty for, by person challenged 1631
Felony, conviction of, disfranchises 1557
General assembly—
senators and members in, elected by the people 1573
time of election of 1575
returns of election for state officers opened in presence of 1651
tie vote, how decided by 1651
certificate of election to members of, by whom furnished 1650
special election for member of, when ordered 1598
returns of election in new counties, to whom made 1661
election of senator or representative of, how contested; procedure 1686–1692
General elections—
provision for, throughout the state 1574
notice of, given by sheriff 1590
returns of, to whom forwarded 1646, 1648, 1654
counting of; by whom made 1647, 1651, 1655
result of, given by proclamation of governor, when 1647, 1655
Governor, elected by the people; time of electing 1573–1575
when may restore to rights of citizenship 1557
appoints county registrar, fills vacancy 1561
special elections, day of, designated by 1599
ordered by; writs of, issued by 1600
for congress or state offices, notice by proclamation of 1601
proclamation by, as to election officers, when 1647
electors for president and vice-president, returns estimated by 1655
proclamation by, as to result 1655

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Governor, tie vote, in case of, decided by 1656
constitutional amendment, election on, proclamation by, as to result 1664
election of, how contested; procedure 1672–1685
Hour of meeting of inspectors and returning-officers 1591
opening and closing polls 1591, 1618
Idiots disfranchised 1557
Illiterate voter; how assisted in preparing ballot 1623
Insane persons disfranchised 1557
Inspectors and returning-officers of, how appointed 1588
duties of, how places supplied on failure to attend 1591
Inspectors of—
three, two of whom are members of opposing political parties, if practicable 1588
returning-officer absent, appointment by 1592
clerks selected by 1593
markers appointed by 1594
clerks and markers appointed from lists furnished, etc 1595
residence of inspectors, clerks and markers 1596
oath of inspectors, clerks and markers, by whom administered 1597
opening polls, proclamation of, made by 1619
initials of one must be on stub of ballot 1622
assistance by, to elector in preparing ballot 1623
depositing ballot by elector, duty of 1625
duty of, on receiving ballot 1626
person challenged must be informed by, of penalty for false swearing 1631
counting votes, by 1637
manner of counting 1638
ballot must not be rejected by, for technical error, etc 1638
statement of votes and one poll-list certified, sealed up and delivered to precinct returning-officer, by 1639
who must deliver to county returning-officer 1641
ballots and other poll-list, how disposed of by 1640
compensation of, preferred claim; how paid 1643
Judges of circuit court—
elected by the people 1573
time of electing 1574, 1578
election of, how and before whom contested 1686–1703
Judges of probate—
registration, under supervision of 1560
alphabetical lists of each precinct made by, copies furnished inspectors 1566
book, and blanks for registration furnished by 1568
cost of, and printing, how paid 1570
elected by the people 1573
time of electing 1578
change in precinct or voting-place, notice of by 1586
ballot, printing of, duty of 1606
certificates and petitions of nomination, preserved by 1609
cards of instruction, provided by; furnished to sheriff by 1617
certificate of result of election forwarded to secretary of state by, when ... 1646
when forwarded to governor for speaker of house of representatives 1648
election of, how contested 1686–1703
Jury, when trial by, may be demanded in contested election 1698
Justices of the peace, elected by the people 1573
time of electing 1574, 1576
election of, how contested 1686–1703

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Larceny, conviction of, disfranchises 1557
Liquors, selling or giving away, on day of, unlawful 1636
duty of general assembly to pass laws protecting against evils arising from use of intoxicating liquors on election day—
Const., Art. VIII., §6, p. 89.
Lunatic disfranchised 1557
Mayor of city or town, duties of, concerning municipal elections, etc 1615, 1616
Malfeasance in office, conviction of, disfranchises 1557
Markers of, appointed by inspectors 1594
from list of persons furnished, etc 1595
residence of 1596
oath of, by whom administered 1597
Municipal elections—
mayor of city, duties of, relating to, etc 1615
as to providing voting-booths, etc 1616
New counties—
considered as part of old counties, until, etc 1659
right of elector to vote in, when 1660
returns of election to congress and general assembly, to whom made 1661
Notices of—
general election must be given by sheriff 1590
special, must be by proclamation of sheriff 1602
given probate judge and circuit clerk by sheriff 1603
Oath of registrars 1561
registrar, duty of, to administer, to electors 1561
inspectors, clerks and markers; by whom administered 1597
person challenged 1630
person absent or sick during time for registration 1564
Officers elected by the people; time of electing 1573–1579
of, appointment and duties of 1588–1597
compensation of, preferred claim; how paid 1643
Penalties—
for false swearing by person challenged 1631
failure to make returns; proceedings 1665
notice to be given solicitor 1666
against witness for failure to attend before commission to take testimony. 1679
Petitions—
citizenship, rights of, to restore to 1557
nominating candidate, with whom filed 1606
preservation of, and certificate of nomination 1610
Precincts—
elector must vote in precinct in which he resides 1556
removing out of one, into another in city, may vote, when 1556
when place of residence in two, right to select 1559
registrar must be at polling-place, in, on day of election 1564
election, those established continued until changed 1580
establishment, change and abolition of 1581
may be two places of voting in 1582
orders relating to, to be recorded 1583
designation of, boundaries and voting-places in 1584
places of voting in 1585
notice of change in, and places of voting 1586
elector, must register and vote in residence of 1620
Polling-place, registrars must be at, on day of 1564
person drunk or intoxicated about, may be arrested 1635

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Polling-rooms, arrangement of 1616
who allowed within 1621
provided, how and when 1616
when elector must withdraw from 1628
no person permitted in, until, etc 1642
Polls, opening of, proclaimed by inspectors 1619
time of opening and closing 1618
Poll-lists and ballots, how disposed of 1639, 1640
lists of registered voters; where filed 1649
election, in contested, either party entitled to copy of 1670
Presidential electors, elected by the people; time of electing 1573, 1579
time of electing 1579
elected by general ticket, when 1653
returns sent to secretary of state 1654
governor estimates returns and gives notice of result by proclamation 1655
tie vote, in case of, governor decides 1656
meeting of, time and place; vacancies, how filled 1657
compensation of 1658
Qualification of voters 1556
voter, in contested election required to answer as to 1669
answer not admissible in prosecution of 1669

Registrar, county—
one for each county; appointment; oath; term of; vacancy, how filled ... 1561
appoint precinct registrars; oath; term of; vacancy, how filled 1561
county, may act in precinct of his residence 1561
may register himself 1562
precinct registrar failing to act, or in case of vacancy, appointment of, by. 1571

Registrar, precinct—
make registration of electors; how and when 1562
may register himself 1561
absent on day of election, county registrar appoints, etc 1564
copy of registration-list made by; original and copy, where filed 1566
compensation of, how and by whom paid 1570
failing to act, or in case of vacancy, county registrar appoints 1571
identity of elector, examination as to, by 1572

Registration—
duty of precinct registrars to make; when; forms, etc 1562
time of, in country; in cities 1563
on day of election, who entitled to 1564
when need not be reregistered, exception as to cities, etc ....Note, p. 509.
registrar must be at polling-place on day of election .....Note, p. 509.
removal of elector in city, etc., what necessary to vote 1564
certificate of, furnished elector, form of 1565
copy of, made by precinct registrar; original and copy, where filed 1566
alphabetical lists of, made by probate judges; copies furnished precinct inspectors 1567
books and blanks for, when and by whom furnished 1568
form of 1569
electors, where must register 1572
identity of; examination as to, by precinct registrar 1572
lists of, either party entitled to copy of, in contested election 1670
Residence of voter, when not lost 1558
acquired 1558
right to elect in certain cases 1559

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Returning-officers—
how and by whom appointed ... 1588
sheriff county returning-officer ... 1589
if all inspectors absent, appointment by ... 1591
counting vote, duty of ... 1638
certified statement and poll-list delivered to county returning-officer by ... 1641
compensation of, preferred claim; how paid ... 1643
Sailors, when they do not acquire residence ... 1558
Secretary of state—
elected by the people ... 1573
time of electing ... 1575
candidates, certificate of nomination of, duty of as to ... 1606
certificates of election to members of general assembly and congress furnished by ... 1650
tie vote, when and how decided by ... 1652
constitutional amendment, election on, returns counted by ... 1664
must notify solicitor of failure of officer to make returns ... 1666
certificate of, as to certain officers, sent to ... 1646
counting returns sent to ... 1647
presidential electors, returns of election of, sent to ... 1654
Sheriffs—
elected by the people ... 1573
time of electing ... 1576
duty of, to post notices of change in precinct, or voting-place ... 1586
notify inspectors and returning-officers of appointment ... 1588
returning-officer for county ... 1589
election, general, notice of, by ... 1590
special elections, notice of, by proclamation of ... 1602
judge of probate and circuit clerk notified of, by ... 1603
booths, must be provided by ... 1616
cards of instruction, posted by ... 1617
duty of, and deputies on day of election ... 1633
may raise a posse comitatus to quell riot, etc ... 1633
tie vote, when decided by ... 1652
duty of, in contested election of state officers, compensation of ... 1684
with others must provide ballot-boxes ... 1587
Soldiers, when they do not acquire residence ... 1558
Speaker of house of representatives—
election returns for state officers opened by, etc ... 1651
must notify solicitor of failure of officers to make returns ... 1666
Special elections—
when and for what offices held ... 1598
day for holding of ... 1599
ordered by governor ... 1600
for members of congress or state officers, proclamation by governor ... 1601
in county, sheriff to give notice ... 1602
must give notice to probate judge and circuit clerk ... 1603
how conducted and certificates given ... 1604
Statement of votes and one poll-list certified, sealed up and delivered by the inspectors to returning-officer ... 1639
ballots and other poll-list; how disposed of ... 1640
State officers—
elected by the people, time of electing ... 1573–1575
election returns for, opened, etc., by speaker of house of representatives ... 1651
special elections for; when ordered ... 1598
election returns for; to whom forwarded ... 1646, 1648

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

State officers—*Continued.*
counting returns sent to secretary of state 1647
contesting election of 1672–1685
notice of result of election for, given by proclamation of governor 1647
State treasurer, elected by the people 1573
time of electing 1575
election of; how contested 1672–1685
Superintendent of education, elected by the people 1573
time of electing 1575
election of; how contested 1672–1685
Supervisors, county board of, who constitute 1644
vote of county estimated by, when 1644
declaration of the result by, how published 1645
certificates of result made by, disposition of 1646–1648
poll-lists and lists of registered voters, how disposed of by 1649
electors for president and vice-president, certificate of result of election for, to whom forwarded 1654
constitutional amendment, election on, returns, to whom made 1663
Supervisors, state board of, who constitute 1647
counting returns made to secretary of state by 1647
proclamation by the governor as to result 1647
electors for president and vice-president, estimating returns by 1655
proclamation by governor as to result 1655
Tax-assessor, elected by the people 1573
time of electing 1576
election of; how contested 1686–1703
Tax-collector, elected by the people 1573
time of electing 1576
election of; how contested 1686–1703
Testimony in contested election—
of state officers, how and by whom taken 1675–1682
senator or representative, how taken; to whom returned 1690, 1691
chancellor, how taken 1694
judge of circuit court, how taken 1695
judge of probate 1696
any other officer 1698
Tie vote, when decided by general assembly 1651
sheriff 1652
secretary of state 1652
governor 1656
in contested election, fact of, to whom certified 1700
Time when registration must commence and close 1563
within which appeal must be taken in contested election 1702
Treason, conviction of, disfranchises 1557
Voters, qualifications of 1556
blind, disabled or illiterate, how assisted 1623
must answer as to qualifications in contested election 1669
answers not admissible on prosecution of 1669
Votes, manner of counting, etc 1638
legal and illegal, notice of evidence relating to, in contested election ... 1687
Witnesses—
failure of, to appear before commission to take testimony; penalty 1679
pay of, in contested election of state office 1683
when examined orally; separate and apart 1690
pay of, in contested election other than for state office 1692
defaulting, proceedings against 1698

ELECTIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Witnesses—*Continued.*
affidavit as to name, residence and nationality of; testimony of..... 1690
Writs of election, who to issue..... 1600

ELECTORS FOR PRESIDENT AND VICE-PRESIDENT OF UNITED STATES.

Compensation of..... 1658
Elected by the people; time of electing..... 1573, 1579
general ticket, when..... 1653
Governor estimates returns and gives notice of result by proclamation..... 1655
Meeting of, time and place; vacancies, how filled..... 1657
Returns sent to secretary of state..... 1654
Tie vote, in case of, governor decides..... 1656
Time of electing..... 1579

ELECTRIC-LIGHT COMPANIES.

Consolidate, may, with street-railway companies; proceeding..... 1202-1204
Taxation of; property tax.....Subd. 10, 3911
license-tax.....Subd. 47, 4122

EMBALMERS.

Board of, state; established; number of..... 1704
appointment of; term of office..... 1705
certificate of..... 1706
removal of by governor, when..... 1705
Dues to be paid annually..... 1710
License; board must grant, when; fee..... 1709
unlawful to practice embalming without..... 1711
Notice of meeting..... 1708
Oath of office to be taken by members of board..... 1706
Powers and duties of board of..... 1707
Quorum of board, what constitutes..... 1708
Vacancy in board, how filled..... 1704

EMIGRATION.

Shall not be prohibited.....Const., Art. I., §31, p. 67.

EMINENT DOMAIN.

Condemnation of lands for public uses; general provisions.

Application for; who may file, and in what court..... 1712
contents of; must be in writing and sworn to..... 1713
costs, security for, must be given..... 1713
day fixed for hearing of; notice, to whom and how given..... 1714
guardian ad litem appointed for minors, etc..... 1715
duties; authority; compensation..... 1715
allegations of, objections, and proof to be heard..... 1717
if, granted, commissioners appointed, etc..... 1718
appeal from order granting or refusing..... 1717
Bill of exceptions may be reserved by either party..... 1717
Commissioners, appointment of; qualifications; vacancy, how filled..... 1718
assessment of damages and compensation by; how made..... 1718
report as to, order of condemnation, etc. 1719
appeal from, who may take; proceedings 1720
when, does not suspend judgment..... 1720
Costs; against whom taxed; execution..... 1725
Court of probate deemed always open for filing applications for..... 1726

EMINENT DOMAIN—*Continued.* SECTION

Condemnation of lands for public uses; general provisions—*Continued.*

Jurors, pay of 1383
Owner not appearing on hearing, court proceeds, etc 1716
Order of condemnation, effect of; effect of appeal 1721
Payment of damages; within what time; effect of default 1722
United States; provisions relating to 626–628
Witnesses, fees of 1388

Corporations, special provisions applicable to.

Foreign telegraph and telephone companies for lines, in favor of 1723
Jurors, pay of 1383
Mining, quarrying and manufacturing companies for roads or canals 1145
Railroad companies for right of way, in favor of 1163
crossing other railroads 1165
and street-railroad companies may acquire easement for crossings 1724
Street-railway companies for right of way, in favor of 1198
Telegraph companies for right of way and offices 1246
and telephone lines, right of way for, along public roads 2490
Turnpike and other toll-road companies for right of way 1207

Dams for public mills, gins and factories.

Appeal to circuit court; proceedings 1748
Application; where filed; to whom addressed 1728
contents of 1729
notice of; upon whom served 1730
to non-residents 1731
writ of ad quod damnum issues on filing 1732
mode of executing; charge to, and duties of jury 1733
when value of acre of land, abutting dam, also assessed 1734
inquest; how made and returned 1735
owner summoned to show cause against 1736
notice to; how given 1737
when granted; when refused 1738
Authority to raise dam; similar proceedings 1743
By whom dams may be erected 1727
Canal through another's land; similar proceedings 1742
Conditional fee vests on payment of assessment 1740
Contest of application; security for costs 1744
Deputy-sheriffs may act 1746
Failure to fulfill conditions avoids the grant 1740, 1741
Grist-mills subject to law of tolls and rotation 1747
Jurors, pay of 1383
Land reverts on breach of conditions 1741
Payment of assessment; effect of default in 1739
Penalty for raising or building dam or obstruction across stream without authority 1745
Right of appeal protected ..... Const., Art. XIV., §7, p. 101.
Right of eminent domain limited and protected ..... Const., Art. I., §24, p. 66.

Roads and ferries.

Ferries, lands for; compensation for; proceedings 2503, 2504
Private roads, lands for; damages; proceedings 2497
Public roads, taking lands for; damages; proceedings 2447–2449, 2492–2494
appeal by owner of land; security for costs 2450
contract for timber for; value of; how assessed 2475

EMPLOYER AND EMPLOYE. SECTION

Damages recovered, etc., by servant or employe, exempt, etc. 1750
Debts due to employes, as such, preferred claims against estates of decedents 126
Employer's liability to employe for injuries defined; remedy; damages exempt 1749–1751
Lien of agricultural employe farming on shares 2712
and railroad employes 2762–2773
Mechanic's lien in favor of employes declared 2723–2752
Personal representative of employe may sue if injury results in death 1751
Wages, to extent of twenty-five dollars per month, exempt, etc. 2038

ENCLOSURES.

Fences, *see* 2110–2123

ENGINEER, RAILROAD.

And conductor to be instructed by superintendent as to certain duties 3444
Duty of, to ring bell and blow whistle, when 3440
and conductor as to railroad crossings 3441
Examination of, as to capacity, etc., to fill position 3448
how and by whom conducted 3449
License to issue to, if found competent; by whom issued 3450

ENGROSSING-CLERKS.

Of general assembly; election; term; compensation 2233–2235

ENROLLING-CLERKS.

Of general assembly; election; term; compensation 2233–2235

ENTRY.

By deceased representatives, guardians, or trustees as evidence 1809
On lands presumed; when right exists 2803
right of not tolled by descent cast 2804
physicians' books; effect of as evidence 1808

ENUMERATION.

Of inhabitants of state; when provided for by general assembly—
Const., Art. IX., §5, p. 89.
children within educational age; time of 3573
new enumeration of, in certain cases, when 3574

EQUITABLE ATTACHMENTS.

By what provisions governed 762
In aid of suit by state for recovery of moneys wrongfully used, etc. 3758
favor of surety, or accommodation drawer, indorser, etc., of written contract against principal; proceedings 780
may be dissolved, in such case, when 781
no decree in such case, until debt of principal paid 782
when creditor may intervene 783
Lien of 769
May issue on equitable debts and demand; in what cases 762
before judgment for debt; decree and execution 765
be dissolved, when, in suit of surety, or accommodation drawer, etc., of written contract against principal 781
no decree in such case, until debt of principal paid 782
when creditor may intervene 783
On legal demands, operate only on equitable effects or debts; in what cases 764
Powers of chancellor in vacation, in respect to 763
Property to be specified; copy of bill to be served 766

EQUITABLE ATTACHMENTS—*Continued.* SECTION
Register may make orders for, on any day....Ch. R. 4, p. 1203.
Replevy of property attached; bond.... 767
bond to be returned with writ.... 768
has force of judgment, if property not delivered.... 770
execution on.... 770
Restoration of, on appeal from order discharging....Ch. R. 87, p. 1221.
What sufficient prayer for; in bill....Ch. R. 17, p. 1205.
officers may make orders for, and sale of property levied on; proceeds. 771, 921

EQUITY OF REDEMPTION.
Limitations of actions founded on.... 2797
Subject to levy and sale under execution....Subd. 3, 1890

ERRORS.
Assessment of taxes, correction of, in....3979, 4019, 4020
Confession of judgment a release of.... 477
Correction of, at law, after judgment.... 919
Injunction of judgment a release of.... 785
Pleading over after judgment on demurrer does not waive.... 3305
When clerk, register, or judge of probate liable for, in transcript.... 453

ESCAPED TAXES.
Taxation, *see*....4030, 4031

ESCHEATS.
Decrees against representative for failure to pay over proceeds.... 1757
Disposition of personalty when no heir appears.... 1755
realty in such cases.... 1756
Duty of judge of probate as to.... 1760
Moneys received paid to state treasurer; penalty for, and evidence of default.. 1758
Notice of, must be given by personal representative.... 1753
contents of.... 1754
Public schools, shall be applied to maintenance of..Const., Art. XIII., §3, p. 97; 3539
State's remedy on distribution of property without authority.... 1759
When property escheats to the state.... 1752

ESTATES OF DECEDENTS.
Administration of estates, *see*....45–363
Descents and distributions, *see*....1453–1473

ESTRAYS.
Advertised in newspaper, when.... 1771
by posting, when.... 1772
contents of advertisement.... 1773
Appraisement; certificate of.... 1764, 1769
entered by probate judge.... 1765
Bond of taker; estrays not used until given.... 1767, 1780
returned to probate judge.... 1768
penalty for using before giving.... 1781
Death or escape of; taker discharged.... 1776, 1777
Estrays required to be advertised, and brought to court-house, when.... 1775
not to be injured or killed.... 1784
penalty.... 1785
Fee for advertising certain estrays.... 1769
Forfeited to taker if not claimed in one year.... 1786
one-half value paid county.... 1787
execution on bond therefor.... 1788
Forfeiture by justice for neglect of duty.... 1770
If taker dies, provisions as to giving up estrays apply to legal representative.. 1789

ESTRAYS—*Continued.* SECTION

List of estrays posted 1774
May be taken up, when 1761
Neat cattle not to be taken up at certain seasons; exceptions 1762
Oath of taker 1763
Ownership established in one year 1778
order of delivery 1779
no charge for keeping, if worked 1782
pay for keeping; how established 1783
Stallions and jacks, when taken up; advertisement and fees 1790
if not claimed within three months, taker may geld 1791
Two or more estrays included in one proceeding 1766

EVIDENCE.

General rules; documentary evidence.

Account, sworn to, admissible in, when 1804
Actions by county against relatives of the poor, when certificate of probate judge 3234
Adverse possession, record of declaration of, or certified copy as 1543
Advertisement, newspaper containing evidence of publication of 3051
Affidavit without state in commencement or progress of suit; before whom taken 1799
of plaintiff in suits on lost bonds, notes, etc 31
printer as to publication of notice of limited partnership, when evidence 3217
Applications, in, for sale of lands in probate court, patents or deeds evidence of title 186
Books and records in office of probate judge or tax-collector, or certified copies, when are 4088
containing list of officers and stockholders of turnpike companies as 1206
Certificate of commanding officer of military company, etc., as to membership; effect of as to exemption from poll-tax and jury duty 2889
head of any bureau or department of general government as 1818
notary of presentment for acceptance, demand for payment, protest or notice, when 3080
probate judge as evidence in action by county against relatives of the poor, etc 3234
Certificates of registers of land-office, etc., when vest title and received in 1813
state treasurer, against representative as to escheats, when 1758
supreme-court clerk as, in summary procedings against clerk of circuit court 3797
Certified copies of official books or papers, by custodian 1816
church registers of marriages, births and deaths, by custodian 1811
books, maps, etc., of surveyor-general of United States as 1815, 1974
articles of incorporation of turnpike companies as 1206
certificates of incorporation of purchasers of such companies as 1243
certificate of qualification of physician to practice, when ... 3265
field-notes by probate judge as 1817
patents issued by United States or this state as 1003
copy of execution and certificate of clerk of supreme court as, in summary proceedings against sheriff or coroner 3780
record in office of commissioner of agriculture as to license to sell fertilizers as 380
statement of judgment rendered by justice as 2679

EVIDENCE—*Continued.* SECTION

General rules; documentary evidence—*Continued.*

Certified transcript of record of deeds, etc., made or signed upon books of land-office in this state as..... 1814
may be recorded and copy thereof evidence, when..... 1814
Church registers of marriages, births and deaths certified by custodian 1811
Claim of exemptions filed in probate court; effect as 2043
Competency of parties as witnesses..... 1794
witnesses as effected by conviction for crime..... 1795
witness may be examined touching his conviction for crime... 1796
Contract for conditional sale, lease, hire, etc., or certified copy as when..... 1018
Conveyances of property; when self-proving..... 992
certified transcript of record of, when admissible as 992
Copies of official bonds, instruments, papers, books, or proceedings; when evidence..... 1819
when court may require production of originals..... 1819
Corporation or partnership, when proof of not required..... 1803
Crops, papers and records in proceedings to partition as..... 3205
Deeds or instruments made or signed upon books of land office in this state; how proved 1814
certified transcripts of record of such, as..... 1814
may be recorded, etc., certified copy, as..... 1814
Dentists, license of, when evidence 1449
Entries or memoranda by deceased representative, guardian, or trustee as..... 1809
Entry on physician's book, effect of as..... 1808
Escheats, certificate of state treasurer in respect to, when..... 1758
Evidence of value of property received on partial distribution, in action on bond, etc..... 275
Execution, copy of, and certificate of clerk of supreme court as, in summary proceeding against sheriff or coroner..... 3780
Fertilizer or chemical, official analysis of, copy of, etc., as..... 395
parol evidence competent to show fictitious price in sale of..... 389
Field-notes, copy of by probate judge as..... 1817
In defamation, truth of words spoken or written, etc., may be given in, etc., when 1437, 1438
Interest, rates of in other states, publication of by secretary of state in pamphlet as..... 1823
Interpreters may be sworn when necessary; fees..... 1793
Inventory of personal property of decedent's estate, how may be explained by proof..... 351
Judgment or decree, presumption of satisfaction of, arises, when..... 1930
Justification under process regular on its face, and issued by competent authority..... 1807
Letters testamentary or of administration conclusive evidence of authority of person to whom issued..... 77
transcripts of, as 79
Limited partnership, printer's affidavit of publication of notice of, when..... 3217
List of public-road defaulters, made by overseer, as..... 2483
Lost bonds, notes, etc., affidavit of plaintiff in suits on..... 31
Marriage registers certified by custodian..... 1811
Municipal ordinances and by-laws purporting to be printed by authority as.... 1822
New or continuing contract to remove bar of statute of limitations, what not evidence of..... 2811
Newspapers containing advertisements evidence of fact of publication..... 3051
Official bonds, instruments, papers, books, or proceedings, copies of, when evidence..... 1819

EVIDENCE—*Continued.* SECTION

General rules; documentary evidence—*Continued.*

Official bond, but court may, if practicable, require production of original..... 1819
Patents admissible in evidence without further proof..... 1812
certified copies of, issued by United States or this state as..... 1008
or deeds evidence of title, in application for sale of lands in probate court..... 186
Physician, entry on books of, effect of as..... 1808
certified copy of certificate of qualification, etc., authority, etc..... 3265
Plat or survey by county surveyor; when and of what evidence..... 3895
Powers of attorney to convey property; when to be received as..... 995
Prices current as presumptive evidence of value of merchandise..... 1810
rate of exchange..... 1810
freights..... 1810
insurance..... 1810
arrival and departure of vessels..... 1810
Printer's affidavit of publication of notice of limited partnership; when..... 3217
Private acts of general assembly may be read in evidence, without being specially pleaded..... 1820
Rates of railroad companies approved by railroad commission; when..... 3461
interest in other states, publication of, by secretary of state in pamphlet acts as..... 1823
Receipts, releases and discharges have effect according to intention of parties 1805
Registers of land-office, etc., certificates of, when vest title and received in..... 1813
marriages, births and deaths as..... 1811
Road defaulters, list of, made by overseer, as..... 2483
Statute of limitations, new or continuing contract to remove bar of, what not evidence of..... 2811
Sale of lands in probate court, in applications for, patent or deed evidence of title..... 186
Statutes or proceedings of any legislative body, purporting to be printed by authority, etc., are evidence without further proof..... 1821
Sworn account admissible in evidence, when..... 1804
Tax deed as evidence..... 4075
Testimony given in open court unless otherwise provided..... 1792
Transcript of acts of congress, or statutes of any other state or territory, certified by secretary of state, as..... 1821
books or papers in office of any public officer as..... 1816
no objection to such, that book from which taken is copy of books belonging to United States..... 1816
from books and records of superintendent of education prima facie, etc..... 3807
of record of forthcoming bond given on partial distribution of estate, etc., as..... 273
evidence of value of property received in action on such bond.. 275
record of conveyances, when..... 992
letters and bonds of personal representatives as..... 79
Turnpike companies, certified copies of articles of incorporation of, as..... 1206
copy of incorporation of purchasers of, as..... 1243
Usury, proof of, by representative..... 1798
Will, properly probated and indorsed, or record or transcript thereof, as..... 4281
Witness, competency of, as affected by conviction..... 1795
may be examined touching his conviction for crime..... 1796
Written composition or settlement of debts, effect of, as..... 1806
contracts sued on; effect of as evidence; consideration of; how impeached..... 1800
instruments sued on, purporting to be signed by defendant, self-proving, unless denied by sworn plea..... 1801

EVIDENCE—*Continued.* SECTION

General rules; documentary evidence—*Continued.*

Written instruments, execution of, proved by maker without accounting for attesting witnesses 1797
assignment of such, deemed genuine, unless impeached by sworn plea 1801
in either case, burden of proof on plaintiff 1801
not necessary to prove execution or assignment of, when offered in evidence under plea, unless denied by sworn replication 1802

In probate court.

Accounts of personal representative, proof of credits on settlement of 209
depositions may be taken on settlements of 212
evidence in support of items of 211
guardians, on settlements of 2341
Lands, application to sell, for payment of debts; proof, how taken 164, 167
distribution; testimony, how taken 166, 167
division, how taken 3181
partnership, application to sell, by personal representative, how taken 194
Provisions as to evidence in courts of law, depositions, etc., when applicable to 3380
Will, on contest of, rules as to evidence and depositions 4292

Demurrer to evidence.

Adverse party required to join in 3322
Damages assessed by jury 3325
Effect of 3323
Testimony written out, signed by judge, and becomes a part of record 3324
When allowed to either party 3322

Procuring testimony by subpœna.

Subpœna, issue of 1824
affidavit required for, when 1825
how and by whom served 1826
issued to each term 1827
Witness, excuse of, how made 1830
discharged on bond, when 1832
imprisoned for refusal to testify, when 1831
penalty for default of 1828
proceedings to recover 1829

Procuring testimony by deposition.

Affidavit for taking; contents of 1834
Commissioner, appointment of 1834, 1835
certificate of, presumptive evidence, etc 1842
duty of, in executing commission 1841
summons witnesses, etc.; default proved by his certificate 1837
Commission, issue of 1834, 1835
Deposition of witness may be taken, when 1833
may be read in evidence 1843
taken in proceedings to remove attorneys 607
objections to whole, to be taken before trial 1844
when cannot be used 1846
presumed to be as came from hands of commissioners 1843
Fees of witnesses and commissioner 1849
Interrogatories may be filed; affidavit; notice; commission 1835
Notice when party resides out of county 1836

EVIDENCE—*Continued.* SECTION

Procuring testimony by deposition—*Continued.*

Objections to the whole deposition to be taken before trial 1844
Penalty against witness failing to appear; how recovered 1838
Steps to be taken before issue of commission 1834
Witness, when may be re-examined on cross-interrogatories 1845
defaulting may be committed without bail until he consents to testify 1839
if examination postponed, may give bail, etc 1840
provisions to compel attendance of, before commissioner in foreign suits 1848
when personal attendance of compelled though deposition has been taken 1847

Examination of parties by interrogatories at law and in equity.

Answers evidence, when offered by party taking them 1854, 719
may be contradicted 1857, 719
verification of 1852, 719
Corporation must answer through officer cognizant of the facts 1853
Interrogatories, either party may file, to adversary 1850, 715, 716
proceedings on failure to answer 1856, 715, 716
service of copy of, how made 1851, 717
Impertinent questions need not be answered; exceptions 1855, 718
What questions party bound to answer; exceptions 1858, 718

Requiring the production of books and writings.

Court may, on motion and notice, require parties to produce books or writings 1859
Consequence of failure to comply with order 1860

Proceedings to perpetuate testimony.

Applicant must make affidavit specifying grounds 1862
Depositions; when evidence; effect of as 1867, 1875
Examination 1865
order for; notice to adverse party 1863
notice of, when adverse party non-resident 1864
reduced to writing, certified and filed with circuit clerk 1866
Kinship, heirs and distributees may perpetuate testimony to prove 1872
affidavit showing relationship 1873
interrogatories; notice; commission; return; record 1873
deposition evidence as to, in subsequent controversy 1874
Non-resident witnesses, testimony of, may be perpetuated 1868
affidavit specifying grounds 1869
interrogatories; notice; commission; return; record 1870
deposition of, evidence on trial between parties 1871
Testimony may be perpetuated 1861

EXAMINER AND ASSISTANT EXAMINERS OF PUBLIC ACCOUNTS.

Appointed by governor; duties of 1876
Appointment revocable 1878
Commission of; authority of 1877
Compensation of assistants fixed by governor 1876
Contempt proceedings against witnesses and officers refusing to obey, etc 1877
Dueling oath to be taken 3062
Governor may cause reports of, to be printed 1879
Have not power to prescribe mode of keeping books, etc 1877
Oath of office ..... Const., Art. XV., §1, p. 103; 3062
Report to governor results of examination and condition of accounts examined 1879
circuit judge as to examination of books, etc., of county officials 1879
Salary of examiner 1876

EXCEPTIONS. SECTION

Answer, to, in chancery; when made; notice..... 714
not allowed if oath to, waived.....Ch. R. 34, p. 1209.
proceedings on.....Ch. R. 31-38, p. 1209.
defendant not in contempt for want of answer until decision on—
Ch. R. 33, p. 1209.
for insufficiency, cannot be made when oath waived—
Ch. R. 34, p. 1209.
Bill, to, in chancery, rules in reference to.....Ch. R. 35, 37, 38, p. 1209.
or answer, proceedings on.....Ch. R. 35-38, p. 1209.
Interrogatories, to, to complainant by defendant; time of taking and hearing.. 718
Register, decision of, exceptions to; either party may reserve..... 745
exceptions to report of.....Ch. R. 93, p. 1222.
draft of report of, cannot be taken before register...Ib.
hearing of, report of, before chancellor; not referred to register.....Ib.
report of, how taken; note of testimony to be made—
Ch. R. 94, p. 1222; 745
who is and who is not entitled to—
Ch. R. 95, p. 1222.
hearing of.....Ib.
Bills of exceptions, *see*..... 612-622

EXECUTIONS.

Form of executions; by whom and when issued.

Alias, may be issued, when..... 1886
Appropriate writs may issue on judgments in detinue or for recovery of lands 1880
Assignee, on assignment of judgment, etc., may have execution, when..... 1928
Bill of costs, copy of, to accompany, illegal without..... 1883
Clerk to issue, and keep execution-docket..... 934
Coroner, whom to be directed to..... 1887
Costs, when, may be issued against plaintiff for his; penalty for failure to collect..... 1361, 1889
Credits to be indorsed on..... 1888
Form of writs of..... 1880
If issued in a year, others may issue at any time within ten years..... 1924
Issue of, on judgments at adjourned terms..... 917
May be issued during term, on cause shown, by order of court..... 1884
More than one may be issued at plaintiff's cost, though first not returned..... 1886
Must be issued immediately after adjournment..... 1885
within stated time after adjournment .....C. C. R. 4, p. 1196; 1882
Personal representative, may be issued in favor of, when..... 1926
issue in favor of successor of, when..... 1926
when and how revived in favor of..... 1927
cannot issue against, on judgment against decedent..... 349
Plaintiff in judgment entitled to issue of, within a year after judgment rendered 1880
Scire facias necessary, if, not issued within a year; notice, how executed..... 1925
To be signed, tested, and issued as soon as practicable after adjournment..... 1881
What proof necessary for issue of, when ten years intervene..... 1930

Property subject to execution.

Growing or ungathered crop exempt; exception..... 1891
Property subject to levy and sale under..... 1890

Lien of executions.

Destroyed by supersedeas or injunction..... 1894
How long, continued..... 1892
Levied after defendant's death, when..... 1895

EXECUTIONS—*Continued.* SECTION

Lien of executions—*Continued.*

On property within the county subject thereto from its receipt 1892
Order of, as between different judgment creditors, etc 1893

Levy, sale and return; venditioni exponas; conveyance.

Bond of indemnity; when may be required; effect of failure to give 1903
right of prior creditors to give 1904
Conveyance by sheriff of lands sold by predecessor 1915
Debtor has right to substitute other property for that levied on 1909
Description of property levied on to be indorsed; notice of levy on land 1902
land sold, and price to be indorsed on writ 1912
Excess of proceeds of sale to be paid to defendant 1911
If not executed, reasons therefor to be stated in return 1899
May be levied, when, or alias issued and levied, after defendant's death 1895
Money collected to be indorsed, and receipt given therefor 1908
notice of, to be given to plaintiff or attorney 1910
must be paid to defendant, on injunction, when 1911
Principal and surety, execution against, to be first levied on property of principal 1907
Returnable, when, if issued on judgments at special or adjourned terms 917
Return-term, what is 1898
Return from another county may be by mail, but money not so sent without plaintiff's consent 1900
as to goods levied on and not sold; writ issues for sale thereof; form .. 1913
Sale, time and place of, when may be continued from day to day 1905
excess of proceeds of, to be paid to defendant 1911
notice of 1906
Sheriff, duty of, when levied on live stock; compensation 1901
conveyance by, of lands sold by predecessor 1915
execution-docket to be kept by; entries therein 3742, 3743
required to make deed to lands sold to purchaser, when 1914
Time of receipt, and if more than one, order of receipt by sheriff to be indorsed 1896
To be executed with diligence and returned before first day of return-term 1897

Forthcoming bonds and executions thereon.

Certain persons denied right to give such bond 1918
Forfeiture of such bond, and issue of execution thereon 1917
On refusal of tender for property destroyed, obligors entitled to supersedeas .. 1919
Personal property levied on to be restored on execution of forthcoming bond .. 1916
When bond given and property destroyed, its value may be tendered 1919

Registration of judgments and decrees, and executions thereon.

Judgments and decrees may be registered; when and where 1920
Registered judgment or decree a lien on property of defendant 1921
execution on, may be issued, when 1922
entry of payment and satisfaction of; penalty 1923

Revivor of judgments and executions thereon.

Assignee of judgment or decree may have execution, when 1928
may by scire facias have same revived in his name 1929
If execution is issued in a year, others may issue for ten without 1924
Personal representative, execution in favor of, without, when 1926
successor of, execution in favor of, without, when 1926
revivor in favor of, when 1927
Presumption of satisfaction after ten years, when 1930
Scire facias when execution did not issue within a year; notice, how given 1925
barred after lapse of twenty years from rendition of judgment, etc. 1931

EXECUTIONS—*Continued.* SECTION

Issued by justices of the peace.

Alias; when may be issued within three years without reviving judgment.... 1951
Forthcoming bond, defendant may give, when personalty levied on..... 1941
defects in form of, or stay bond do not affect..... 1944
proceedings on when execution issued from another county 1943
when forfeited, execution issued on; no stay allowed..... 1942
Form of..... 1933
Issue and return of..... 1932
Levy on land; when to be made, and proceedings thereon..... 1947
notice of..... 1948
Lien of..... 1938
May be issued immediately after judgment, when..... 1934
May be stayed, when..... 1935
Officer holding, may require indemnity, when..... 1940
Order of payment when several against same defendant..... 1939
Plaintiff, execution against, for his costs; when may be issued..... 1361
Sale of personal property levied on, time and place of..... 1945
notice of..... 1946
land levied on ordered by circuit court on motion, when..... 1949
papers to be recorded, and writ for, to be issued..... 1950
Scire facias, when, necessary; bar to revival of judgment, what..... 1952
To another county, how certified..... 1936
by whom such execution executed..... 1937

Special provisions, and executions in special cases.

Attachment suits, when to be issued on judgments in..... 570
on replevy bond in.....556, 557
Awards, for enforcement of..... 513
Costs, for, on appeal, issued by clerks of trial-courts..... 456
affirmance on appeal of order removing representative..... 462
judgments in actions for usurpation of office, etc..... 3436
against appellant on appeal to supreme court.....439, 464
in contest of election.....1685, 1692
Estray bond, on..... 1788
Forfeited bond, on, given on receipt of proceeds of sale pending attachment suit..... 552
claim bond, on.....4144, 4149
Garnishee, when, entitled to, for costs..... 2206
on judgment on answer of.....2192, 2193
Lost note, bond, etc., what necessary to issue of, on judgment on..... 32
Mechanics' liens, on judgments for enforcement of.....2741, 2742
Replevy bond, on, in attachment.....556, 557
Sheriff or other officer selling property under, must first pay taxes thereon.... 4117
Stayed, when, on judgment against garnishee on answer..... 2191
when to be, on garnishment of demand it was issued to enforce..... 2177
Supersedeas of, on rehearing at law.....3344–3351
Waiver of exemption to be indorsed on..... 2108

In chancery court.

Administrator ad litem, on decrees in favor of.....354–356
Forthcoming bond, on..... 862
Injunction bond, on..... 794
for costs, when decreed against party obtaining..... 795
Generally, on decrees for money, recovery of land or personal property..... 857
In cases when an account is taken, etc..... 859
Liens, on decrees for enforcement of, etc..... 859

EXECUTIONS—*Continued.* SECTION

In chancery court—*Continued.*

Proceedings when execution for costs returned "no property"—
Ch. R. 111, p. 1227.
Sheriff, summary proceedings against, for failure to make money on..... 863
When returnable..... 858

In probate court.

Administrator ad litem, on decrees in favor of..... 354-356
Award, on, of arbitrators of controversies on settlement of estates..... 255
Executor or administrator, remaining or succeeding, on decrees against.... 244, 245
non-resident, against, and sureties..... 87, 88
Garnishees, may enforce judgments against, by issue of..... 3376
Guardians and their sureties, for enforcement of decrees against..... 2349
Judge of probate, duty of, to issue, and keep docket of..... 3365
Partition property, on decrees in proceedings to..... 3175
Personal representative, against, to enforce payment of legacy..... 265
for enforcement of judgments and decrees against...345-348
Sheriff or coroner, summary proceedings against, for failure to make money on, etc..... 3379
When returnable..... 3378

EXECUTIVE DEPARTMENT.

Attorney-general..... 2027-2032
Blanks for; how printed..... 3397
Consists of, what.....Const., Art. V., §1, p. 78.
Department of agriculture..... 368-418
Governor..... 1953-1973
Secretary of state..... 1974-1992
State auditor..... 1993-2012
treasurer..... 2013-2026
The militia..... 2852-2896

EXECUTORS AND ADMINISTRATORS.

Administration of estates, *see*..... 45-363

EXECUTOR DE SON TORT.

Creditor may subject property fraudulently conveyed by..... 340
Liable only to personal representative..... 340

EXECUTORY DEVISE.

Contingent remainder in lands prohibited; but allowed to operate as an executory devise..... 1022

EXEMPTIONS.

From levy and sale under process; claim and contest.

Alienation of homestead by married man, when invalid. Const., Art. X., §2, p. 91; 2034
acknowledgment of, by wife, form of..... 2034
By what law right of, governed; remedy for asserting, etc..... 2068
Burial-place and church-pew exempt..... 2036
Claim of, contest of, after declaration filed; how instituted..... 2046
when no declaration has been filed..... 2047
notice of; effect of failure to contest..... 2047
on contest of, property delivered to defendant on his giving bond.... 2048
plaintiff, when..... 2049
defendant without bond, when.. 2049
papers, with statement, returned to court..... 2050

EXEMPTIONS—*Continued.* SECTION

From levy and sale under process; claim and contest—*Continued.*

Claim of, on contest of, inventory of personal property to be filed, when 2051
effect of failure to file..... 2051
issue in, and trial of; exceptions and appeal..... 2052
trial by jury in probate court, when; or before justice..... 2053
judgment..... 2054
when claim of personalty excessive 2055
proceedings when inventory shows property not claimed as..... 2056
issues that may be tendered by plaintiff on defendant's filing inventory..... 2057
judgment, when issues found in favor of plaintiff..... 2057
forthcoming bond given, when, value of property and damages assessed..... 2058
forfeiture of, and execution thereon 2058
Counties and municipal corporations, exemptions in favor of..... 2040
Crop, growing or ungathered, exempt from levy and sale..... 1891
Damages recovered by servant or employe of master or employer, are exempt 1750
Declaration of claim of, how made, and where filed..... 2041
after filing, property embraced not subject to levy, unless waiver indorsed..... 2045
effect of, as evidence and notice..... 2043
fees of judge of probate for filing, etc..... 2044
if not filed, no action lies against officer for levying on exempt property 2066
receipt for, record, and copy of..... 2042
right of exemption not waived by failure to file..... 2047
Fees of probate judge for filing, recording, etc., declaration of..... 2044
General assembly to prescribe by law rules and regulations to ascertain value of property exempt, and to secure same to claimant as selected—
Const., Art. IV., §53, p. 78.
Homestead, exempt from payment of debts, etc., extent of area and value—
Const., Art. X., §§2, 3, pp. 91, 93; 2033
alienation of, by married man; when invalid—
Const., Art. X., §2, p. 91; 2034
acknowledgment of, by wife, form of..... 2034
disposition of proceeds of sale of, on death of defendant 2062
proceedings on contest when it exceeds area or value allowed 2060
in such case when area of cannot be reduced..... 2061
property not sold until contest terminated; lien preserved..... 2067
revivor of contest of claim of, on death of husband; in whose name 2063
when wife or minor child may interpose claim of 2063
may be sold on bill in equity..... 2064
not abandoned by leasing or temporary leaving 2065
Insurance on life of husband exempt in favor of wife or wife and children 2535
proceeds of policy of life, exempt from creditors of assured or beneficiary, etc..... 2607
Liens, what, not affected by homestead exemptions—
Const., Art. X., §§2, 4, pp. 91, 93; 2035
Money or thing garnished, claim to; when and how made; contest..... 2059
Mutual aid associations, interest of resident member of, exempt from debts, etc. 1121
Officer levying on exempt property, no action lies against, if declaration not filed 2066
Partnership property, when, not exempt..... 2039
Personal property of value of one thousand dollars, exempt; by whom selected—
Const., Art. X., §1, p. 90; 2037
other designated articles of, also exempt..... 2037

EXEMPTIONS—*Continued.* SECTION

From levy and sale under process; claim and contest—*Continued.*

Right of exemption not waived by failure to file declaration of 2047
Road-hand, no property exempt from execution on judgment founded on default of 2486
Taxes, no property exempt from sale for payment of 4013
Wages, etc., of laborers, etc., to amount of twenty-five dollars per month exempt; levy void 2038

From administration and payment of debts.

Damages recovered for injury resulting in death of decedent, exempt 27
by servant or employe of master or employer, exempt 1750
Homestead exempt in favor of widow and minor children 2069
estate in, declared ..... Const., Art. X., §§3, 5, p. 93; 2069
real estate, exemption of, in lieu of; when allowed and extent of ... 2070
when all, of decedent set apart as, title vests absolutely 2071
Personal property, what, specifically exempt in favor of widow, etc 2072
other articles of, to the value of one thousand dollars 2073
if estate solvent to be accounted for on distribution 2073
any of children leaving family entitled to equal share 2073
to be delivered to widow or guardian; how to be used 2075
specifically exempt not to be included in inventory 115
To minor child or children allowed from estate of deceased mother 2077
Use, etc., of property before exemptions set apart; right to sue and defend 2076
Wages or salary of deceased employe, what amount of, exempt to widow 2074
debtor for, may discharge himself from liability for, how 2074

Setting apart exemptions to widow and minor children.

Appraisers to set apart personal property, commission to 2078
duty of, to set apart same; return of, when and how made 2079
homestead, appraisement of, by; report of, how and when made 2080
proceedings on failure of, to set apart exemptions and appraise homestead 2082
Commissioners to set apart exemptions and homestead, appointment of ... 2081, 2097
qualification and oath of 2102
compensation of 2103
Exceptions to report of allotment of exemptions or homestead 2084
day fixed for hearing, and notice thereof 2084
how issue made up and tried 2085
proceedings when exemption of personalty insufficient or excessive 2086
proceeding, when report set aside 2087
costs on; against whom awarded 2088
appeal from decree on, security for costs or bond 2089
Exemptions, setting apart, before administration; inventory and appraisement 2097
if property does not exceed, same set apart 2098
exceptions may be filed to report of commissioners; how heard, etc. 2099
if no, filed and sustained, absolute title vests in widow, etc 2100
use, etc., of such property before, set apart; right to sue and defend 2076
Homestead, appraisement of; report of appraisers, contents of 2080
proceedings to set apart, when it exceeds value or area allowed ... 2081
on failure of appraisers to set apart exemptions and appraise 2082
exemptions in lieu of; how claimed and set apart 2083

EXEMPTIONS—*Continued.* SECTION

Setting apart exemptions to widow and minor children—*Continued.*

Homestead, report of appraisers as to; exceptions and proceedings 2090
proceedings when no exceptions are filed to 2091
incapable of allotment, when widow and minors retain possession of 2092
if sold, must be sold separately, etc 2092
on sale of, two thousand dollars set apart to purchase home for widow, etc 2093
duty of personal representative; expenses, conveyance, etc 2093
when widow and minors purchasers of, credit of two thousand dollars allowed, etc.; conveyance 2094
when no bid above two thousand dollars, fact reported to court; order of court 2095
exceptions to report, who may file, etc 2095
if, sustained, resale ordered; otherwise, homestead set apart, etc 2096
actual occupation of, by widow, etc., not essential to preservation of right 2101

Waiver of exemptions.

Attachment, waiver indorsed on; evidence produced or affidavit filed 2108
proceedings in, on claim of exemptions, when waiver not sustained 2109
Homestead, as to; how made; when invalid if by married man—
Const., Art. X., §7, p. 94; 2106
if by married woman, executed as prescribed by section 2528 2106
How alleged and proved; declared in judgment or decree; indorsed on process 2107
Personalty, as to; how made ..... Const., Art. X., §7, p. 94; 2105
Right of, declared ..... Ib.; 2104

From taxation.

Cotton-factories may be exempted from county and municipal taxes, when 3908
application for exemption; how made and granted 3909
from state, county and municipal taxes, when, etc.—
Note, pp. 1071, 1072.
Poll-tax, members of Alabama National Guard; how membership proved 2889
township trustees exempt from 3575
Property, what, and persons exempt 3907
of social and literary societies, etc., to amount not exceeding two thousand dollars 1311

From jury duty.

Members of Alabama National Guard; how membership proved 2889
Superintendent and other regular employes of Insane Hospital 2569
Township trustees 3575

From road duty.

Females, males under eighteen and over forty-five years of age, maimed and disabled persons 2452
Inhabitants of town incorporated under general law 2966
Persons serving notices, warning road-hands 2479
Superintendent and other regular employes of Insane Hospital 2569
Township trustees 3575

EXHIBITS. SECTION
Commissioner of agriculture must make, of state's resources, etc.....Subd. 13, 376
Part of bill, petitions and answers in chancery; admission of, dispenses with proof of.....Ch. R. 16, p. 1205.
Proof of, to bills and answers in chancery.....Ch. R. 64, p. 1214; 728

EXILE.
No citizen shall be exiled.....Const., Art. I., §31, p. 67.

EXPERIMENT STATIONS.
Agricultural experiment stations and schools, *see*..... 398–415

EXPRESS COMPANIES.
Assessment of property of; to whom returns made..... 3976
Privilege tax, required to pay..... 3914

EX POST FACTO LAW
Prohibited.....Const., Art. I., §23, p. 65.

EXTORTION.
Grand jury may be dispensed with in prosecutions for..Const., Art. I., §9, p. 62.
Judge of probate, forfeiture against, for, in fees..... 1368
Railroads, by, liability for..... 3460, 3461

EYE-GLASSES.
License required of peddlers of.....Subd. 29, 4122

FACTOR.
Gross amount of commissions taxed.....Subd. 2, 3912
Regulations as to sampling, weighing and selling cotton..... 1389–1395

FACTORIES.
Cotton, exempted from state, county and municipal taxation, when and how— Note, p. 1071; 3908, 3909
Dams, etc., for, proceeding for erection of..... 1727–1748

FALSE IMPRISONMENT.
Action for; form of complaint in.....No. 19, p. 946; 3352
limitation of..... 2796

FARM PRODUCE.
Of preceding year, in hands of producer, exempt from taxation.....Subd. 8, 3907

FARMING-TOOLS.
To the value of twenty-five dollars exempt from taxation.....Subd. 8, 3907

FEES.
Arbitration cases, in, of constables..... 520
Arbitrators, of..... 520
Auditor, fees and salary of..... 1996
Authority of officers to receive; how taxed and collected..... 1371
Chain-bearers and markers; compensation fixed by county commissioners.... 3897
Clerks of circuit and city or criminal courts, registers and sheriffs to keep fee-book and index..... 1364
Clerks of circuit and city courts, allowed generally..... 1372
election, in contest of..... 1692
fee bill, must keep, posted..... 1354
penalty for failure..... 1355
Clerk of supreme court, allowed generally..... 1374
Commissioners, for taking depositions..... 738, 1849
ad quod damnum proceedings, in; how taxed..... 1725

FEES—*Continued.* SECTION

Commissioners, exemptions, for setting apart ... 2103
crops, for partition of ... 3203
property, for partition of ... 3174
Commissions, not allowed for collecting costs on execution ... 1360
on what allowed ... 1360
sheriff and coroner, when entitled to full ... 1357
half ... 1358
Constables, allowed generally ... 1380
in arbitration cases ... 520
forcible entry and unlawful detainer cases ... 2143
Coroner, for services rendered as sheriff ... 1378
when entitled to full, and when to half commissions ... 1357, 1358
County surveyor; compensation fixed by county commissioners ... 3897
Damages, what, recoverable against officers, etc., for receiving unauthorized fees ... 1367
Execution against plaintiff for his costs, when, penalty for failure to collect, etc. 1361
Ex officio services, accounts for, to be itemized, etc.; maximum allowance ... 1363
Fee bill, must be posted by certain officers ... 1354
penalty for failure to post ... 1355
Figures, initials and abbreviations; how estimated in copying or recording ... 1369
How entered ... 1364
Indexes to books and records, what officers prohibited from receiving pay for ... 1362
Insurance commissioner, fees to be collected by ... 2601
Interpreters when examined in court paid same fees as witnesses ... 1793
Itemized bill of costs to be given by officers when demanded ... 1359
no fee allowed for, or for taxing costs ... 1359
Jurors; in ad quod damnum proceedings ... 1383
before justices of the peace ... 2693
chancery court, in; how taxed ... 827, 1381
circuit or city court, in ... 1381
crops, for partition of ... 3203
inquisition of lunacy, on ... 1385
Jurors; probate court, in ... 1386
trial of right of property, in, before justices ... 1382
turnpike road, in proceedings to condemn land for ... 1384
Justices of the peace, allowed generally ... 1379
fence-viewers, in issuing orders to ... 2120
in estray proceedings ... 1769
matrimony, for celebrating rites of ... 2851
taxes, in garnishments for ... 4016
Notaries public, for taking and certifying acknowledgments of deeds ... 3032
administering oaths and taking affidavits ... 3032
other services ... 3033
No fee must be demanded or received, unless authorized by law ... 1353
entered in fee-book ... 1365

Probate judge—
allowed generally ... 1375
adopting children, in proceedings for ... 367
apprenticing child, for ... 497
books showing fees received, must be kept by ... 1366
conveyances, may demand fees in advance for recording ... 986
crops, in proceedings to partition ... 3203
dentist, for recording license of ... 1448
dog, for registering ... 424
exemptions, declaration of, for filing and recording ... 2729
fee bill, must keep posted ... 1354
penalty for failure ... 1355

FEES—*Continued.*

SECTION

Probate judge—*Continued.*

for receiving money on decrees against personal representative 3370
indexes to books and records, not entitled to fee for keeping 1362
incorporating companies, for services in 1285
licenses, revenue, for issuing 4125
for collecting and paying over money for 4132
matrimony, for celebrating rites of 2851
mechanics' liens, for filing and recording 2729
penalty for receiving unlawful fees 1368
physicians, for recording certificates of 3264
sheriff's fees collected, duty as to ..... Subd. 5, 3365
taxes, for services in proceedings to sell land for 4071
unlawful fees, penalty for receiving 1368

Register in chancery—

allowed generally 1373
depositions, for taking and certifying 738
fee bill, must keep posted 1354
penalty for failure 1355
fee-book, must keep 1364
no fee charged unless entered in, etc 1365
indexes to books and records, not entitled to fees for keeping 1362
trustees, for appointing, to receive property in another state, etc 4204

Secretary of state, fees and salary of 1976, 1977
to be collected by as insurance commissioner 2601

Sheriff—

allowed generally 1377
arbitration cases, in 520
commissions; entitled to on what 1360
when entitled to full 1357
half 1358
not entitled to on costs 1360
constable, for serving as 3741
crops, in proceedings to partition 3203
due, when 1357
in contest of election of state officers 1684
other officers 1692
fee-book, must keep 1364
no fee charged unless entered in, etc 1365
forcible entry and unlawful detainer, in cases of 2143
taxes, in garnishments for collection of 4016
proceedings to sell lands for 4071

Special and local laws giving greater fees than prescribed by this Code repealed 1370
Supreme-court clerk, allowed generally 1374
Tax-assessor, commissions for assessing taxes 3925
not entitled to commissions on erroneous assessments 3926
fees of 3927

Tax-collector—

commissions of, on general and special taxes 3997
on poll and escaped taxes assessed and collected by 3998
delinquents, for demand on 4001
fees of 4001
garnishments for taxes, costs in 4016
lands, for services in proceedings to sell, for taxes 4071
personal property, for selling 4011

Witnesses—

ad quod damnum proceedings, in 1388
arbitrators, before 520

FEES—*Continued.* SECTION

Witnesses—*Continued.*
attendance of; certificates to; taxation and collection of..... 1337–1345
civil cases, in..... 1336
commissioners to take depositions, before 1849
in chancery..... 738
county commissioners, before..... 1387
crops, in proceedings to partition..... 3203
election, in contest of..... 1683, 1692
forcible entry and unlawful detainer cases, in..... 2143
inquisition of lunacy, on..... 1385
justices, before..... 2686
probate court, in 1385
railroad commissioners, before..... 3501

FEE SIMPLE ESTATE.
Absolute power of disposition vests fee as to creditors, etc., when..... 1046–1048
Attornment of tenant not necessary to pass..... 1019
Fee tail becomes an estate in fee simple..... 1021
Livery of seizin not necessary..... 1037
Passes by conveyance unless it clearly appears a less estate was intended..... 1020
Tax deed, what estate conveyed by..... 4074

FEE TAIL ESTATES.
Conveyances of, vest fee simple..... 1021

FELONY.
Attorney, conviction of, a ground of removal..... 595
Civil action for felonious injury maintainable without prosecuting offender.... 22
Conviction of, disqualifies from voting or holding office—
Const., Art. VIII., §3, p. 88; 1557, 3056
Jurisdiction of circuit court of prosecutions for.....Const., Art. VI., §5, p. 83; 918

FEMALES.
Eligible to office of notary public..... 3022
register in chancery..... 653
Exempt from work on public roads..... 2452
Marriage of, revokes will..... 4250
Masculine gender, words used in, include..... 1
Must not be worked on streets for violation of town or city ordinance..... 2968
That witness is a woman ground for taking deposition..... 1833
Unmarried, may sue for her own seduction..... 23

FENCES.
Commissioner of agriculture shall give attention to fencing, etc.....Subd. 7, 376
Damages for trespass if inclosure lawful..... 2115
assessment of..... 2117
examination of fence in such case..... 2116
Lawful fence defined..... 2110, 2111, 2112
No trespass if fence not lawful..... 2113
Not to be joined to public bridge..... 2471
Partition fence defined..... 2123
assessment of value of, etc., by viewers..... 2119
costs of justice and viewers; by whom paid; execution..... 2120
expense where parts of fence assigned to several owners..... 2122
oath of viewers..... 2121
to be erected and repaired at joint expense..... 2118
Penalty for setting stakes, etc., if fence unlawful..... 2114
Railroads, fencing of..... 3495
When original owners, on change by survey, do not lose rights to fences or buildings..... 3898

FERRIES.

SECTION

Bridges, causeways and ferries, *see* 2498–2514

FERTILIZERS.

Analysis of, to be made ..... Subd. 17, 376; 393
copy of, evidence 395
to be branded on bag, barrel or package 391
License from commissioner of agriculture required for sale of 378
Sale of, when void 378, 386, 387
license for; fee; duration 379
tags to be attached by dealer, or sale void 386
vitiated by including tag tax in price 387
at fictitious price, only market value recoverable 388
parol evidence competent to show market value 389
Statement of name, brand, etc., to be submitted to commissioner of agriculture 390
What not included in term "fertilizer" 392

FIELD-NOTES.

Copy of, certified by judge of probate, evidence 1817
County commissioners authorized to contract for 965
Of late surveyor-general public archives; custody; certified copies evidence. 1815, 1974

FIERI FACIAS.

Executions, *see* 1880–1952

FILES OF COURT.

Not to be removed from county; exceptions 2643
Papers to be recorded on filing 2644
Taking file in pending suit from office 2646
Substitution of lost or destroyed papers 2647–2653
destroyed county records 964
When record used on trial of cause 2645

FINAL RECORD.

In chancery court 657, 658
circuit court 934
probate court 3365
supreme court 3860, 3861
Judgments, orders and decrees entered on minutes constitute part of 2642
Minute entries not to be copied into 2642
Original pleadings, process, etc., recorded on filing; record constitutes part of 2644
When record used on trial of cause 2645

FINES AND FORFEITURES.

Authority of governor to remit ..... Const., Art. V., §12, p. 80.
Duty of clerk of circuit court to account for, and pay over to county treasurer—
Subd. 12, 934
county treasurer in reference to ..... Subd. 5, 1429
Excessive fines shall not be imposed ..... Const., Art. I., §16, p. 64.
Injuring or breaking gate to toll-bridge or causeway, forfeiture 2510
Summary judgments, *see* 3763–3824

FIRE-HUNTING.

Damages for killing domestic animal while hunting deer by fire 420

FIRE-INSURANCE COMPANY.

Insurance companies, *see* 2575–2621

FIRE-INSURANCE PATROL.

How maintained 2623
Organization and powers 2622

FIRE-INSURANCE PATROL—*Continued.* SECTION
Penalty for failure to report; how suit brought 2625
Semi-annual report of premiums collected 2624

FISCAL AGENCY.
In New York for payment of interest on state bonds 2019–2023

FISCAL YEAR.
Ends on thirtieth day of September 2011
Of Insane Hospital, to be fixed by board of trustees 2546

FLAG.
Of state; design of 3751
When and where displayed 3752

FLORIDA.
Boundary line between, and Alabama 625

FLYING-JENNIES.
License for, required ..... Subd. 49, 4122

FOLLOWING.
Meaning of the word as used in Code 5

FORCIBLE ENTRY AND UNLAWFUL DETAINER.
Action of, when barred 2136
Appeal, who may take 2144
judgment on; writ of restitution issues, when 2146
when, does not suspend issue of writ of restitution 2145
Complaints in, to be exhibited to, and tried before what officer 2131
form of, in unlawful detainer ..... No. 27, p. 948; 3352
forcible entry and detainer ..... No. 28, p. 948; 3352
Damages for detainer after expiration of term of lease 2137
Defendant, when, may remove cause from justice's to circuit court for trial of title 2147
Fees of witnesses, sheriffs and constables 2143
Forcible entry and unlawful detainer cognizable before justices of peace 2124, 2662
for trial of, court always open 2125
Forcible entry and detainer defined 2126
If plaintiff succeeds, writ of restitution to issue; costs 2133
fails, judgment entered against him for costs; execution 2134
Issue in, and trial of such action 2132
Notice, issué of, upon complaint filed; form of 2129
time and mode of serving; return by officer, or proved 2130
On redemption of lands sold, unlawful detainer lies to recover same, when 3508
Proceedings in, no bar to other remedies 2138
Purchaser at tax sale may maintain unlawful detainer for lands purchased, when 4081
Removal of cause by defendant from justice's to circuit court for trial of title, when 2147
petition for, contents of 2147
order on; bond; writ to justice, etc 2148
trial of title in circuit court, etc., judgment; execution against sureties, etc 2149
Sheriff or constable, penalty against, for failing to execute process 2140
fees of 2143
Title not in issue in actions of 2135
trial of, on removal of cause to circuit court, etc 2149
Unlawful detainer defined 2127
What estate in lands included 2128
When action barred 2136
Witnesses, subpœna for; by whom issued 2139
fees of 2143

FORCIBLE ENTRY AND UNLAWFUL DETAINER—*Continued.* SECTION

Witnesses, fine against defaulting 2141, 2142
testimony of may be taken by deposition 2139
Writ of restitution, when not suspended by appeal unless, etc 2145
awarded on judgment on appeal, etc 2146

FORDS.

May be crossed at public ferries without payment of toll 2511

FOREIGN CORPORATIONS.

Admission fees required of; amount and to whom paid 1321
to be paid but once; failure vitiates contracts 1323
Agent and known place of residence in state, must have—
Const., Art. XIV., §4, p. 99.
Attorney-general, duty of, as to enforcing penalties against 1320
Instrument of writing designating agent and place of business, must be filed .. 1316
where filed 1317
Interstate commerce, corporations engaged solely in, excepted 1324
Penalty for doing business before filing such instrument 1318
acting as agent for non-complying corporation 1319
Process against, may be served on agent anywhere in state—
Const., Art. XIV., §4, p. 99.
Process against may be served on designated agent; proof of agency 3277
of attachment against, may issue, when 535
Solicitor; duty of as to enforcing penalties against 1320
Statement giving name, where incorporated, amount of capital, etc., to be filed 1322
United States chartered corporations excepted 1324
Venue of suits against, in any county where corporation does business by agent 4207

FOREIGNERS.

Becoming bona fide residents enjoy same property rights as native-born citizens ..... Const., Art. I., §36, p. 67.
Right of aliens to take, hold, dispose of and transmit property 419

FORMS.

Accounts of county treasurer 1436
Acknowledgment to conveyance 996
separate, of wife to conveyance of homestead 2034
Affidavit of retailer 3521
Attachment before justice of the peace 573
Ballot 1569
Complaints and pleas in actions at law 3352, 3353
Execution on money judgment 1880
and writ of possession 1880
for seizure and delivery of specific property 1880
sale of goods levied on 1913
from justice's court 1933
Forcible entry and unlawful detainer notice 2129
Insane Hospital; schedule of questions on application for admission 2551
certificate by judge of probate 2555
bond of paying patient 2556
Letters testamentary 47
of administration 57
Notice of adverse possession of land 1542
to creditors to present claims against trust estate 4160
Pleas to actions at law 3353
Registration-book 1569
Registration certificates 1564, 1565
Summons to answer complaint in circuit court 3270
justice's court 2667

SECTION

FORMS—*Continued.*
Taxation; assessment-blanks 3948, 4110, 4111
certificate to assessment-book 3986
notice to taxpayer of application to sell land 4049
owner unknown, of such application 4052
decree for sale of land for taxes 4056
certificate and deed 4076
Unlawful detainer notice 2129

FORTUNE-TELLERS.
License required of ..... Subds. 22, 23, 4122

FRAUDS AND PERJURIES.
All instruments made to hinder, delay, or defraud creditors, void as to creditors 2156
Auctioneer's written memorandum of, etc., when sufficient to take contract without statute, etc 2153
Award on arbitration may be set aside for fraud 521
Bonds, etc., given, or decree, etc., suffered with intent to hinder or delay creditors also void 2156
Certain contracts void, unless in writing 2152
Conveyances, etc., of personal property in trust for the grantor are void as to creditors 2150
Fraudulent disposition of property, or fraudulent withholding, ground for attachment ..... Subds. 7, 8, 525
General assignment or conveyance, when, enures equally to benefit of all creditors 2158
Jurisdiction of court of equity, on bill, etc., to discover, etc., property fraudulently conveyed 814–823
Limitation of actions seeking relief on ground of fraud 2813
Limited partnership, or partners, when sale, assignment, or transfer of property of, void 3227, 3228
judgment suffered, or lien, etc., or credit given by, void 3227, 3228
members of, guilty of fraud, liable to party injured 3226
Mortgage of personal property void, unless in writing and subscribed by mortgagor 2151
or deed of trust, etc., void as to creditors, if the grantor reserves a benefit, etc 2157
Officer's return or report of judicial sale sufficient note of contract, etc 2154
Partition by decree of probate court may be set aside in equity for fraud 3171
Public lands, contracts made on consideration of not bidding for, void 2159
improvements on, may be sold 2162
not to be bid off under a contract to resell 2160
such contracts void; penalty for making them 2161
Representation of another's credit, to be actionable, must be in writing and signed, etc 2155
Sheriff, coroner, etc., penalty against, for fraudulently making false return. 3771, 3820
Sunday, contracts made on, void except in case of necessity, or for works of charity 2170

Gambling and wagering contracts.

Answers of parties do not subject them to prosecution 2169
Any person may recover money paid on, for use of wife, etc., of loser 2164
Gambling contracts void, and money paid may be recovered 2163
Garnishment bars another suit 2167
a prior judgment bars 2168
One judgment bars other suits for the same cause 2165
The winner may be garnished by a creditor of losing party 2166
answers of the parties do not subject them to prosecution 2169

FREIGHTS. SECTION
Common carrier may sell goods to pay charges, when ... 4225, 4226
Discrimination in rates unlawful ... 3462
Duties and powers of railroad commissioners in respect to rates ... 3490–3494
Extortionate charges by railroads; liability for ... 3460
evidence of ... 3461
Free transportation permitted ... 3463
Pooling, agreements for, between railroads, unlawful ... 3464
Rates of, to be posted at depot ... 3462
Special rates to aid in development of industries ... 3462

FRUIT-TREES.
Commissioner of agriculture to take steps to stamp out diseases among— Note, p. 201.
Damages for injury to or destruction of ... 4139

FUNERAL EXPENSES.
Claims for, against estates of decedents, preferred ... 126

GAMBLING AND WAGERING CONTRACTS.
Answers of parties do not subject them to prosecution ... 2169
Any person may recover money paid on, for use of wife, etc., of loser ... 2164
Gambling contracts void, and money paid may be recovered ... 2163
Garnishment bars another suit ... 2167
a prior judgment bars ... 2168
One judgment bars other suits for the same cause ... 2165
The winner may be garnished by a creditor of losing party ... 2166
answers of parties do not subject them to prosecution ... 2169

GARNISHMENTS.

Garnishment defined; when and how issued and dissolved.

Affidavit for, required in all cases ... 2173
Bond required when, issues pending suit ... 2174
Debts or demands in suit subject to ... 2177
Defects in form or substance of, amendable ... 2186
Defendant may give bond and collect money from garnishee; proceedings ... 2183
etc., and dissolve the garnishment; proceedings ... 2184
Executors and administrators may be garnished for debts due by testator or intestate ... 2178
amounts due legatees and distributees ... 2179
Garnishment, nature of ... 2171
Issue and return of ... 2175
Judgment of condemnation, effect of, as between garnishee and defendant ... 2185
Lien in favor of plaintiff created by service of ... 548
May issue pending suit, or after judgment ... 2172
Money in hands of officers or attorneys may be garnished ... 2180
trustee may be garnished ... 2181
Notice to defendant; when to be given ... 2176
Subscription for stock in corporation may be garnished ... 2182

Ancillary attachments and garnishments.

Attachment may issue when resident defendant evades service of summons ... 559
proceedings in such cases ... 560
Ancillary garnishment, special affidavit for ... 2173
Corporation, subscription to stock in, subject to garnishment ... 2182
Defendant, resident, evades service of summons, attachment may issue; proceedings ... 559, 560

GARNISHMENTS—*Continued.* SECTION

Ancillary attachments and garnishments—*Continued.*

Garnishments upon decrees in probate court, when.....Subd. 3, 3372
in aid of such decrees, when..... 3376, 3377
representatives and sureties, in aid of decrees against..... 345, 346
guardians, their sureties, etc..... 2349
mechanic's lien, in suits for enforcement of..... 2743
agricultural laborer's lien, in suits for enforcement of..... 2770
decrees in equity, on..... 772
state, in favor of, when..... 3758
taxes, in aid of collection of..... 4014–4016
on judgment, or in pending suit..... 2172
judge of probate, authority of, to issue, etc.....Subd. 3, 3372
Judge of probate, authority of, to issue garnishments, etc.....Subd. 3, 3372
Pending suit, attachment in aid of..... 558
garnishment in aid of, or on judgment, when..... 2172
bond required..... 2174
Subscription for stock in corporation may be garnished..... 2182

Answer of garnishee and proceedings thereon.

Answer of garnishee; when and how made; oral examination..... 2187
corporation; by whom made..... 2190
contest of, by plaintiff..... 2196
defendant..... 2197
judgment on, when answer not sustained..... 2198
execution suspended..... 2191
demand payable in personal property, etc. 2192
and proceedings on, admitting possession of effects 2193
when garnishee admits possession of money..... 2194
Claim of exemption to money and choses in action garnished; contest..... 2059
Court may order money loaned pending suit..... 2189
Garnishee recovers his costs on a discharge; execution..... 2206
proceedings on death of, or contestant..... 2207
when, may pay fund into court..... 2188
Judgment of condemnation, effect of, as between garnishee and defendant..... 2185
On suggestion of claim by another, in answer of garnishee, claimant made party 2199
proceedings to try such claim..... 2200
if contestant non-resident, proceedings stayed; proceedings..... 2201
resident, judgment on return of two notices "not found"..... 2202
such collateral issues do not affect jurisdiction..... 2203
bills of exception in such cases..... 2204
appeal to supreme court; in whose favor lies..... 2205
Nature of garnishment declared..... 2171
Proceedings on failure of garnishee to answer..... 2195

Garnishments issued by justices of the peace.

Answer of garnishee; evidence on appeal..... 2209
Contest of garnishee's answer and collateral issues tried without a jury..... 2210
Execution for balance of judgment unsatisfied..... 2211
Lien in favor of plaintiff created by service of..... 548
Money in hands of sheriff or other executive officer, or debt in court of record not subject to..... 575
Sale of land when garnishee answers indebtedness for purchase-money..... 2212
What provisions of this Code applicable to..... 2208

GAS-WORKS. SECTION
Gross income of, taxed....Subd. 3, 3912
License-tax, required to pay....Subd. 48, 4122

GATES.
County commissioners may authorize, to be erected across public roads.... 2491
Injuring or breaking gate to toll-bridge or causeway; penalty, etc.... 2510

GENDER.
Masculine includes feminine.... 1

GENERAL ADMINISTRATOR.
Administration not to be granted, when.... 73
granted, on application of third person, applicant to give bond.. 74
summary decree against obligors on such bond.... 75
Appointment of; term of; duties of.... 69
Bond required of; conditions.... 70
additional, may be required of, when.... 102
Record must be kept by, showing his official acts.... 71
Removal of; when and how.... 101

GENERAL ASSEMBLY.

Constitutional provisions.

Adjourn, neither house to, for more than three days, or to different place, without consent of the other....Const., Art. IV., §16, p. 73.
less than a quorum may, and compel attendance of absent members—Ib. §10, p. 72.
Ad quod damnum proceedings, prohibited from depriving any person of appeal from preliminary assessment in....Const., Art. XIV., §7, p. 101.
Amendments, concurrence by one house in, of other; what necessary—Const., Art. IV., §22, p. 74.
to constitution, may propose....Const., Art. XVII., §1, p. 103.
Annexation of foreign territory, on, duty to enact laws extending to inhabitants rights and privileges required by terms of acquisition—Const., Art. IV., §51, p. 77.
Apportionment of representatives and senators, power of, to make—Const., Art. IX., §5, p. 89.
Appropriation bill, general; what shall embrace....Const., Art. IV., §32, p. 76.
Appropriations, prohibited from making, to certain charitable institutions, except by two-thirds vote....Const., Art. IV., §34, p. 76.
Arbitration, duty of, to provide for settlement of differences by—Const., Art. IV., §45, p. 77.
Arms, ammunition, etc., duty of, to provide for safe-keeping of—Const., Art. XII., §7, p. 97.
Arrest, when members of, privileged from....Const., Art. IV., §14, p. 73.
Bank or moneyed institution for purpose of issuing bills of credit or bills payable to order, etc., prohibited from incorporating, except upon conditions—Const., Art. XIV., §14, p. 102.
Banking company, prohibited from lending credit of state to—Const., Art. XIV., §20, p. 102.
Biennial sessions; place of meeting; length of session—Const., Art. IV., §5, p. 72.
Bill, no, shall be altered or amended so as to change its original purpose—Const., Art. IV., §19, p. 74.
law shall be passed except by....Ib.
shall become a law until referred to committee of each house, and returned....Ib. §20, p. 74.
every, shall be read on three different days in each house....Ib. §21, p. 74.

GENERAL ASSEMBLY—*Continued.* SECTION

Constitutional provisions—*Continued.*

Bill, necessary requisites to passage of.....Ib.
amendment to, by one house, how concurred in by the other. Ib. §22, p. 74.
what necessary to passage of, over veto of governor—
Const., Art. V., §§13, 14, p. 80.
signing of bills and resolutions by presiding officers; provisions for—
Const., Art. IV., §27, p. 75.
for raising revenue to originate in house of representatives, but senate may propose amendments.....Ib. §31, p. 75.
Bills of credit or bills payable to order or bearer, prohibited from establishing or incorporating any bank or moneyed institution for purpose of issuing—
Const., Art. XIV., §14, p. 102.
Bonds or stocks of private corporations, prohibited from authorizing investment of funds by representatives, guardians, or trustees, in—
Const., Art. IV., §35, p. 76.
Bribery of members, provisions against.....Ib. §§40–42, pp. 76, 77.
Canals, rivers and railroads, duty of, to correct abuses and prevent discrimination and extortion in freight and passenger rates on—
Const., Art. XIV., §22, p. 102.
Chancery divisions, to divide state into.....Const., Art. VI., §7, p. 84.
may increase number of, by two-thirds vote.....Ib.
Charitable or educational institutions, certain, prohibited from making appropriations to, except by two-thirds vote.....Const., Art. IV., §34, p. 76.
Circuit and chancery courts, may provide for holding, when judges or chancellors fail to attend regular terms.....Const., Art. VI., §19, p. 86.
Claimant of property exempted from sale, duty of, to prescribe by law rules for ascertaining value of, and securing same to....Const., Art. IV., §53, p. 78.
Codification of laws, duty of, to make provision for.....Ib. §46, p. 77.
Committees of conference, reports of; how adopted.....Ib. §22, p. 74.
Constitution, duty of, to enact all laws necessary to give effect to provisions of—
Const., Art. XVI., §2, p. 103.
may propose amendments to; provisions for—
Const., Art. XVII., §1, p. 103.
Contempt, punishment for, no bar to indictment for same offense—
Const., Art. IV., §12, p. 73.
power of each house as to, etc.....Ib. §11, p. 73.
Corporation, prohibited from creating, renewing, or extending charter of more than one, in one law.....Const., Art. XIV., §10, p. 101.
Corporations, may alter, revoke, or amend charters of.....Ib.
prohibited from creating, by special act, except for particular purposes.....Ib. §1, p. 99.
Corruption, member of either house expelled for, not thereafter eligible to either house.....Const., Art. IV., §12, p. 73.
Counties or municipal corporations, prohibited from requiring, to pay any charges now payable out of state treasury—
Const., Art. XI., §9, p. 96.
no senatorial district to be made of two or more, not contiguous to each other.....Const., Art. IX., §4, p. 89.
County, each, entitled to at least one representative.....Ib. §3, p. 89.
not to be divided between two senatorial districts.....Ib. §4, p. 89.
city, town, or other subdivision of state, prohibited from authorizing, to lend its credit, or grant public moneys or property in aid of, or to any individual or corporation, or to become a stockholder in any corporation, etc.....Const., Art. IV., §55, p. 78.
Court of probate, may establish in each county a....Const., Art. VI., §9, p. 84.
Creating any office, prohibited from, the appointment to which shall be for longer term than during good behavior.....Const., Art. I., §30, p. 67.

GENERAL ASSEMBLY—*Continued.* SECTION

Constitutional provisions—*Continued.*

Credit of state, prohibited from lending, to any banking company—
Const., Art. XIV., §20, p. 102.
Crimes, persons convicted of designated, ineligible to office, etc.—
Const., Art. IV., §18, p. 73.
Discrimination and extortion, duty of, to correct abuses and prevent unjust, in freight and passenger rates on railroads, canals and rivers—
Const., Art. XIV., §22, p. 102.
Doors of each house to be open, when secrecy not required—
Const., Art. IV., §15, p. 73.
Dueling, duty of, to pass penal laws for suppression of.....Ib. §47, p. 77.
Each house to keep a journal; publication.....Ib. §13, p. 73.
Each house to elect its own officers and to be judge of election, etc., of its members.....Const., Art. IV., §8, p. 72.
Educational and property qualifications, prohibited from establishing any, for suffrage or office.....Const., Art. I., §38, p. 67.
Election and term of office of president of senate and speaker of house—
Const., Art. IV., §8, p. 72.
senators and representatives. Ib. §§3, 9, pp. 71, 72.
Elections, in all, by, members vote viva voce; votes entered on journals—
Ib. §44, p. 77.
duty to pass uniform laws regulating, and may provide for registration of electors.....Const., Art. VIII., §5, p. 89.
adequate laws protecting against evils arising from use of intoxicating liquors at.....Ib. §6, p. 89.
Emigration, prohibited from prohibiting.....Const., Art. I., §31, p. 67.
Eminent domain, powers as to.....Ib. §24, p. 66.
Enumeration of inhabitants of state, power of, to provide for, etc.—
Const., Art. IX., §5, p. 89.
Ex post facto law, or law impairing obligation of contracts, prohibited from enacting any .....Const., Art. I., §23, p. 65; Art. IV., §56, p. 78.
Expulsion of member of, for corruption; provision as to—
Const., Art. IV., §12, p. 73.
Extra compensation, prohibited from giving, to any public officer, etc., after services rendered or contract made.....Ib. §29, p. 75.
Freight and passenger rates, duty of, to correct abuses and prevent unjust discrimination and extortion in, on railroads, canals and rivers—
Const., Art. XIV., §22, p. 102.
General appropriation bill; what shall embrace.....Const., Art. IV., §32, p. 76.
Guardians, representatives or trustees, prohibited from authorizing investment of funds by, in bonds or stocks of private corporations—
Const., Art. IV., §35, p. 76.
House of representatives to consist of not more than one hundred members; apportionment.....Const., Art. IX., §2, p. 89.
In all elections by, members vote viva voce; votes entered on journals—
Const., Art. IV., §44, p. 77.
Inspecting or measuring merchandise, etc., prohibited from continuing or creating office for.....Ib. §38, p. 76.
Intoxicating liquors, duty of, to pass adequate laws protecting against evils arising from use of, at elections.....Const., Art. VIII., §6, p. 89.
Judicial circuits, duty of, to divide state into.....Const., Art. VI., §4, p. 83.
elect solicitors for.....Ib. §25, p. 86.
may increase number of, by two-thirds vote.....Ib. §4, p. 83.
Journal, each house to keep; publication of.....Const., Art. IV., §13, p. 73.
yeas and nays on any question; when to be entered on.....Ib.
right of members to dissent from, or protest against any act or resolution, and have reasons entered on .....Ib.

GENERAL ASSEMBLY—*Continued.* SECTION

Constitutional provisions—*Continued.*

Legislative power vested in; consists of senate and house of representatives—
Const., Art. IV., §1, p. 69.
Local and private interests, duty of, to pass general laws under which, shall be provided for and protected.....Ib. §25, p. 75.
Local or special laws, passage of; notice necessary; exception—
Const., Art. IV., §24, p. 74.
what, prohibited.....Ib. §23, p. 74.
Lottery or gift-enterprise tickets, duty to pass laws prohibiting sale of—
Ib. §26, p. 75.
Lotteries or gift enterprises, prohibited from authorizing.....Ib.
Members of, shall not be questioned in any other place for any speech or debate in either house.....Ib. §14, p. 73.
during term of office, ineligible to designated offices—
Const., Art. IV., §17, p. 73.
power of each, by two-thirds vote, to expel, etc.....Ib. §11, p. 73.
Member of, having a personal or private interest in any measure or bill, shall disclose the fact, and not vote thereon.....Ib. §43, p. 77.
privileged from arrest, when.....Ib. §14, p. 73.
right of, to dissent from, or protest against any act or resolution, and have reasons entered on journals.....Ib. §13, p. 73.
Merchandise, etc., prohibited from continuing or creating office for inspecting or measuring.....Ib. §38, p. 76.
Ministry, prohibited from compelling any one to pay tithes, taxes or rates for building or repairing any place of worship, or maintaining any—
Const., Art. I., §4, p. 60.
Money or credit of state, etc., prohibited from lending—
Const., Art. IV., §54, p. 78.
Municipal corporations, prohibited from authorizing, to pass laws inconsistent with general laws of state—
Ib. §50, p. 77.
taxing property of, etc...Ib. §52, p. 78.
New state debt, prohibited from creating.....Const., Art. XI., §3, p. 94.
Oath of office of members and officers of.....Const., Art. XV., §1, p. 103.
Office, prohibited from creating any, the appointment to which shall be for longer term than during good behavior.....Const., Art. I., §30, p. 67.
Officer, contractor, etc., prohibited from giving extra compensation to, after services rendered or contract made.....Const., Art. IV., §29, p. 75.
Officers and employes of each house, duty to prescribe by law number, duties and compensation of; when payments prohibited.....Ib. §28, p. 75.
One of the departments of government; cannot exercise powers properly belonging to others.....Const., Art. III., p. 68.
Pay and mileage of members.....Const., Art. IV., §6, p. 72.
Persons convicted of designated crimes ineligible to office, etc....Ib. §18, p. 73.
Place of worship, prohibited from compelling any one to attend any, etc.—
Const., Art. I., §4, p. 60.
or to pay tithes, taxes, or rates for building or repairing any—
Ib.
Poll-tax, duty of, to provide for levying and collecting an annual—
Const., Art. XIII., §4, p. 97.
may levy.....Const., Art. XI., §1, p. 94.
Poor, duty of, to require counties to make provisions for the—
Const., Art. IV., §49, p. 77.
Power of each house, by two-thirds vote, to expel a member; declared—
Ib. §11, p. 73.
Presiding officers, signing of bills and resolutions by; provisions for—
Ib. §27, p. 75.

GENERAL ASSEMBLY—*Continued.* SECTION

Constitutional provisions—*Continued.*

Private corporation, prohibited from remitting forfeiture of charter of, or altering or amending same, or from passing any general or special law for its benefit, except upon stated condition.....Const., Art. XIV., §3, p. 99.
Property exempted from sale, duty of, to prescribe by law rules for ascertaining value of, and securing same to claimant as selected—
Const., Art. IV., §53, p. 78.
Property of state, counties or municipal corporations, or cemeteries, or other designated institutions, prohibited from taxing..... ...Ib. §52, p. 78.
Protest, right of member to, and have reasons for, entered on journals—
Ib. §13, p. 73.
Public schools, duty of, to establish, organize and maintain a system of, throughout the state.....Const., Art. XIII., §1, p. 97.
Qualification of senators and representatives.....Const., Art. IV., §4, p. 72.
Quorum, majority of each house a; power of less number to adjourn and compel attendance of absent members.....Ib. §10, p. 72.
Race, color, or previous condition of servitude, prohibited from placing any restraint upon right of suffrage or office on account of—
Const., Art. I., §38, p. 67.
Railroads, canals and rivers, duty of, to correct abuses and prevent unjust discrimination and extortion in freight and passenger rates on—
Const., Art. XIV., §22, p. 102.
Registration of electors, duty of, to provide for, etc.—
Const., Art. VIII., §5, p. 89.
Religion, prohibited from establishing any, by law, or giving any preference to any religious sect, etc.....Const., Art. I., §4, p. 60.
Religious test, prohibited from requiring, as a qualification for office or public trust.....Ib.
Reports of committees of conference; how adopted..Const., Art. IV., §22, p. 74.
Representatives, duty of, to fix number of and apportion them among the counties.....Const., Art. IX., §3, p. 89.
each county entitled to at least one.....Ib.
number of, to which each county entitled until apportionment made.....Ib. §6, p. 90.
Representatives, guardians or trustees, prohibited from authorizing investment of funds by, in bonds or stocks of private corporations—
Const., Art. IV., §35, p. 76.
Right or remedy, prohibited from reviving any, which may have become barred by lapse of time or statute.....Ib. §56, p. 78.
Rules of proceedings, power of each house as to, punishment for contempt, enforcement of obedience to its process, protection of its members, etc., declared.....Ib. §11, p. 73.
Salaries of public officers, duty of, to regulate by law cases in which deductions shall be made from, for neglect of duty.....Ib. §48, p. 77.
Seat of government of state, what necessary to change of.....Ib. §39, p. 76.
Senators, duty of, to fix number of, and divide state into districts, etc.—
Const., Art. IX., §4, p. 89.
number of, not to be less than one-fourth or more than one-third of number of representatives.....Ib. §1, p. 89.
Senators and representatives, qualifications of.....Const., Art. IV., §4, p. 72.
election and term of office of..Ib. §§3, 9, pp. 71, 72.
Senatorial districts, duty of, to divide state into.....Const., Art. IX., §4, p. 89.
to be as nearly equal, as to number of inhabitants, as may be.....Ib.
each, entitled to one senator and no more.....Ib.
when change of, prohibited.....Ib.

GENERAL ASSEMBLY—*Continued.* SECTION

Constitutional provisions—*Continued.*

Senatorial districts, no county to be divided between two.....Ib.
no district to be made of two or more counties not contiguous to each other.....Ib.
until state again divided.....Ib. §7, p. 90.
Signing of bills and resolutions by presiding officers of; provisions for—
Const., Art. IV., §27, p. 75.
Solicitors for judicial circuits, duty of, to elect.....Const., Art. VI., §25, p. 86.
Special sessions of, legislation to be enacted at.....Const., Art. IV., §37, p. 76.
Speech or debate, members shall not be questioned in any other place for any, in either house.....Const., Art. IV., §14, p. 73.
State, or counties, or municipal corporations, or cemeteries, prohibited from taxing property of, or property of other designated institutions.....Ib. §52, p. 78.
prohibited from lending money or credit of, etc.....Ib. §54, p. 78.
debt, new, prohibited from creating.....Const., Art. XI., §3, p. 94.
Stationery, printing, etc.; how furnished and performed—
Const., Art. IV., §30, p. 75.
members and officers prohibited from being interested in contract for.....Ib.
Style of laws; provision as to subject and title of law..Const., Art. IV., §2, p. 71.
Suffrage, duty of, to protect right of, by laws regulating elections, and prohibiting all undue influences from power, bribery, etc.—
Const., Art. I., §34, p. 67.
prohibited from establishing any educational or property qualifications for suffrage or office.....Ib. §38, p. 67.
prohibited from placing any restraint upon right of suffrage or office on account of race, color, or previous condition of servitude.....Ib.
Taxation, prohibited from delegating power of, to individuals or private corporations.....Const., Art. XI., §2, p. 94.
prohibited from levying, in any one year, a greater rate of, than three-fourths of one per cent. on value of property..Ib. §4, p. 95.
prohibited from creating any new state debt.....Ib. §3, p. 94.
Tithes, taxes or rates, prohibited from compelling any one to pay, for building or repairing any place of worship, or maintaining any ministry—
Const., Art. I., §4, p. 60.
Title of nobility, prohibited from conferring any, or hereditary distinction, etc.—
Const., Art. I., §30, p. 67.
To consist of not more than thirty-three senators and not more than one hundred representatives.....Const., Art. IV., §7, p. 72.
Treason, prohibited from attainting any person of....Const., Art. I., §20, p. 64.
University, State, or Agricultural and Mechanical College, prohibited from changing location of, except upon two-thirds vote—
Const., Art. XIII., §10, p. 99.
Veto of governor; what necessary to passage of bill over—
Const., Art. V., §§13, 14, p. 80.
Writ of election to issue on vacancy in either house..Const., Art. IV., §9, p. 72.
Yeas and nays on any question; when to be entered on journals..Ib. §13, p. 73.

Statutory provisions.

Apportionment of members..... 2213, 2214
Amount of pay due members and officers of, how certified..... 2230
Committee to examine offices of auditor and treasurer..... 2218
duties of; report of..... 2219, 2220
pay and mileage of, and pay of clerks of during recess..... 2228
Contesting election of member of..... 1686–1692

GENERAL ASSEMBLY—*Continued.* SECTION

Statutory provisions—*Continued.*

Elections by, how conducted ... 2217
Elections for members of ... 1573–1575
Engrossed copies of laws and resolutions preserved ... 2222
Local law, notice of introduction of ... 2231
Mileage when intervals between sessions short ... 2229
Notice of death of members; by and to whom given ... 3145
No claim against state must be allowed, etc., by, unless properly verified, etc.. 2009
Oath of office of members and officers; by whom administered ... 2225
Papers relating to finished business deposited at close of session with secretary of state ... 2221
unfinished business arranged; delivered to secretary of state ... 2223, 2224
Pay for printing ordered by either house of; how made, etc ... 3412, 3416
and mileage of officers and members of, fixed ... 2226
committees sitting during recess; pay of their clerks ... 2228
in case of sickness of member of ... 2227
how certified ... 2230
Resignation of member of; to whom transmitted ... 3148
Secretary of senate and clerk of house to file and arrange papers, etc.; where.. 2240
furnish copy of journals to public printer ... 2240
compensation of, for said services ... 2240
Senatorial districts ... 2214
Sessions of; place and time ... 2215, 2216
Special election of members of ... 1598–1604
Subordinate officers of, election; term of office and removal ... 2233
compensation and duties of secretary, clerks, doorkeeper, etc ... 2234, 2235
committee clerks, and additional clerical assistance; compensation ... 2237
how compensation certified and paid ... 2239
oath to, by whom administered ... 2232
pages and messenger; compensation of ... 2236
servants employed by doorkeepers; compensation ... 2238
University of Alabama, right of, to revise or amend provisions relating to ... 3682

GENERAL ASSIGNMENT.

Assignment for benefit of creditors, *see* ... 4152–4173
By limited partnership or partner thereof; when void ... 3227, 3228
Taxes a preferred claim in case of ... 4116
What instruments and acts amount to a ... 2158
When enures to benefit of all creditors ... 2158

GENERAL GUARDIAN.

Appointment of; term of ... 2253
for person of unsound mind, when ... 2270
Bond of; payee, penalty and conditions ... 2276

GENERAL ISSUE.

Effect of pleading, in action in nature of action of ejectment ... 1532
What is plea of, in actions for defamation, or for injuries to the person, or to real or personal property ... 3295
all other actions ... 3295

GEOLOGICAL SURVEY.

Appropriation, annual, for; how drawn ... 2244
Assistants; by whom appointed; compensation ... 2243

GEOLOGICAL SURVEY—*Continued.* SECTION
Expenses of; what embraced in 2246
vouchers filed with auditor 2244
statement of receipts and disbursements to accompany biennial report 2244
State geologist, who is ex officio 2241
duties of 2242
salary of 2245

GEORGIA.
Boundary line between, and Alabama 624

GIFTS.
Parol, of personal property void, when 1015

GINS.
Dams for, erection of; proceedings 1727–1748
Gross receipts of, taxed 3912
Lien of owners for price of ginning and baling cotton; proceedings 2788–2792

GOATS.
Lien for season of; enforcement of 2776–2779

GOVERNOR.

Constitutional provisions.

Appropriation bills, power to disapprove items of; proceedings thereon—
Const., Art. V., §14, p. 80.
Cannot hold any other office during term of office...Const., Art. V., §17, p. 81.
Commander-in-chief of militia and volunteer forces of state; exception—
Const., Art. V., §18, p. 81; Art. XII., §6, p. 97; 2852
but need not command in person, unless so directed by general assembly.....Const., Art. V., §18, p. 81.
Commutation and pardons, power to grant, except in cases of treason and impeachment.....Const., Art. V., §12, p. 80.
Compensation to be fixed by law, and not changed during term of office—
Const., Art. V., §7, p. 79.
Executive department, one of.....Const., Art. V., §1, p. 78.
Fines and forfeitures, power to remit.....Const., Art. V., §12, p. 80.
From what officers and persons may require information under oath—
Const., Art. V., §9, p. 79.
General assembly, may, by proclamation, convene; contents of proclamation.....Const., Art. V., §10, p. 79; 2215
at beginning of each session, and at close of his term to give information, by written message, of condition of the state—
Const., Art. V., §11, p. 79.
regular session to present to, estimates of money to be raised by taxation for all purposes.....Ib.
account to, for all moneys received and paid out by him..Ib.
bill passed by, power to veto; proceedings thereon—
Const., Art. V., §13, p. 80.
must report to, each case of reprieve, commutation or pardon granted.....Const., Art. V., §12, p. 80.
to give information to, of state of government, and recommend measures to their consideration—
Const., Art. V., §11, p. 79.
upon conviction for treason, may suspend execution of sentence and report same to.....Const., Art. V., §12, p. 80.
Grants and commissions, must sign all.....Const., Art. V., §22, p. 82.
Great seal of state to be used by.....Const., Art. V., §20, p. 81.

GOVERNOR—*Continued.* SECTION

Constitutional provisions—*Continued.*

Impeachment, in case of, removal, death, resignation, etc., provisions for vacancy.....Const., Art. V., §§15, 16, p. 81.
grounds of.....Const., Art. VII., §1, p. 87.
Qualifications for office.....Const., Art. V., §6, p. 79.
Reprieves, power to grant, etc.....Ib. §12, p. 80.
Residence of.....Ib. §7, p. 79.
Shall take care that the laws are faithfully executed.....Ib. §8, p. 79.
Supreme executive power of state vested in.....Ib., §2, p. 78.
Term of office of.....Const., Art. V., §5, p. 79.
Treason, upon conviction for, may suspend execution of sentence, etc.—
Const., Art. V., §12, p. 80.

Statutory provisions.

Acts of congress, must obtain, for judges of probate..... 1970
Additional clerks in state department, when may employ..... 1965
Agricultural department, must approve bonds of clerks of..... 373
Alabama Institute for the Deaf, member of board of trustees of..... 3700
Alabama National Guard, commander-in-chief of..... 2852
staff of, appointed by, and commissioned as officers of..... 2853
courts martial, must approve findings of, when..... 2886
all officers in, to be commissioned by..... 2883
signal-corps, formation of, must be approved by..... 2868
Attorney-general, must approve bond of..... 2027
may require additional bond of, when..... 2027
Auditor, must approve bond of..... 1993
may require additional bond of..... 3110
Auditor's office, has supervision of..... 1997
Authority and jurisdiction of state, duty to maintain and defend..... 3750
"Badge of honor" for Alabama National Guard, must prescribe..... 2866
Beginning and duration of term of office of..... 3052
Bonds approved by, where filed..... 1971
Capitol, assigns rooms in, to officers designated..... 1956
private secretary keeper of; duties; pay..... 1961–1963
Claims of state against any person or officer, power, with others to compromise 3753
Certificates of election, what, to be delivered to speaker of house by..... 1648
Commissioner of agriculture, must approve bond of..... 370
deeds in other states, may appoint..... 968
Commissions to officers, must sign..... 3059
Compromise, power, with others, to, claims of state against persons and officers 3753
must file statement of, with treasurer..... 3754
Copyright reports of supreme court decisions, statutes, etc., and this Code, must 1973
Counsel, may employ to aid solicitor in suits in equity..... 671
defend suit against person deriving title from state, etc. 1972
bring suit in foreign jurisdiction..... 3762
Counting votes sent to secretary of state, must be present at..... 1647
Death of, notice of, to whom sent..... 3145
Dueling oath, required to take..... 3062
Election of, provisions as to.....Const., Art. V., §§3, 4, p. 79; 1573–1575
returns of, to whom made..... 1648
result, by whom proclaimed..... 1651
Electors for president and vice-president, duty as to election for..... 1655, 1656

GOVERNOR—*Continued.* SECTION

Statutory provisions—*Continued.*

Embalmers, state board of, appoints members of..... 1704
fills vacancy in..... 1704
Examiner, and assistant examiners of public accounts, may appoint and remove 1876, 1878
power in reference to..... 1876–1879
Fiscal agent in New York, must approve selection of..... 2019
General assembly, must give notice to, of vacancies in office to be filled by.... 3152
Guarantee companies, may order examination into financial condition of..... 3108
Insane Hospital, nominates trustees of, to senate..... 2545
fills vacancies in board of trustees of, etc..... 2545
insane convict, may cause removal of, to..... 2564, 2567
Insurance commissioner, must approve vouchers of..... 2601
deputy, must fix salary of..... 2577
Messenger to executive office, may employ; compensation..... 1964
Mine-inspector; appointment and removal of, by..... 2899, 2902
Notaries public, may appoint.....Const., Art. VI., §26, p. 86; 3021, 3034
Oath of office, by whom and when administered...Const., Art. XV., §1, p. 103; 1953
where filed..... 3064
Patents for conveyance of lands belonging to state, must sign..... 2699
Pharmacists, board of; appoints one member each year..... 3248
President of board of trustees of Agricultural and Mechanical College—
Const., Art. XIII., §9, p. 98; 3686
University of Alabama.....Ib.; 3667
Private secretary, may employ; salary of..... 1958
keeper of capitol; duties of, pay..... 1961–1963
may discontinue services of..... 1960
Property of state, controls, unless otherwise provided; exceptions..... 1955
with approval of, city council of Montgomery may pass ordinances to protect..... 1969
Publication of laws in newspaper, must approve contract for..... 3401
Public money, etc., authority to cause suits to be instituted for recovery of... 3755
jurisdiction and proceedings in such suits..... 3756–3761
Public printing, must approve contract for..... 3392
Quarantine, duty and power as to..... 2395
approves site for plant of "Quarantine Board of Mobile Bay"..... 2411
Railroad commissioners, nominates to senate, and fills vacancy in office of.3481, 3483
Recording secretary, may employ; salary of..... 1959
discontinue services of..... 1960
Representatives in congress, election of; duty as to..... 1655, 1656
Resignation of; to whom sent..... 3147
Salary of..... 1954
Salt springs and salt lands, duty as to..... 2695–2697
Secretary of state, must approve bond of..... 1975
account of, for fuel, must approve..... 1992
must approve contracts by, under section 30, article four of constitution..... 1978
must be present at counting of vote sent to..... 1647
Servants for executive and judicial offices, must employ four..... 1966
Special elections, duty as to ordering..... 1600, 1601
Special chancellor or judge, must appoint, when..... 650, 928
Staff of; of whom consists..... 2853, 2854
appointed by, and commissioned as officers of the Alabama National Guard..... 2853
State board of health, duty as to annual report of..... 2426
State bonds, duty as to payment of interest on, in New York..... 2020
may direct insurance on money sent to New York to pay interest on..... 2021

GOVERNOR—*Continued.* SECTION

Statutory provisions—*Continued.*

State treasurer, must approve bond of 2013
has supervision of office of 2016
may require additional bond of 3110
State troops. See Alabama National Guard, *supra*
Suits against party deriving title from state, etc., may employ counsel to defend 1972
may order, brought in foreign jurisdiction and employ counsel therefor.. 3762
for recovery of public money, etc., authority to institute, etc 3755
jurisdiction and proceedings in 3756, 3761
written directions of, sufficient authority for bringing 12
Supreme court, must appoint special justices of, when 3837-3839
Swamp and overflowed lands, authorized to issue patents to purchasers of 2702
Tax-assessor, when may be suspended and tax-commissioner appointed by 3953
Tax-collector, when may be suspended and tax-commissioner appointed by 4040
Temporary loan, may negotiate, when 1957
United States, power to cede lands to 628, 629
Vacancies, must fill—
Alabama Institute for the Deaf, in board of trustees of 3700
Agricultural and Mechanical College, in board of trustees of 3691
circuit clerk, in office of ..... Const., Art. VI., §23, p. 86.
commissioner of agriculture, in office of 369
constable, in office of 972
county commissioner, in office of 952
county offices, in all, unless otherwise provided 3061
embalmers, in state board of 1704
Insane Hospital, in board of trustees of 2545
judge or chancellor, in office of ..... Const., Art. VI., §17, p. 85.
of probate, in office of 3355
justice of the peace, in office of 2659
railroad commissioners, in office of 3483
secretary of state, in office of, state treasurer, state auditor, attorney-general and superintendent of education ..... Const., Art. V., §23, p. 82.
superintendent of education, in office of 3549
University of Alabama, in board of trustees of 3675
Watchmen at capitol, must employ and prescribe duties of 1967
compensation of 1967
powers of sheriff to make arrests, etc.; duties of ..... Note, p. 608; 1968

GRACE, DAYS OF.

What paper entitled to 869-871

GRAIN.

Weight per bushel of certain kinds of 4240

GRANDCHILDREN.

Of deceased distributee; descent to 1454
When disposition under appointment or power to or among children may be exercised by 1058

GRAND JURY.

May be dispensed with in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy and other misdemeanors—
Const., Art. I., §9, p. 62.
Vested with inquisitorial powers in certain insurance matters; special charge 2612

GRANT.

When covenant of warranty implied from, when used in deed 1035

GRANTS. SECTION

All grants and commissions issued in name of state, under great seal, signed by governor and countersigned by secretary of state...Const., Art.V., §22, p. 82.
By state made by patent; how signed 2699

GUARANTEE AND INDEMNITY FUND.

Of insurance companies, what constitutes 2587, 2588

GUARANTEE COMPANIES.

Agent, foreign company to have, in state, upon whom process, etc., can be served 3094
if none, process may be served on auditor 3099
Annual license-tax to be paid to auditor by 3093, 3094
Application by domestic or foreign corporation to do business 3093, 3094
with whom filed; contents of 3093, 3094
certificate granted by auditor on, when 3093, 3094
Article applies only to official bonds and the like 3109
Auditor, application by domestic or foreign corporation to do business, filed with 3093, 3094
certificate to do business granted by, when 3093, 3094
good for one year 3095
revocation of, by, when; effect of 3098
notice; to whom and how given 3098
on, additional bond; duty of approving officers 3098
semi-annual statements to be filed; contents of 3093, 3094
annual license-tax to be paid to 3093, 3094
process may be served on, when no agent in state 3099
judgment on bond certified to, by whom 3102
sale of securities may be ordered by, when 3102
corporation to be notified of, and required to supply deficiency; failing to do so, authority canceled, etc. 3102
Bonds, what, may be executed by 3092
jurisdiction of suits on 3100
corporation estopped from denying power to execute 3101
judgments on, to be certified to auditor; by whom; sale of securities 3102
not invalid because corporation executing it was not authorized to do business in state 3105
Books, accounts, etc., of, may be examined by order of governor 3108
duty of corporation; penalty for withholding information 3108
Capital stock; amount required of domestic corporation; of what shall consist 3093
foreign corporation; of what shall consist.. 3094
Certificate to do business, when granted to domestic corporation 3093
foreign corporation 3094
good for one year 3095
revocation of, when; effect of; notice, to whom and how given 3098
on, additional bonds; duty of approving officers 3098
Clerk or register to certify copy of judgment on bond to auditor 3102
Corporation not to become sole surety on bond of state treasurer 3096
may become co-surety; property or credit of, how estimated 3096
be precluded by testator, etc., from becoming surety on bond of executor 3097
estopped from denying power to execute bond 3101
entitled to rights and remedies of other sureties 3103
Deposit with state treasurer, amount of, required of domestic corporation 3093
foreign corporation 3094
may wind up business and withdraw securities on 3104
when value of securities on, impaired, etc., must be made good 3106
faith and credit of state pledged to return securities deposited 3106

GUARANTEE COMPANIES—*Continued.* SECTION
Domestic corporation; application to do business; contents of; with whom filed 3093
capital stock required of; of what shall consist..... 3093
amount of securities required to be deposited by; character of..... 3093
semi-annual statement to be made by; contents..... 3093
annual license-tax required of; amount of..... 3093
Duty of approving officers on being notified of insolvency of corporation..... 3098
Examiner of public accounts may be required to examine financial condition of 3108
Faith and credit of state pledged to return securities deposited, etc..... 3106
Foreign corporation; application to do business; contents of; where filed..... 3094
capital stock required of; of what shall consist..... 3094
must designate a known place of business in state..... 3094
an authorized agent who must be a resident of said place..... 3094
amount of securities required to be deposited by; character of..... 3094
semi-annual statement to be made by; contents..... 3094
annual license-tax required of; amount of..... 3094
Governor may order examination into financial condition of..... 3108
Judgment on official bond, copy of, certified to auditor; when and by whom... 3102
Jurisdiction of suits on bonds..... 3100
Liabilities of, shall not exceed available assets, etc.; description of..... 3093
License-tax, annual, to be paid by; amount of..... 3093, 3094
Officers who are required to approve bonds, duty of, on being notified of insolvency of corporation..... 3098
Official bonds may be executed by..... 3092
Penalty for doing business without authority; however, bond not invalid..... 3105
withholding information on examination as to financial condition 3108
Prerequisites to granting authority to domestic or foreign corporations to do business..... 3093, 3094
Process may be served on auditor when no agent, etc., in state..... 3099
Sale of securities; when, how and by whom made..... 3102
proceeds of; how disposed of..... 3102
Securities, sale of; when, how and by whom made..... 3102
may be sold at private or public sale, with or without notice..... 3102
to be assigned to purchaser..... 3102
proceeds of sale; how and by whom disposed of..... 3102
deposited; when value of impaired by sale or depreciation the same must be made good..... 3106
faith and credit of state pledged to return, etc..... 3106
Semi-annual statements to be filed with auditor; contents of..... 3093
State treasurer, corporation not to become sole surety on bond of..... 3096
sale of securities by; how and when..... 3102
proceeds of; how disposed of..... 3102
faith and credit of, pledged to return securities deposited, etc..... 3106
Testator may, in his will, preclude corporation from becoming surety on bond of executor..... 3097
Venue of suits on bonds..... 3100

GUARDIAN AD LITEM.
Chancery, no notice necessary in, to obtain order for appointment of— Ch. R. 5, p. 1203.
when appointed in, for infant without service.....Ch. R. 20, p. 1205.
rule for appointment of, in.....Ch. R. 23, p. 1207.
service of notice on, in; when sufficient.....Ch. R. 118, p. 1228.
Judge of probate, authority of, to appoint; prohibited from appointing certain persons..... 3372

GUARDIAN AD LITEM—*Continued.* SECTION

May prosecute appeal from order or decree of probate court or judge without security for costs 469

GUARDIAN AND WARD.

Guardians of minors, appointment of.

By court of what county appointed, and when 2247
General guardian of county; term; when estates committed to 2253
If two or more applicants, who preferred 2252
In appointment father preferred; guardian's control over person of ward 2249
Judge of probate cannot act as guardian of minor in his county 2387
Letters to be signed by probate judge or clerk and dated 3375
May be appointed by last will of father, when 2250
Minor over fourteen may nominate 2248
Mother, right of, to custody of minor 2250
Non-resident minor, guardian of; when and by what court appointed 2251
Probate court, jurisdiction of, to grant and revoke letters of 3363
clerk of, may grant letters, when 3372
Sheriff may be appointed guardian; guardianship attaches to office 2254

Guardians of persons of unsound mind, appointment of.

Application for revocation of letters, to be accompanied by certificate of sanity 2262
day appointed for hearing; guardian cited 2263
contest of, how instituted; proceedings on 2264
decree on; costs thereof 2265
if no contest, and court satisfied of sanity, decree of revocation entered 2264
By court of what county appointed, and when 2255
General guardian of county appointed, when 2270
if none, sheriff appointed 2270
If there are two or more applicants, who preferred 2269
Inquisition, application and affidavit for; contents; day set for hearing 2257
jury, writ for, and of arrest 2258
to be impaneled and sworn; how vacancies filled 2259
on verdict of insanity by, papers recorded, and guardian appointed 2260
proceedings when person of unsound mind is confined in asylum 2261
Letters to be signed by probate judge or clerk, and dated 3375
Meaning of term "person of unsound mind" 2271
Non-resident, guardian of; when and by what court appointed 2267
application for appointment of; notice and proceedings 2268
Not to be appointed until after inquisition of lunacy 2256
"Person of unsound mind," meaning of term 2271
Probate court, jurisdiction of, to grant and revoke letters of 3363
clerk of, when may grant letters 3372
Revocation of letters granted on application of guardian 2266
Sheriff appointed if there be no general guardian 2270

Bonds of guardians; rights of sureties.

Approving, filing and record of 2284
Bond of; payee, penalty and conditions 2272
general guardian; payee, penalty and conditions 2276
testamentary guardian may be relieved from giving, but authority limited, etc 2274
when, may be required of 2275
Bond required of, before obtaining order to sell land 2273

GUARDIAN AND WARD—*Continued.* SECTION

Bonds of guardians; rights of sureties—*Continued.*

Informal or irregular; operates as a statutory bond, when..... 2281
Judge of probate liable for neglect or omission in taking..... 2283
New or additional, may be required of guardian; effect of failure to give..... 2278
when may be required by sureties..... 2279
personal representative, heir, etc. 2279
Sheriff as guardian, when, additional bond required of; effect of failure to give 2277
Surety, discharge of, when; new bond..... 2279
effect of new bond..... 2280
conditional execution or delivery of bond no defense to..... 2282
remedy by, against principal not applicable to bonds of guardians..... 3885

Duty and authority of guardians; lease and sale of property; maintenance; reinvestment.

Appeals for ward may be prosecuted by guardian..... 468
costs of, when paid by, may be reimbursed out of ward's estate..... 469
Arbitration, guardian may consent to, on settlement by personal representative 252
Correcting mistakes in description of lands sold by guardians; provisions for.. 2337
Compound interest, debtors to guardians must pay, after maturity..... 2287
Compromise of debts due ward, court may authorize, when..... 2301
proceedings to obtain order of..... 2302
order for; report of..... 2303
real estate may, under order of court, be taken in..... 2304
Decrees against guardians for money may be paid to probate judge..... 3369
Disabilities of non-age, right, etc., on application of minor to be relieved of..829–834
Entries in books of accounts of deceased guardian, evidence..... 1809
Errors in settlement by, in probate court, may be corrected in chancery..... 807
Estate of ward, when may be kept together, and farm cultivated; proceedings for..... 2297
powers of guardian in such case..... 2298
guardians to make annual settlements..... 2299
held in common or jointly, when may be kept together..... 2300
Forfeiture against probate judge for receiving unlawful fees, assets when recovered by..... 1368
Guardian may verify claim against county on belief..... 1418
Imperfect titles, application to perfect; notice served on guardian of minor... 1072
Improvements and repairs on lands, duty and authority as to..... 2296
Insane wife's dower, on application for sale of, notice served on guardian..... 1512
guardian appointed if there is none..... 1513
In suit by ward, guardian may be substituted for next friend, when..... 19
Inventories, must make out and return..... 2285
Jurisdiction of probate court as to real estate of ward..... 2288
Lease of lands, may be made for not exceeding one year, publicly or privately 2289
for longer term than one year, when; proceedings..... 2290
report of leasing; confirmation; proceedings on rejection.... 2291
Lease of mineral lands, under order of court, on application; proceedings.... 2292
rent or royalty..... 2293
report of leasing; proceedings thereon..... 2294
when lands held in common with adults..... 2295
Maintenance of family of person of unsound mind by guardian, etc..... 2313
contents of application for.. 2315
Maintenance and education of minors; when principal applied to, etc..... 2314
contents of application for..... 2315
hearing; guardian ad litem; evidence; order..... 2316
court may order sale of property for... 2319
application for order; contents..... 2320

GUARDIAN AND WARD—*Continued.* SECTION

Duty and authority of guardians; lease and sale of property; maintenance; reinvestment—*Continued.*

Management of ward's estate and loan of his money, duty of guardian as to... 2286
Marriage of minor ward, consent of guardian to... 2845
penalty for issuing license for without consent... 2848
May sue for use of ward... 20
Must list property of ward for taxation... 3942
Persons of unsound mind, guardian must defend for... 18
for what guardians of, liable to be sued... 21
Proceedings on settlement by personal representative when he is also guardian of distributee... 216
for sale of property in all cases, other than choses in action... 2323
day fixed for hearing; guardian ad litem; notice... 2323
testimony; how taken and preserved... 2324
hearing; order of sale; place and terms... 2325
notice of sale... 2326
hours of sale... 2327
guardian may reject inadequate bid... 2328
failure of purchaser to comply; resale; deficiency, etc... 2329
sale, report of... 2330
when set aside... 2331
vacated, resale to be made... 2332
not to be confirmed until ten days after report filed... 2333
confirmation of; what necessary to vest title... 2334
compelling report of, what provisions applicable... 2337
correcting mistakes in description of lands sold by, provisions applicable... 2337
report of payment of purchase-money; when made... 2335
may be compelled of guardian... 2335
conveyance; when, by whom and to whom made... 2336
Real estate, guardian may invest in; when not liable for depreciation in value 2305
title to, how made; management of; annual account for rents... 2306
guardian liable for failure or defect of... 2307
jurisdiction of probate court as to, of ward... 2288
Remedy by sureties against principal not applicable to bonds of guardians... 3885
Sale of choses in action of ward, court may authorize... 2308
proceedings to obtain order of... 2309
hearing; order of... 2310
debtor cannot purchase his own debt... 2311
title not to vest until sale reported and confirmed... 2312
property to pay debts, etc., of person of unsound mind... 2313, 2317
application for; contents of... 2318
Sale for maintenance and education of minor, when allowed... 2319
application for, contents of... 2320
reinvestment, when allowed... 2321
application for, contents of... 2322
Summons to answer bills in chancery, when, may be served on, for infant minor... Ch. R. 20, p. 1205.

Settlements of guardians.

Commissions on money, etc., paid or delivered to ward or successor... 2351
Compensation of guardian... 2350
Court appointing guardian has jurisdiction of settlements... 2338
Enforcement of decrees against guardians, or their representatives and sureties 2349
Final settlements; when to be made... 2344
on death of guardian, to be made by personal representative 2344

GUARDIAN AND WARD—*Continued.* SECTION

Settlements of guardians—*Continued.*

Final settlements; account and vouchers to be filed; guardian ad litem 2345
day appointed for, notice of 2346
auditing and stating account; contest; costs 2347
decree on; account and vouchers to be recorded 2348
partial settlements presumed correct on 2343
proceedings to compel; citation; notice to non-resident ... 2355
representative of deceased guardian required to make; citation 2356
guardian failing to obey citation, attachment may issue, etc. 2357
account may be stated by court 2358
notice of 2359
day set for passing on 2359
proceedings set aside on account, etc., being filed and costs paid 2360
on failure of guardian or representative to appear 2361
Partial settlements; when to be made 2339
notice of, how given 2340
auditing and stating account on 2341
decree on; account to be recorded 2342
when may be compelled on court's own motion; notice .. 2352
may be compelled on application of ward; notice; costs .. 2353
neglect of guardian to make, citation by court; costs 2354

Resignation and removal of guardians.

Removal, causes of 2363
application for, by next friend; notice 2364
hearing of 2365
costs, against whom taxed 2366
by court of its own motion, when 2367
Resignation filed; letters revoked 2362

Removal of person or property of ward.

Removal to another county, of ward and his property, under order of court 2368
mode of obtaining authority for 2369
order of 2370
letters granted in county to which removed 2371
final settlement of former guardian 2372
if, of property only, original jurisdiction retained 2373
Removal to another state of parent having custody of child, property removed 2374
mode of obtaining authority for removal, etc 2375
order of removal of property 2376
domestic guardian to make settlement 2377
Removal of property when guardian and ward non-residents 2378
ward and property to another state, when permitted 2379
guardian must make full settlement, etc., before 2379
notice and evidence in such proceeding; order of 2380
person delivering property under order, etc., protected 2381
Sale of property to effect removal 2382
application for, contents of 2383
proceedings on; appointment of commissioner to make sale, etc 2384
commissioner must pay proceeds of, into court 2385
if, vacated money returned to purchaser 2385

GUARDIAN AND WARD—*Continued.* SECTION

Removal of person or property of ward—*Continued.*

Sale, if, confirmed money paid to foreign guardian, etc.; commissions; costs.. 2385
duplicate receipts to be taken and copy transmitted, etc..... 2386

Judge of probate custodian of certain funds.

Judge custodian of funds not over one hundred dollars, if no guardian..... 2388
Maintains ward, etc.; commissions of..... 2389
Must not act as guardian of minor, etc., residing in his county, etc..... 2387
Settlements made by, with clerk of circuit court; fees..... 2390
balance on, recoverable by motion, etc..... 2391

GUNPOWDER.

Corporate authorities must provide magazine for..... 2971

HABEAS CORPUS.

Power of supreme court to issue writs of..... 3826
judge of probate to grant writs of..... 3372
Privilege of writ of, shall not be suspended.....Const., Art. I., §18, p. 64.

HARBORS.

United States may acquire material for improvement of.....19–21, 626–628

HEALTH AND QUARANTINE.

Annual appropriation to State Medical Association; itemized account to be rendered..... 2442
reports of county board of health; to whom made; contents..... 2430
Authority of judge of probate as to prevention of introduction, etc., of contagious diseases..... 2408
county commissioners, in respect to quarantine, etc..... 2407
Births, report of, by physicians, etc., to county health officer..... 2438
Board of revenue, etc., of county of Mobile, duty of, as to payment for quarantine plant, etc..... 2422
Bringing into, or removal of within county, persons laboring under infectious disease..... 2405
person having died of infectious disease..... 2406
Clerk of state board of health; by whom appointed; salary..... 2424
Contagious diseases, authority of judge of probate as to prevention of introduction, etc., of..... 2408
municipal and county authorities may establish hospitals for persons afflicted with..... 2392
County board of health, who constitute..... 2428
duties of..... 2429
duty to report annually to county commissioners and state board; contents..... 2430
county, city, or town may invest with certain powers; how powers exercised..... 2431
have exclusive appointment of officers or servants, but expenditures reserved to county or city authorities. 2432
no other local boards to be established..... 2433
County commissioners, authority of, in respect to quarantine, guards, etc..... 2407
Death, report of, by physician, etc., to county health officer..... 2441
Examination of master of vessel or person on board; when and by whom..... 2421
Expenses of "The Quarantine Board of Mobile Bay" over twenty-five thousand dollars, how and by whom paid..... 2422
city of Mobile to pay one-half..... 2422
county of Mobile one-half..... 2422
Fees for inspecting steamships and other vessels; payment of; lien on vessel.. 2416
quarantine, for maintenance and operation of plant..... 2417
paid into treasury as special fund, designated "the quarantine fund"..... 2418

HEALTH AND QUARANTINE—*Continued.* SECTION

Fund, quarantine; duty of board to audit monthly, etc. 2418
General quarantine; duty and power of governor as to. 2395
expenses of, appropriation for; how and by whom paid.. 2396
officers may administer oaths, etc., and make arrests.... 2397
Health officer of county, election of; by whom; term and removal of. 2434
bond of; salary, by whom fixed and how paid. 2435
duties of. 2436
assistants, appointment and duties of. 2437
report of births to; duty of physicians, etc., to make 2438
infectious diseases to. 2439
death to. 2441
must supervise certificates of death and notify coroner when inquest necessary. 2440
House, regulations as to foul or infected, vessel or lot. 2393, 2394
Infectious disease, bringing into, or removal of within county, persons laboring under... 2405
person having died of..... 2406
municipal and county authorities may establish hospitals for persons afflicted with. 2392
Inspection fees; inspection of vessels, etc.; payment of; lien on vessel. 2416
Master of vessel, examination of, under oath, or other person, etc.; when and by whom. 2421
rules for, and pilots of tugs. 2415
Mayor and general council of city of Mobile, duty of, as to payment for quarantine plant, etc. 2422
Medical Association of State, constituted state board of health. 2423
annual appropriation to. 2442
Midwife, duty of, to report births and deaths. 2438, 2441
Misdemeanor, removing vessel from quarantine without permission, guilty of 2420
person ordered to remain in quarantine escaping before discharged, a misdemeanor. 2420
Municipal and county authorities may establish hospitals for sick or infirm, or persons afflicted with infectious or contagious diseases. 2392
Nuisances to health, strangers with contagious diseases, regulations as to. 2393, 2394
Pilots, rules for, and masters of tugs. 2415
Physicians, duty of, to report births, deaths and infectious diseases. 2438–2441
"Quarantine Board of Mobile Bay," what officers, etc., constitute. 2409
organization of; headquarters of, etc. 2410
site for, plant; approval by governor; condemnation; appeal, etc. 2411
erection of, plant, funds for; who may give; authority for, etc... 2412
regulations for; authority of board. 2413
copies of, printed in English, Spanish, etc., furnished pilots, masters, etc. 2414
vessels to come to anchor, where; rules for master.. 2414
inspection fees of; payment; lien on. 2416
value of services and material to be paid by.. 2417
quarantine fee may be charged. 2417
and rules for masters and pilots and tugs. 2415
fund, what constitutes; auditing accounts, etc. 2418
Quarantine, grounds for; assent of county commissioners, when requisite.... 2398
when vessel may be removed to. 2401
city or town may prescribe regulations for vessels. 2399
to whom and what, regulations extend. 2400
arrest of person escaping from. 2402
travelers, when, may be compelled to perform. 2403
expense of, incurred on account of any person, goods, or vessel; by whom paid. 2404

HEALTH AND QUARANTINE—*Continued.* SECTION
Quarantine, authority of county commissioners in respect to 2407
removing vessel from, without permission, a misdemeanor 2420
persons ordered to remain in, escaping before discharged, a misdemeanor 2420
Regulations as to foul or infected vessel, house or lot 2393, 2394
authority of "Quarantine Board of Mobile Bay" as to 2413
Removing vessel from quarantine without permission; or person ordered to remain in quarantine escaping before being discharged, a misdemeanor 2420
Salaries and wages of officers and employes of "Quarantine Board of Mobile Bay" 2419
Site for quarantine plant; to be approved by governor; condemnation; appeal 2411
State health officer, duty of, in case of quarantine 2427
board of health, Medical Association of State constitutes 2423
clerk of; salary of and how paid 2424
duties of 2425
annual report to governor, contents of; publication of, etc 2426
Tugs, rules for masters and pilots of 2415
Vessels, authority of board as to regulations for quarantine of, persons, goods, etc 2413
to come to anchor, when and where; rules for masters; how printed, etc 2414
rules for masters and pilots of tugs 2415
inspection fees; payment; lien on 2416
value of services and material to be paid by; quarantine fee 2417
removing, from quarantine without permission, a misdemeanor 2420
master of, or person therein may be examined under oath, when and by whom 2421
regulations for quarantine of, may be prescribed by city or town 2399
extends to persons and goods arriving in, and going on board of 2400
health officer of town, city, or county may, etc., cause, to be removed to quarantine-ground, etc 2401

HEIRS.
Take as tenants in common 1461

HIGHWAYS.

Public roads.

Appeal by owner of land from judgment confirming assessment of damages 2450
Application, by petition, for new road, or change of road; notice of 2446
viewers appointed to mark out road and assess damages 2447
oath of; report of; notice 2448
hearing of objections to report and valuation 2449
accepting route; opening road, etc 2449
Apportioners appointed, who appoint overseers 2454
term of 2455
excuse or resignation of, what must show 2465, 2466
vacancy in office of, how filled 2456
fill vacancies in office of overseer 2457
oath of 2458
duties of 2468
service of notice to 2463
Copy of order appointing overseers and apportioners furnished sheriff 2460
statement to be attached to, for apportioners 2461
County commissioners vested with general superintendence of 2443
established, changed, etc., on application to 2445

HIGHWAYS—*Continued.*

SECTION

Public roads—*Continued.*

County commissioners to divide county into road precincts 2454
jurisdiction of over roads, bridges, etc 957
Defaulters, penalty against 2481
overseer may excuse 2482
list of, returned to justice; proceedings on 2482–2484
presumptive evidence of default 2483
proceedings and penalty for failure to prosecute 2485
no property exempt from execution on judgment for default 2486
Established, changed, or discontinued on application to county commissioners 2445
Excuse or resignation of apportioners and overseers, to whom sent 2465
what, must show 2466
how passed on 2467
Extent of liability of person or hand to work on 2453
Fences not to be joined to bridges without an order therefor 2471
Gates, county commissioners may authorize erection of 2491
Grades for 2444
Hands to be apportioned on nearest road 2469
apportionment of, valid until new one made 2472
liable to work when no apportionment made 2473
mode of warning 2478
persons giving warning to, exempt 2479
where to work if warned on two roads 2480
extent of liability to work on 2453
Insane Hospital, not to be established through grounds of; exception 2572
Judge of probate to furnish sheriff with copy of order appointing apportioners and overseers 2460
Jurisdiction of county commissioners over 957
Mile-posts and sign-boards, contracts for 2474
Navigable waters shall forever remain public highways. Const., Art. I., §25, p. 66.
streams may be divided into road precincts 2517
hands apportioned to work on as road duty 2518
New road, application to establish, to be by petition; notice of 2446
divided into precincts; appointment of overseer for 2459
who to aid in opening 2477
Notice to overseer and apportioners; when and how served 2463
valid from time of service 2464
Other public roads may be established; proceedings for 2492–2494
who to keep in repair 2495
Overseers of, appointed by apportioners 2454
age of; return of list of; commissions to issue, etc 2454
term of 2455
vacancies in office of; how filled 2457
new roads; term of 2459
duties of 2470
excuse or resignation of; what must show 2465, 2466
what order appointing, must show 2462
service of notice to 2463
Railroads, right of, to use, cross, or change 1164
Road-book to be kept by probate judge 2487
Road duty, who liable to do 2451
persons exempt from 2452, 2479, 2569, 2966, 3575
extent of liability to work 2453
Road precincts, county to be divided into, by county commissioners 2454
navigable streams may be divided into 2517
Telegraph-lines, right of way granted for, along 2490
Telegraph company, duty of, as to its lines along 2488

HIGHWAYS—*Continued.* SECTION

Public roads—*Continued.*

Telegraph company, fine of, for default; proceedings to recover 2488
notice in absence of officer or agent, etc 2489
when wires fallen across, a nuisance 2489
proceedings for abatement of such nuisance 2489
Timber, contracts for; value of; how assessed 2475
Tools, other than farming-tools, how obtained 2476

Private roads.

By whom opened and repaired 2496
Damages to be assessed and paid to owner of land, etc 2497
May be established by county commissioners 2496
Proceedings for establishing same as in case of public roads 2497
Where not to be located 2497

Bridges, causeways and ferries.

Actions on bonds; who may bring; recoveries on 2507
Bridges or causeways on line of two counties built at joint expense 2499
Compensation to owner of land 2504
County commissioners have authority to establish 2498
may levy special taxes to build bridges and causeways .. 2498
authority of, to license a person to establish 2500
bond required of licensee; conditions, etc 2500
also to regulate, fix, and alter toll 2501
court of, jurisdiction of, in relation to, declared 957
Damages for injury by defect in bridge or causeway built under contract 2512
recovery of against contractor 2512
when recovery of county 2512
Drawbridges on railroads over navigable rivers; regulation as to boats, etc .. 3445–3447
Fences not to be joined to bridges, etc., without authority, etc 2471
Ferry, license for; application and notice; established only on public road 2503
liability of owner of, for detention at 2508
keeper of bridge or causeway, for receiving excessive tolls .. 2509
any person may ford at, without being liable for toll 2511
Judge of probate may require additional bond of licensee 2502
Jurisdiction of court of county commissioners in relation to, declared 957
On line between counties; by whom established; bond 2505
Penalty for injuring gate to bridge or causeway 2510
obstructing, injuring, or destroying bridge or causeway 2510
avoiding payment of toll at 2510
any person may, however, ford at ferry without toll 2511
Riparian owners; when may charge toll for ferries 2514
Suit by county against contractor for failure to rebuild or repair bridge 2513
Timber for bridges and causeways; contracts for, etc 2475
Toll-bridge or ferry not to be established within two miles of another; exception 2506
Width of bridges and causeways on public roads 2444

Watercourses.

Damages for diverting waters of 2519
Jurisdiction of counties over 1400
Navigable streams are public highways ..... Const., Art. I., §25, p. 66; 2515
may be divided into road precincts 2517
hands apportioned to work on, as road duty 2518
Railroads, right of, to cross 1164
Removal of obstructions from, county commissioners authorized to contract for 2516
United States may acquire material for improvement of 626

HOLIDAYS.

SECTION

What are; rule as to commercial paper due on 872

HOMESTEAD.

Exempt from levy and sale under process; claim and contest.

Abandonment of, no, by leasing or temporary leaving of 2065
Alienation of; by married man, when invalid.....Const., Art. X., §2, p. 91; 2034
acknowledgment of, by wife, form of..... 2034
By what law right of, governed; remedy for asserting, etc..... 2068
Contest of, proceedings on, when it exceeds area or value allowed..... 2060
in such case when area of cannot be reduced..... 2061
disposition of purchase-money in lieu of homestead when defendant dies..... 2062
property not sold until, terminated; lien preserved..... 2067
revivor of, claim of, on death of husband; in whose name..... 2063
Declaration of claim of, how made, and where filed..... 2041
receipt for, record, and copy of..... 2042
effect of evidence and notice..... 2043
fees of judge of probate for filing, etc..... 2044
after filing, property embraced not subject to levy, unless waiver indorsed..... 2045
right of exemption not waived by failure to file 2047
if, not filed, no action lies against officers for levying on exempt property..... 2066
Claim of, revivor of contest of, on death of husband; in whose name..... 2063
when wife or minor child may interpose..... 2063
Disposition of purchase-money in lieu of homestead, when defendant dies..... 2062
Exempt from payment of debts, etc.....Const., Art. X., §§2, 3, pp. 91, 93; 2033
Extent of area and value of.....Ib.; 2033
Form of acknowledgment by wife of alienation of, by husband..... 2034
General assembly to prescribe by law rules and regulations to ascertain value of personal and real property exempted and to secure same to claimant as selected.....Const., Art. IV., §53, p. 78.
Husband, exempt from payment of debts of..... 2033
Leasing or temporary leaving of, not an abandonment of..... 2065
Liens, what, not affected by homestead exemptions—
Const., Art. X., §§2, 4, pp. 91, 93; 2035
May be sold on bill in equity, when..... 2064
Minor child, when, or wife may interpose claim of..... 2063
Proceedings on contest when homestead exceeds area or value allowed..... 2060
in such case when area of cannot be reduced..... 2061
disposition of purchase-money in lieu of homestead, when defendant dies..... 2062
property not sold until contest terminated; lien preserved..... 2067
Revivor of contest of claim of, on death of husband; in whose name..... 2063
Right of, not waived by failure to file declaration, etc..... 2047
Wife, when, or minor child may interpose claim of..... 2063

Exempt from administration and payment of debts.

Estate in declared.....Const., Art. X., §§3, 5, p. 93; 2069
Exempt in favor of wife and minor children..... 2069
Real estate, in lieu of homestead; when allowed and extent of..... 2070
when all, of decedent set apart as, title vests absolutely..... 2071
To minor child or children allowed from estate of deceased mother..... 2077
Use, etc., of property before exemption set apart; right to sue and defend.... 2076

HOMESTEAD—*Continued.* SECTION

Setting apart to widow and minor children.

Actual occupation of, by widow, etc., not essential to preservation of right.... 2101
Allotment of, before administration; inventory and appraisement..... 2097
if property does not exceed exemptions, same set apart..... 2098
exceptions to; when filed and heard.... 2099
if none filed absolute title vested in widow, etc... 2100
use, etc., of such property; right to sue and defend..... 2076
Appraisement of, report of; contents of..... 2080
Appraisers; appraisement of homestead by; report of, when and how made... 2080
proceedings on failure of, to appraise..... 2082
Commissioners to set apart homestead, appointment of..... 2081, 2097
qualifications and oath of..... 2102
compensation of..... 2103
Conveyance, costs and expenses, duty of personal representative as to, etc..2093, 2094
Cost and expenses of purchasing home for widow and minor children..... 2093
Exceptions to report of allotment of; who may file; when to be filed.....2084, 2090
appraisers as to homestead; when and by whom filed.... 2090
issue; how made up and tried..... 2085
proceedings when no exceptions filed..... 2091
may be filed to report of commissioners, how heard, etc... 2099
if none filed and sustained, absolute title vests in widow, etc..... 2100
may be filed to report of sale of homestead incapable of allotment; when and by whom..... 2095
hearing of; notice, etc..... 2095
Exemptions in lieu of; how claimed and set apart..... 2083
Incapable, when, of allotment, when widow and minors retain possession of... 2092
if sold, must be sold separately, etc..... 2092
on sale of, two thousand dollars set apart to purchase home for widow, etc..... 2093
duty of personal representative; expenses, conveyance, etc..... 2093
Proceedings to set apart, when it exceeds value or area allowed..... 2081
on failure of appraisers to appraise, etc..... 2082
Purchasers of, when widow and minors, credit of two thousand dollars allowed, etc.; conveyance..... 2094
Report of appraisers as to appraisement of, etc..... 2090
proceedings when no exceptions filed to..... 2091
Sale, on, of homestead incapable of allotment, two thousand dollars set apart to purchase home for widow, etc..... 2093
conveyance, etc., duty of personal representative as to 2093
costs and expenses of investigating title, etc.; how paid 2093
when widow and minors purchasers, credit of two thousand dollars allowed on bid.... 2094
conveyance to, etc. 2094
no bid above two thousand dollars, fact reported to court; order, etc..... 2095
exceptions as to fairness, etc., of sale may be filed; hearing of, etc..... 2095
if sustained, resale ordered; otherwise order setting apart..... 2096
Widow, when, and minors purchasers of, credit of two thousand dollars allowed on bid..... 2094

HOMESTEAD—*Continued.*

SECTION

Setting apart to widow and minor children—*Continued.*

Widow, when, and minors, two thousand dollars set apart to purchase a home for, when ... 2093
conveyance to, etc., duty of personal representative as to ... 2093, 2094
costs and expenses as to investigation of title and, to ... 2093
retain possession of homestead incapable of allotment ... 2092
when absolute title to, vests in ... 2100

Waiver of homestead.

Acknowledgment of, by wife ... 2106
Alleged and proved, how ... 2107
Attachment, waiver indorsed on; evidence produced or affidavit filed ... 2108
proceedings in, on claim of exemptions, when waiver not sustained 2109
Execution or other process, waiver and extent of must be indorsed on ... 2107
How made; when invalid if by married man ... Const., Art. X., §7, p. 94; 2106
waiver alleged and proved; declared in judgment or decree and indorsed on process ... 2107
Judgment or decree, waiver and extent of, must be declared in ... 2107

HOSPITALS.

Court of county commissioners may establish, etc., when ... 2407
Judge of probate may establish, etc., when ... 2408
Insane Hospital, *see* ... 2544–2574
Municipal and county authorities may establish, etc., when ... 2392

HOTELS AND INNS.

Keepers of, licensed ... 2538
liability of at common law ... 2539
may make special contracts with guests ... 2540
must keep safes for valuables; notice ... 2541
not liable for articles not deposited ... 2542
liable on non-compliance ... 2543

HOUSE OF REPRESENTATIVES.

General assembly, *see* ... 2213–2240

HUSBAND AND WIFE.

Actions by or against woman not abated by her marriage ... 37
Alienation of homestead by married man; what essential— Const., Art. X., §2, p. 91; 2034
Ante-nuptial contracts and torts of wife, liability for ... 2524
Appeal, when wife relieved from giving bond or security for costs for ... 446
By whom property of wife listed for taxation ... 3942
Claim of exemptions, when wife may interpose ... 2063
revived in her name ... 2063
Contracts by non-resident married woman, etc., force and validity of, etc ... 2532
Contracts between husband and wife; she cannot become his surety ... 2529
Custody of children on voluntary separation ... 2536
mode of proceeding relative to; orders pending suit ... 2537
Damages for injuries to person or reputation her separate estate ... 2523
Deposits in bank by wife; paid only upon her order, etc ... 1095
Dissent of widow from will of husband ... 4259–4262
Divorce and alimony ... 1485–1503
Earnings of wife her separate property ... 2521

HUSBAND AND WIFE—*Continued.* SECTION
Exemptions, right of widow to, and proceedings to set same apart..... 2069–2103
claim of, when wife may interpose..... 2063
revived in her name..... 2063
Homestead; right of wife, by bill in equity, to have sold in certain cases..... 2064
alienation of, by married man; what essential—
Const., Art. X., §2, p. 91; 2034
waiver of, by married man; how made.....Ib. §7, p. 94; 2106
woman; how made..... 2106
Husband's distributive share in wife's estate..... 2534
entitled to use of her realty after her death during his life..... 2534
Insurance on life of husband; to what extent exempt from his creditors..... 2535
Intemperate husband, wife may file bill in chancery to protect estate of..... 836
Lands of husband descend to wife, when..... 1453
when, descend to wife when devisee incapable of taking.... 4243
Letters testamentary, wife not entitled to, without consent of husband..... 49
by such consent husband becomes responsible with her 49
wife entitled to letters on removal of disabilities..... 50
Letters of administration, when wife entitled to, on husband's estate..... 56
granted to husband in her right..... 59
Marriage, see that title..... 2837–2851
settlements; when to be recorded; effect of failure..... 1011
revokes will of wife previously made..... 4250
when will of husband revoked by, and issue..... 4249
of woman under twenty-one and over eighteen years of age relieves of disability of minority..... 2531
Married woman arriving at the age of eighteen years relieved of disability of minority..... 2531
contract by non-resident, etc.; force and validity of..... 2532
Personal estate of deceased husband, wife's share in..... 1462
Post-nuptial contracts and torts of wife, liability for..... 2525
Separate property of wife defined, not liable for debts of husband—
Const., Art. X., §6, p. 93; 2520
earnings of wife her; not entitled to compensation, etc..... 2521
damages for injuries to person or reputation her..... 2523
wearing apparel of wife her..... 2522
Separate estate of wife; effect of, on dower..... 1506, 1507
wife may, by will, dispose of.....Const., Art. X., §6, p. 93; 2533
Suit by woman in equity, not abated by marriage.....Ch. R. 102, p. 1224.
how husband made party on marriage pending; proceedings—
Ch. R. 103, p. 1224.
What property of wife subject to provisions of chapter..... 2530
Wife may sue or defend for husband, when..... 16
dower, right of, to..... 1504–1508
relinquishment of inchoate right of; what essential to..... 1509–1513
how, sues and must be sued at law or in equity..... 2527
may file bill in chancery to protect estate of intemperate husband..... 836
not entitled to compensation for services to husband or family..... 2521
power of, to contract..... 2526
alienate or mortgage her real and personal property..... 2528
right of, to recover money or property lost at gambling..... 2164
when, joining in husband's conveyance, not bound by warranty..... 1514
Will of husband; when revoked by marriage and issue..... 4249
dissent of wife from..... 4259–4262

IDIOTS.
Disqualified from voting or holding office....Const., Art. VIII., §3, p. 88; 1556, 3056
Included in term "insane"..... 1

IDIOTS—*Continued.* SECTION

Included in term "person of unsound mind" 2271
Guardian and ward, *see* 2255–2271

ILLUMINATING-OIL.

License required for engaging in sole or principal business of selling..Subd. 56, 4122

IMMIGRATION.

Commissioner of agriculture shall aid, by publishing information as to the agricultural, mineral and other industrial resources of state, etc....Subd. 14, 376
Shall be encouraged ..... Const., Art. I., §31, p. 67.

IMPEACHMENT.

Constitutional provisions relating to ....Const., Art. VII., pp. 87, 88.
Of railroad commissioners; before what court, and grounds of 3485

IMPERFECT TITLES.

Provisions for perfecting, on contract by decedent, in probate court 1069–1072
removing cloud on title, etc., proceedings 809–813

IMPOST.

Prohibited unless expressly authorized ..... Const., Art. I., §25, p. 66.

IMPRISONMENT.

By sentence of court martial, when 2886
Contempts, power of courts generally to sentence to, for 2638–2640
chancery court 641
circuit court 918
court of county commissioners 958
justice of the peace 2663
probate court 3364
registers in chancery 668
supreme court 3826
Form of complaint in actions for false imprisonment ..... No. 19, p. 946; 3352
In penitentiary; when ground for divorce 1485
Limitation of actions; effect on 2807
action for false imprisonment 2796
No person shall be imprisoned for debt ..... Const., Art. I., §21, p. 64.
Nor for offenses except in cases ascertained by law, and according to forms prescribed ..... Const., Art. I., §8, p. 62.
Of husband, effect of on powers of wife 16, 2063, 2528
Sentence to, in penitentiary, vacates office 3142

INCEST.

Incestuous marriages forbidden; what are 2837, 2838
when issue of, not illegitimate 2840

INCORPORATION.

Corporations, *see* 1085–1324
Municipal corporations, *see* 2937–2973

INDEMNITY FUND.

Of insurance companies; what constitutes 2587, 2588

INDEXES.

Acts and joint resolutions 3403
Circuit clerk must keep reverse indexes of records 934
Compensation out of county treasury for keeping, prohibited 1362
Probate judge must keep general, direct and reverse indexes of records 3365
Register in chancery must keep direct and reverse indexes of records 663

SECTION

INFANCY.
Form of plea of ..... No. 39, p. 950; 3353
See MINORS.

INFANTS.
Disabilities of non-age, may be relieved from, when 829
petition for removal of, where filed 830
notice of, given by register 831
contest of, evidence, how taken 832
decree on, and its effect 833, 834
copy of, filed with probate judge for record 835
Guardian ad litem for; appointment of ..... Ch. R. 23, p. 1207.
and ward, *see* 2247-2391
How served with summons in chancery ..... Ch. R. 20, p. 1205.
notice of application to prove will 4285
Property of, by whom listed for taxation 3942
Sue by next friend and defend by guardian ad litem 17
See also MINORS.

INFORMATION.
No person shall, for any indictable offense, be proceeded against criminally by; exceptions ..... Const., Art. I., §9, p. 62.

INFERIOR COURTS.
Judges of, shall be elected or appointed in such mode as the general assembly may prescribe ..... Const., Art VI., §13, p. 85.
May be established by general assembly ..... Const., Art. VI., §1, p. 82.

INJUNCTIONS.
Answer, on overruling exceptions to, for insufficiency, discretionary to dissolve, without motion or argument ..... Ch. R. 99, p. 1223.
Appeal from order on application to reinstate, etc ..... Ch. R. 101, p. 1224.
decree dissolving, bond for restoration on ..... Ch. R. 87, p. 1221.
orders sustaining or dissolving 428
Application for, if refused, to whom renewed; when refusal final 790
to justice of supreme court, when may be made 791
refusal to grant, to be indorsed on bill 792
erasure of such indorsement, misdemeanor .. 792
to reinstate; appeal therefrom ..... Ch. R. 101, p. 1224.
Bill, order for, made before filing, valid 798
Bond for, to stay proceedings after judgment in personal action 786
after recovery of lands 787
in other cases 788
effect of, on dissolution of injunction of a judgment; execution 794
restoration on appeal from decree dissolving ..... Ch. R. 87, p. 1221.
refunding, when required of defendant on interlocutory decree dissolving 796
execution for costs, when may be issued against obligors on 795
By whom granted 784, 921
Costs, execution for, when may be issued against obligors on injunction bond 795
Custody of children on voluntary separation, may issue pending application for 2537
Damages may be decreed for delay, on dissolution of 793
Dissolution of injunction of a judgment, effect of bond on; execution 794
on, damages may be decreed for delay 793
Dissolved, if defendant not brought in before second term .. Ch. R. 100, p. 1223.
only, on sworn answer ..... Ch. R. 32, p. 1209.
Domestic insurance company, when granted against 2580
Errors, injunction of judgment, a release of 785
Estate of intemperate persons, may issue to secure, pending suit 838

INJUNCTIONS—*Continued.* SECTION

Exceptions to answer for insufficiency, on overruling, discretionary to dissolve, without motion or argument.....Ch. R. 100, p. 1223.
Execution for costs, when may be issued against obligors on injunction bond.. 795
Fieri facias, lien of, destroyed by bond for injunction..... 1894
Hearing of motion to dissolve.....Ch. R. 97, p. 1223.
Insufficiency, on overruling exceptions to answer for, discretionary to dissolve, without motion or argument.....Ch. R. 99, p. 1223.
Insurance company, domestic, when granted against..... 2580
Intemperate persons, may issue to secure estates of, pending suit..... 838
Judgment, of, a release of errors..... 785
sufficiency of prayer in bill for injunction of.....Ch. R. 17, p. 1205.
bond on injunction of, in personal action..... 786
action for recovery of lands..... 787
Lands, bond for injunction of judgment in action for recovery of..... 787
Lien of fieri facias destroyed by bond for injunction..... 1894
Limitation of actions, time of injunction not computed in..... 2820
Motion to dissolve or discharge in vacation for want of equity, or denials in answer..... 797
hearing of; time of; notice, etc.....Ch. R. 97, p. 1223.
Notice of, of suits or judgments may be served on attorney..... 789
Of judgment a release of errors..... 785
Order for, made before bill filed, valid..... 798
Prayer, sufficiency of, in bill for.....Ch. R. 17, p. 1205.
Refunding bond, when required of defendant on interlocutory decree dissolving injunction..... 796
Register has no authority to grant or dissolve..... 659
Separation, on voluntary, injunction may issue pending application for custody of children..... 2537
Sufficiency of prayer in bill for.....Ch. R. 17, p. 1205.
Summary remedy for failure to pay over money on execution enjoined..... 3778

INNKEEPERS.

Liability of, at common law..... 2539
License; must obtain from judge of probate..... 2538
May make special contracts with guests..... 2540
Must keep safe for valuables; notice..... 2541
liable on non-compliance..... 2543
Not liable for articles not deposited..... 2542

INQUESTS.

Duty of coroner to hold..... 1076

INQUISITION OF LUNACY.

Guardian not appointed until after inquisition..... 2256
Pay of jurors and witnesses on..... 1385
Proceedings on..... 2255–2271

INSANE.

Actions, time allowed, for commencement of..... 2807
Appeal for, by whom, may be prosecuted..... 468
Bills of review, time allowed, for applying for leave to file..... 761
Bond required of captain of vessel bringing pauper insane to state; penalty... 3238
By whom appeal for, may be prosecuted..... 468
Captain of vessel bringing pauper insane to state, must give bond; penalty for breach; penalty for failure to give bond..... 3238
Chancery, time allowed, to contest will in..... 4299
how may sue in..... 672
when decrees against, in, without personal service, become binding 757

INSANE—*Continued.* SECTION
Claims, time allowed for presentation of, against estates of decedents..... 131
filing against insolvent estates..... 307
Decrees against, in chancery, without personal service, when become binding 757
Disqualified from voting or holding office....Const., Art. VIII., §3, p. 88; 1556, 3056
Dissent by insane widow from deceased husband's will..... 4262
Dower, relinquishment of, by insane wife.....1511–1514
Errors, time allowed for correction of, on settlements in probate court, on bill in equity..... 806
Estate of decedents, time allowed for presentation of claims against..... 131
Exempt from taxation, property of, of value of one thousand dollars..... 3907
Guardian appointed pending suit may be substituted for next friend, in suit by 19
may sue for use of..... 20
of, when subject to suit for contract or tort of..... 21
Ineligible to public office.....Const., Art. VIII., §3, p. 88; 3056
"Insane," the term, includes all persons of unsound mind..... 1
Insane wife, relinquishment of dower by.....1511–1514
widow, dissent by, from will of deceased husband..... 4262
paupers; how supported..... 3237
Insolvent estates, time allowed for filing claims against..... 307
In suit by, guardian appointed pending suit may be substituted for next friend 19
to enforce mechanics' liens; how service may be had on..... 2737
Liquors, sale or exchange of, to; when void..... 3524
Mechanics' liens, in suits to enforce; how service may be had on..... 2737
Paupers; how supported..... 3237
Penalty against captain of vessel bringing pauper insane to state, for failure to give bond, etc..... 3238
for breach of bond, etc..... 3238
Property of; by whom listed for taxation..... 3942
to what extent exempt from taxation..... 3907
Relinquishment of dower by insane wife.....1511–1514
Sale or exchange of liquor to; when void..... 3524
Settlements in probate court, time allowed for correction of errors on, by bill in equity..... 806
Suits by and against; by whom brought and defended..... 18
in, guardian appointed pending suit may be substituted for next friend 19
Taxation, to what extent property of, exempt from..... 3907
property of, by whom listed for..... 3942
Time allowed for presentation of claims against estates of decedents..... 131
filing claims against insolvent estates..... 307
applying for leave to file bills of review..... 761
correction of errors on settlements in probate court by bill in equity..... 806
commencement of actions..... 2807
contesting will in chancery..... 4299
Widow, insane, dissent by, from will of deceased husband..... 4262
Wife, insane, relinquishment of dower by.....1511–1514
Will of deceased husband, dissent by insane widow from..... 4262

INSANE HOSPITAL.
Admission of patients; qualifications for..... 2549
order of..... 2550
preliminary steps..... 2551
judge of probate, duty of; application..... 2551
reply of superintendent to..... 2552
certificate of; removal of patient; expenses of indigent patient..... 2553

INSANE HOSPITAL—*Continued.* SECTION

Admission of patients; judge of probate, to ascertain financial condition of patient; expenses of indigent or paying patient; certificate 2554
form of certificate to be made by 2555
bond of paying patient to be taken by; form of 2556
when obligors on, released. 2557
insane criminal must be prearranged with superintendent 2568
Appointment and removal of subordinate officers and employes; by whom 2548
Appropriation for; disposition of unexpended balance 2574
how and when drawn 2574
Assistant physicians, appointment and removal of, by superintendent 2548
exempt from military service, road and jury duty 2569
Attendants, appointment and removal of 2548
Board of trustees; nominated by governor and confirmed by senate 2545
term of office; compensation 2545
quorum, what constitutes 2545
president and secretary elected by 2545
vacancies in; how filled; term of appointee 2545
powers and duties of 2546
meetings of; when must be held 2546
must elect treasurer of hospital and fix his salary 2547
reports of; when and to whom made 2546
printing of; number of copies; how disposed of 2546
may grant certain rights and quitclaim lands to United States for certain purposes 2573
resident board of, who constitutes; duties of 2545
bond of treasurer must be approved by .. 2547
authority to discharge patients 2559
with superintendent to allow road through grounds 2572
Bond to be given by paying patient, form of 2556
obligors on, of paying patient; when released 2557
treasurer required to give; by whom approved 2547
Books and accounts of, subject to examination by examiner of public accounts 1876
Certificates, form of, required to be made by judge of probate under sections 2553 and 2554 2555
patient brought without; duty of probate judge of Tuscaloosa county 2562
Compensation for removal and guarding insane convict 2565
Convicts, insane, physician of state and county convicts reports certain classes of, to governor 2563
governor causes removal of, on report of physician 2564
compensation for removal of 2565
restored, returned to penitentiary or discharged, as governor may order 2566
at expiration of his term; how disposed of, etc 2567
Deposition of superintendent may be taken, when 2571
Discharge of patient by superintendent 2559
resident board of trustees 2559
Employes, appointment and removal of 2548
exempt from military service, road and jury duty 2569
Exemption of officers and employes from military service 2569
road duty 2569
jury duty 2569
Expenses of conveying indigent patient to; how and by whom paid 2553
indigent patient while at; by whom paid 2554

INSANE HOSPITAL—*Continued.* SECTION

Expenses of paying patients; when and by whom paid ... 2554
removal of patient restored to sanity; when and by whom paid ... 2561
insane convict paid by state ... 2564
compensation for removal and guarding 2565
Furloughs granted patients by superintendent; readmission, when ... 2560
Governor nominates trustees, etc.; fills vacancy in office of ... 2545
causes removal of insane convict to ... 2564
insane convict restored, returned to penitentiary or discharged, as may be ordered by ... 2566
to cause report of board of trustees to be published ... 2546
Grounds, police of; appointment of police by superintendent; powers and duties of ... 2570
Incorporation of; location; name and powers ... 2544
Indigent patients, expenses of conveying to; how and by whom paid ... 2553
while at; how and by whom paid ... 2554
removal of, restored to sanity ... 2561
Insane convicts; provisions for removal to hospital ... 2563–2567
restored, returned or discharged, as the governor may order 2566
at expiration of term; disposition of ... 2667
criminal, admission of, must be prearranged with superintendent ... 2568
Judge of probate, duty of, on application to place party in Hospital; preliminary steps ... 2551
certificate of; removal of patient, etc ... 2553
to ascertain financial condition of patient, etc.; certificate ... 2554
contracts with parties for payment of expenses of paying patient ... 2554
form of certificates to be made by ... 2555
when may relieve obligors on bond of paying patient ... 2557
of Tuscaloosa county, duty of, when patient brought without certificate ... 2562
Nurses, appointment and removal of ... 2548
Officers and employes exempt from military service ... 2569
road duty ... 2569
jury duty ... 2569
Patients, admission of; qualifications for admission ... 2549
order of; preference to what class ... 2550
preliminary steps; duty of probate judge; application 2551
reply of superintendent ... 2552
judge of probate, certificate of as to insanity; removal of ... 2553
must show whether indigent or paying ... 2554
to ascertain financial condition of ... 2554
if paying, contracts with parties for expenses of ... 2554
form of certificates to be made by ... 2555
bond required of paying; form of ... 2556
when obligors on, released by judge of probate ... 2557
may be required of patient admitted as indigent ... 2558
discharge of by superintendent; by resident board of trustees ... 2559
furlough of, by superintendent; readmission, when ... 2560
when brought without certificate, duty of judge of probate of Tuscaloosa county ... 2562
expense of conveying indigent, to; how and by whom paid ... 2553

INSANE HOSPITAL—*Continued.* SECTION

Patients, admission of; expenses of indigent, while at, how and by whom paid 2554
paying, when and by whom paid 2554
removal of, restored to sanity 2561
insane convict paid by state 2564
compensation for removal and guarding 2565
Paying patients, judge of probate contracts, etc., for payment of expenses of .. 2554
bond of; form of 2556
release of obligors on, when and by whom 2557
when may be required of patient admitted as indigent 2558
Physician of state and county convicts reports certain classes of insane convicts 2563
on report of, governor causes removal of insane convict to 2564
Resident board of trustees, who constitute; power and duties of 2545
bond of treasurer to be approved by 2547
authority of, to discharge patients 2559
public highways not permitted through grounds of, without consent of superintendent and 2572
Salary and wages of officers and employes fixed by superintendent and resident board 2548
of superintendent determined by board of trustees 2548
State and county convicts, physician of, reports certain classes of insane convicts to governor 2563
on report, governor causes removal of insane convict to 2564
insane convict restored, returned or discharged, as governor may order 2566
convict insane at expiration of his term, disposition of 2567
admission of insane criminal must be prearranged with superintendent 2568
Stewards, supervisors, nurses, attendants and other employes; appointment and removal of 2548
exempt from military service, road and jury duty ... 2560
Supervisors, appointment and removal of 2548
Superintendent of, qualifications of; elected by board; term; powers and duties of 2548
must not be removed except for incompetency or unfitness, etc 2548
salary of, fixed by board of trustees 2548
with concurrence of resident board, appoints assistant physicians, steward, supervisors, nurses, attendants and other employes, and may remove same 2548
duty to reply to judge of probate, when 2552
with concurrence of resident board, fixes salary and wages of officers and employes 2548
patients, discharge of, by 2559
furlough granted, by, when 2560
readmission of, how and when 2560
admission of insane criminal must be prearranged with ... 2568
exempt from military service, road and jury duty 2569
authority to employ persons to act as police officers of grounds, etc 2570
not compelled to attend as a witness in certain cases; deposition taken, when 2570

INSANE HOSPITAL—*Continued.* SECTION
Superintendent of, public highways not permitted through grounds without consent of, etc ... 2572
Treasurer of, elected by board of trustees; salary fixed by board ... 2547
bond of, must be appointed by resident board ... 2547
Trustees, nomination and confirmation of; by whom; term of ... 2545
compensation of ... 2545
vacancies in office of, how filled; term of appointee ... 2545
board of, must elect president and secretary ... 2545
powers and duties of; meetings, when and where held ... 2546
reports of, when and to whom made ... 2546
to be printed; disposition of ... 2546
to elect superintendent of ... 2548
treasurer of ... 2547
may give certain rights, and quitclaim lands to United States for certain purposes ... 2573
Vacancies in office of trustee; how filled; term of appointee ... 2545
Witness, superintendent not compelled to attend as, in certain cases; deposition may be taken ... 2571

INSOLVENT ESTATES.
Administration of estates, subtitle Insolvent estates, *see* ... 290–329

INSPECTOR.
Of brigade; of rifle practice; appointment; rank of; duties of ... 2856, 2857
Of regiment; of rifle practice; appointment; rank of ... 2858

INSPECTOR-GENERAL.
Appointment; rank of; duties of ... 2853, 2854
Of rifle practice, appointment; rank of; duties of ... 2853, 2854

INSPECTORS OF CONVICTS.
Books and accounts of, subject to be examined by examiner of public accounts 1876
Room in capitol to be assigned to president of ... 1956
When indictment against convict to be certified to president of ... 938

INSPECTORS OF ELECTION.
Appointed by judge of probate, clerk and sheriff, from opposing political parties; number ... 1588
Assistance by, to elector in preparation of ballot ... 1623
Ballot must not be rejected by, for technical error, etc ... 1638
Ballots and other poll-lists, how disposed of by ... 1640
Clerks selected by ... 1593
and markers appointed by, from lists furnished, etc ... 1595
Compensation of, preferred claim, how paid ... 1643
Counting votes by, on closing polls ... 1637
manner of ... 1638
Depositing ballot by elector, duty of ... 1625
Duty of, on receiving ballot ... 1626
Initials of one inspector must be written on stubs of ballots ... 1622
Markers and clerks appointed by, from lists furnished, etc ... 1595
Oath of inspectors, clerks and markers; by whom administered ... 1597
Opening polls, proclamation of, how made ... 1619
Person challenged must be informed by, of penalty for false swearing ... 1631
Poll-list; one copy delivered to returning-officer ... 1639
other copy and ballots, how disposed of ... 1640
Residence of clerks, inspectors and markers ... 1596
Returning-officer absent, appointed by ... 1592
Statement of votes and one poll-list sealed up and delivered to returning-officer 1639
Votes, when and how to be counted and result certified ... 1637–1640

INSPECTORS OF MINES. SECTION
Appointed by governor; terms; salaries ... 2899
Appropriation to defray expenses of ... 2904
Chief inspector to give written instructions as to working gaseous mines and examine machinery ... 2924
controversy between, and operator referred to judge of probate; appeal; penalty ... 2935
Controversies between operators and inspectors; how settled; discretion of inspectors ... 2934
Duties of ... 2901
Duty of when informed of insufficient ventilation of mine ... 2915
Governor may remove inspector for incompetency or malfeasance and appoint successor ... 2902
Must make biennial report to governor ... 2903
Qualifications of ... 2900
Shall have, at proper times, right of access to scales used at mines ... 2911

INSTITUTE FOR THE DEAF, DUMB AND BLIND.
Alabama Institute for the Deaf, *see* ... 3698–3726

INSTALLATION.
Of executive officers, when to take place ... 3052

INSURANCE.
Contract of, defined ... 2576
On life of husband; to what extent exempt from his creditors ... 2535
Premiums paid by common carriers reimbursed out of proceeds of sale of freight ... 4227
Proceeds of policy of life-insurance, exempt from creditors of assured or beneficiary, etc ... 2607

INSURANCE COMMISSIONER.
Secretary of state styled "Insurance Commissioner ex officio" ... 2577
may appoint deputy-commissioner; bond and salary ... 2577
duties of as commissioner ... 2577–2613

INSURANCE COMPANIES.
Advertisements, what to exhibit ... 2579, 2584
Affidavit, application of stockholders or person interested for examination of company, to ... 2578
required of foreign fire, fire and marine or marine company before entitled to certificate to do business ... 2615
Agent appointed for domestic company by court, when ... 2580
appointment of, by foreign company upon whom all legal process may be served ... 2584
must be commissioned and licensed and have certificate of commission; exception ... 2585
of foreign company defined; penalty for doing business without authority 2603
liable for loss by reason of any contract unlawfully made ... 2604
Annual statement by foreign company ... 2584
false, punishment for ... 2584
Appeal to sheriff from order of officers of fire and police department of city relative to removal of combustibles, etc ... 2610
Application of act ... 2586
Arbitration—
provision in policy, issued by company belonging to tariff association, to arbitrate loss not binding on assured ... 2619
Assets of foreign company, what constitutes ... 2588
Attorney-general, application to restrain domestic company, when ... 2580
Auditor—
before issuing certificate to foreign fire, fire marine, or marine company must require affidavit showing compliance with the law ... 2615

INSURANCE COMPANIES—*Continued.* SECTION

Auditor—*Continued.*
may examine into business of, when ... 2616
bond required of party filing complaint ... 2616
when auditor may revoke license of ... 2617
Bonds, deposit of, as protection to policy-holders, etc ... 2584
mortgage security in lieu of ... 2584
deposit of, by foreign company as guarantee fund, etc ... 2587
domestic life company must have invested, in, etc ... 2589
Books and papers, access to by commissioner or deputy ... 2578
examination of, relating to guarantee fund, etc ... 2588
Capital, domestic company, of, when impaired ... 2581
cash, of other than life companies ... 2584
of plate glass or live-stock companies ... 2584
domestic fire company, amount of paid-up, to do business ... 2590
mutual fire companies, when exempt, etc ... 2590
domestic companies, other than life or fire, organized in state since February 18, 1897, amount paid-up, required ... 2591
Certificate, examination of company before granting ... 2578
revocation of, when ... 2579
of commissioner of another state as to value of policies of foreign company; effect of, how accepted ... 2583
authority, of, agents must have ... 2585
foreign fire, fire and marine or marine companies before receiving, must file affidavit, etc ... 2615
Commissioner of insurance, duties and powers of ... 2577
may appoint deputy; bond and salary of ... 2577
has general supervision of ... 2578
examination before granting certificate to ... 2578
authority of foreign company revoked by, when ... 2579
application by, to restrain domestic company, when 2580
duty of, when capital of domestic company impaired ... 2581
life company impaired ... 2582
status of foreign life and domestic companies, method of ascertaining ... 2583
constituted attorney for foreign company upon whom all legal process may be served ... 2584
may examine trustee's books and papers as to guarantee and indemnity fund ... 2588
must keep records and make annual report to governor ... 2593
license, fees, charges, etc., duty as to ... 2601
may require sheriff to investigate cause of fire ... 2608
Contract of insurance, defined ... 2576
when not affected by misrepresentation in application or proof of loss ... 2597
to be in plain language free from ambiguity; penalty ... 2602
unlawfully made, agent liable for loss ... 2604
when regarded as made in this state ... 2606
with company belonging to tariff association construed. 2619
in case of loss under, additional amount recoverable ... 2619
not defeated by provision to arbitrate loss ... 2619
Court, discretion as to issuing injunction, etc ... 2580
may appoint agent or receiver, etc ... 2580
must charge grand jury specially ... 2612
judgment, decree order of, validity and effect of ... 2613

INSURANCE COMPANIES—*Continued.* SECTION

Definition of terms 2575
Deposit of securities, as protection to policy-holders 2584
by foreign company as to guarantee fee, etc 2587
with whom made 2599
exchange and withdrawal of 2599
Deputy commissioner of insurance, appointment; bond; salary and duties of 2577
removable at pleasure of insurance commissioner 2577
Dividends, by domestic companies to be made from surplus profit only 2600
discrimination as to, between policy-holders of same class prohibited 2602
Domestic companies, examination of, by commissioner or deputy, when 2578
before granting certificate to 2578
when restrained and receiver appointed 2580
proceedings when capital impaired twenty per cent 2581
life company, when capital impaired twenty per cent 2582
status of, method of ascertaining 2583
annual statement of, what must show 2584
same must be published by 2584
agent of, must have certificate of authority from commissioner 2585
life company, investment in bonds, securities, or mortgages, etc 2589
dividends declared by, out of surplus profits only 2600
Examination of affairs of 2578
Exempt, certain fire-insurance companies and secret benevolent societies, etc., from provision of act 2586
proceeds of life-policy, from creditors of assured or beneficiary 2607
Expenses, examination, of 2578
department, of 2601
fire investigation, of 2608, 2611
examination of foreign company by auditor, of 2616
payment of, may be enforced by suit, when 2618
Fees, expenses and compensation, examinations, of 2578
certificate to agent; seal of office; copies of papers, etc 2601
department, expenses of, how paid 2601
Filing certified copy of charter, etc 2584
Fire, fire marine and marine companies—
foreign must contract through local agents regularly commissioned, exception 2614
before entitled to certificate must file affidavit showing compliance with law 2615
auditor may investigate business of, when 2616
when company liable for cost of investigation 2616
failure to comply with law, by, forfeits right to do business 2617
payment of expenses of examination of, may be enforced by suit 2618
Fire-insurance patrol, how maintained 2623
organization and powers of 2622
premiums, fire, collected semi-annually, report of 2624
report, failure to make, penalty for; how suit brought .. 2625
Fire investigations, jury summoned for, by sheriff, when 2608
report by, made to sheriff 2608
sheriff must keep record, etc 2608
may swear witnesses, make arrests, etc 2609
fire and police department of city must assist sheriff 2610
chiefs and assistants of, power and duty 2610
expenses of investigation; how paid 2611
Foreign companies, examination of affairs of, by commissioner, when 2578

INSURANCE COMPANIES—*Continued.* SECTION

Foreign companies, commissioner, when must revoke authority of 2579
life company, status of, method of ascertaining 2583
certificate of commissioner of another state as to value of policies, effect of, how accepted 2583
what necessary before authorized to do business in this state 2584
agent of, must have certificate from commissioner 2585
deposit by, as guarantee fund, etc 2587
may appoint trustee to hold guarantee and indemnity fund 2588
report of premiums and statement of business 2584
same deposit, taxes, fines, license fees, etc., required of, as is required by states in which they are located of companies incorporated in Alabama 2595
policies issued by, not invalidated by war, etc 2598
acting without authority, penalty 2603
unlicensed in this state, party insuring with must report gross premium and pay tax on 2605
adjuster must report loss and pay tax on 2605
fire, fire marine and marine companies must contract through local agents regularly commissioned; exception 2614
before entitled to certificate must file affidavit showing compliance with law 2615
auditor may investigate business of 2616
where company liable for cost of 2616
failure to comply with law, by, forfeits right to do business 2617
payment of expenses of examination may be enforced by suit 2618
Foreign countries, companies of, deposit of guarantee fund, etc 2587
may appoint trustee of guarantee and indemnity fund 2588
war between United States and, does not invalidate policy 2598
Form, annual statement of 2584
Forms of complaints on life, fire and marine policies .....Nos. 12, 13, 14, p. 945; 3252
Governor, vouchers of insurance commissioner, approved by 2601
Gross premiums, report of, by foreign company 2584
party placing risk with foreign company not licensed in this state must report and pay tax on 2605
Guarantee and indemnity fund, what constitutes 2587, 2588
Injunction, domestic company, against 2580
Insurance commissioner. See Commissioner of insurance, *supra.*
Jail, when party imprisoned in 2603, 2605, 2613
Jury, to investigate cause of fire 2608
duty of; per diem and mileage, how paid 2608
grand, invested with inquisitorial power; must be specially charged 2612
must add penalty if they find insurer belonged to tariff association 2620
"Liability reserve" 2583
License, amount and time of paying 2601

Life-insurance companies—
domestic, capital of, when impaired twenty per cent. no new business until made good 2582
proceeds of policy in, exempt from creditors of assured or beneficiary 2607
Life-policies, when incontestible 2596, 2597
"Lloyd's" associations authorized 2592
Mortgage, security by, instead of bonds 2584
Notice, by commissioner of revocation of certificate to foreign company to do business 2579
must specify particulars, when 2579
Oath, application of party under, for examination of company 2578
annual statement of, under 2584

INSURANCE COMPANIES—*Continued.* SECTION

Oath, report of fire premiums under, etc. 2624
Penalties, commissioner, for obstructing. 2578
examination, for refusal to submit to. 2578
foreign company, default in report of condition. 2584
false annual or other statement. 2584
as to domestic companies same as provided by section 2584. 2594
for ambiguity in contract; allowing rebates; discrimination as to dividends between policy-holders of same class. 2602
against foreign company acting without authority. 2603
for failure to remove combustibles, etc., from building, when. 2610
solicitor of circuit must bring suit for. 2613
when collected, paid to insurance commissioner, less commissions. 2613
Policies on life, when incontestible. 2597
Premiums, rebates on, prohibited. 2602
Process, legal, service upon insurance commissioner as attorney for foreign company. 2584
such service valid and binding. 2613
Publication by company of annual statement. 2584
failure forfeits right to do business. 2584
of revocation of such right. 2579
Rebates not allowed; penalty. 2602
Receiver of domestic company appointed, when. 2580
Reciprocal legislation. 2595
Reinsurance, what charged as liability for, etc. 2583
Revocation of authority of foreign company, when. 2579
Seal of office, fee for, with certificate, etc. 2601
Secretary of state styled the "Insurance Commissioner ex officio". 2577
Securities, deposit of, as protection to policy-holders. 2584
by foreign company as guarantee fund, etc. 2587
with whom made. 2588
exchange and withdrawal of. 2599
company entitled to income on, etc. 2599
Solicitor of circuit must bring suit for penalties. 2613
collecting same must pay to insurance commissioner less commissions. 2613
Sheriff, fire investigation, when made by, jury summoned. 2608
must keep a record of fires, etc. 2608
may swear witnesses, take testimony, make arrests, etc. 2609
has power of justice of peace, etc. 2609
fire and police departments of city must assist. 2610
expenses of investigation; how paid. 2611
appeal to, from order relative to removal of combustibles, etc. 2610
Statements to be made by; contents of, etc. 2584
State treasurer to hold securities, etc.; exchange and withdrawal of same, when. 2599
Surplus profits, dividends out of, by domestic company. 2600
Tariff association, contracts with company belonging to, construed. 2619
loss in case of, additional amount recovered as penalty. 2619
provision in contract to arbitrate not binding. 2619
jury must add penalty if they find insurer belonged to. 2620
law shall be liberally construed. 2621
Tax, foreign companies, in case of. 2584
domestic companies. 2594
Verdict of jury in case against company belonging to tariff association. 2620
War, policies not invalidated by. 2598
Witnesses, failure of, to appear before commissioner, a misdemeanor, etc. 2578
may be summoned and sworn by sheriff, when. 2609

INSURANCE COMPANIES—*Continued.* SECTION
Witnesses, may be kept separate and apart, when 2609
Words and phrases, meaning of, as used in article 2575

INTEMPERATE PERSONS.
Bill in equity by relatives of, for preservation of estates of 836
allegations of; decree; appointment of trustee 837
Estate, security of, pending suit 838
restoration of 840
Jurisdiction of court; management and settlement of trust 841
Trustee, duty of 839
must make settlements as required of guardians 842
compensation of 843

INTEREST.
Accrues on breach of contract 2627
Banker discounting paper at greater than legal rate, forfeits 2631
Bonds of state, on; where and how paid 2019–2023
Calculated by clerk on judgment by default or nil dicit 3316
Compound interest, debtors to guardians pay, after maturity 2287
Contract for more than eight per cent. usurious and enforceable only for principal 2630
interest paid on, deducted from principal 2630
excess of principal and legal interest recoverable back 2630
Decrees for money bear, from date of rendition 2628
Guardians entitled to compound, after maturity 2287
Judgments for money bear, from date of rendition 2628
Paper issued, without authority, to circulate as money, bears fifty per cent 866
Partial payments first applied to accrued 2629
Personal representative, liability for 210
Rate of, on contracts, fixed at eight per cent. per annum 2626
change-bills and notes for one dollar or less 2632
loans by building and loan associations 1134
paper issued to circulate as money 866
protested bills of exchange 886, 889
summary judgments, *see* 3769–3819
surplus of sale of pledge or collateral 950
taxes after becoming delinquent 4008
other states, printed in pamphlet acts, evidence 1823
Taxes bear interest from time of becoming delinquent 4008
Usury recoverable back in twelve months after completed payment 2630

INTERPLEADER.
At law; in suit on contract for payment of money 2633
for recovery of chattels in specie 2634
affidavit when defendant a corporation; by whom made 2635
In chancery; rule as to taking testimony ..... Ch. R. 56, p. 1213.

INTERPRETERS.
May be sworn when necessary; paid as witnesses 1793

INVENTORY.
Executor or administrator must make and return, of decedent's personalty .. 115–120
removed for failure to make and return 92
how explained when read in evidence 351
Exemptions, on contest of claim of 2047, 2051
setting apart before administration 2097
Guardian must make and return, of ward's real and personal property 2285
removed for failure to make and return 2363
Trustee of express trust to make and file two copies with register 4156

ISSUE.

SECTION

Construction of, in conveyance, on remainder limited after death without..... 1023
Divorce for pregnancy bastardizes..... 1499
Of incestuous marriage, when not illegitimate..... 2840
When marriage of parents legitimates..... 364

ITINERANT VENDERS.

License required of.....Subd. 34, 4122

JACKS.

Lien in favor of owners of, for service; proceedings to enforce.....2776–2779
Running at large; when taken up and gelded.....1790, 1791

JAILS AND JAILERS.

Clerk of circuit court and probate judge must examine condition of jail each week, inspect books, etc.....1415; Subd. 18, 934; Subd. 15, 3365
Condition reported under oath to grand jury..... 1415
Coroner is keeper of jail when sheriff imprisoned..... 1077
Duty of county commissioners to erect jail; power to levy special tax for..... 1405
jailer as to sick persons confined in jail..... 3239
sheriff to supply with water, water-closets, and to keep heated..... 1414
How jail must be constructed and arranged..... 1407
Judge of probate and clerk of circuit court to examine condition of jail once a week and report under oath to grand jury.....1415; Subd. 15, 3365
Special appropriation for heating jail; proceedings.....1411–1413
tax for building or repairing jail.....1408–1410

JENNY-LIND TABLE.

License for, required.....Subd. 13, 4122

JEOPARDY.

No person shall, for the same offense, be twice put in jeopardy of life or limb— Const., Art. I., §10, p. 63.

JOINDER OF ACTIONS.

All actions ex contractu may be joined..... 3292
Blacksmiths and wood-workmen having liens on same property..... 2755
Rent and advances recoverable in same action..... 2707
Trespass, trover and case may be joined 3293

JOINT PROMISES.

Death of one of several joint defendants does not abate action; revivor..... 43
Discontinuance as to parties not served, or alias issued, when..... 42
Equity, suit in, may be prosecuted against one or more..... 670
In writing, how construed; suits on..... 39
Plaintiff suing several may recover against one; costs..... 44
Partnership, suit against, by firm name or against individuals..... 40

JOINT TENANCY.

Minors, estates held jointly by, when kept together..... 2300
in common with adults, when leased..... 2295
Partition of property held jointly, by proceedings in chancery or probate court.....3161–3187
crops held jointly, in probate court.....3188–3206
Sale of such property for partitions, in chancery or probate court.....3161–3187
Survivorship among joint tenants abolished..... 1033

JUDGE-ADVOCATE.

Of brigade, appointment; rank of; duties of.....2856, 2857
courts martial; how appointed; duties of..... 2886

JUDGE-ADVOCATE GENERAL. SECTION
Appointment, qualifications of; rank of; duties of 2853, 2854

JUDGES.
Incompetent to try causes, when 2637
Of court of record shall not practice law ..... Const., Art. VI., §20, p. 86.
Special chancellor appointed, when ..... Const., Art. VI., §18, p. 85; 649–652
circuit judge appointed, when ..... Ib.; 928–930
city-court judge appointed, when ..... Ib.; 945
judge of probate appointed when 3381, 3382
supreme-court judge appointed, when 3837–3839
Vacate office by accepting another 3141

JUDGE OF CIRCUIT COURT. See CIRCUIT JUDGE.

JUDGE OF CITY COURT.
Election of, time and term 1578
Jurisdiction and powers of 944
Marriages, may solemnize 2841
Prohibited from practicing law ..... Const., Art. VI., §20, p. 86.
Special, appointed by governor, when; compensation 945

JUDGE OF COUNTY COURT.
Bond of, by whom approved 3079
when may be declared insufficient and new bond required 3119–3123
additional bond may be required; proceedings 3111–3118
Discharge of sureties on bond and new bond required 3124–3132

JUDGE OF PROBATE.
Additional bond; when may be required of; proceedings 3111–3118
Analysis of stomach of dead body when poison suspected, duty of; as to 3368
Appeal bond, liability for taking insufficient surety on 447
liability for delay in furnishing, etc., transcript on 453
may issue execution for costs on 456
Attachments, authority of, to issue 526
Authority of, generally 3372
to take acknowledgment and probate of conveyances 993
solemnize rites of matrimony 2841
issue attachments 526
Beginning and duration of term of office 3054
Bond of; penalty; by whom approved 3079, 3357
where filed and recorded 3358
suit on, who may bring 3359
to whom payable; conditions 3070
a lien upon property of principal 3078
within what time to be filed 3080
additional; when may be required; proceedings 3111–3118
when, may be declared insufficient and new bond required 3119–3123
right of sureties to be discharged from; new bond required 3124–3132
liability on; who may recover 76, 3359
Books of office free for examination of all persons, when 3367
Cannot act as guardian of minors or persons of unsound mind 2387
but may be custodian of funds of such persons, when 2388
Circuit clerk to give notice of death of, to governor 3146
Clerk, authority to employ ..... Subd. 6, 3372
bond of; by whom approved; when filed and recorded 3373
continues to perform duties of office pending vacancy; exceptions 3374
Commissioners' court, is principal judge of 951

JUDGE OF PROBATE—*Continued.*

SECTION

Commissions allowed on money paid to, by representatives and guardians on decrees 3370
for collecting and paying over money for revenue license 4132
Compensation under revenue law, forfeits half his, for neglect of duty thereunder 3801
must be allowed, for stationery, etc 3384
Conservator, is, of the peace 3360
Conveyances, is authorized to take acknowledgment and probate of 993
may demand fees in advance for recording 986
Corporations, duty as to filing and recording declaration, etc., of 1284
fees for filing and recording declaration, etc 1285
Costs, may issue execution for, on appeal 456
County treasurer, duty to approve, file and record bond of 1428
to appoint an expert accountant to examine books and vouchers of 1433
summons to, to be executed on 3280
Custodian, may be, of funds of minors or persons of unsound mind, when 2387
duties as, in reference thereto 2389, 2390
balance due on settlement in such case recoverable on motion 2391
Dead bodies, duty as to; analysis of stomach when poison suspected 3368
Death of, notice to be given by circuit clerk to governor 3146
Decrees against representatives and guardians for money may be paid to 3369
commissions allowed thereon 3370
Dueling oath, required to take 3062
Duties of, generally 3365
to subscribe for and file weekly newspapers, etc 3049, 3050
as to recopying books of office 3366
to keep records free to public examination, when 3367
Duty as to dead bodies; analysis of stomach when poison suspected 3368
to make out itemized account for services 1376
visit and examine county jail once a week 1415
approve, file and record bond of county treasurer 1428
appoint an expert accountant to examine books and vouchers of county treasurer 1433
as to sheriff's fees collected 3365
filing and recording declarations of corporations 1284, 1285
Election of; term of office ..... Const., Art. VI., §12, p. 85; 1573, 1574, 1578, 3354
how contested 1686-1703
Eligibility for office 3356
Execution, may issue, for costs on appeal 456
Expert accountant to be appointed by, to examine books and vouchers of county treasurer 1433
Fee bill, must keep, posted 1354
penalty for failure to post 1355
Fee-book, must keep, free to public inspection, showing all fees received, etc.. 1366
Fees allowed generally 1375
crops, in proceedings to partition 3203
decrees, for receiving money, against representatives and guardians 3370
dentists, for recording licenses of 1448
exemptions, for filing, recording, etc., declarations of 2044
incorporating companies, for services in 1285
licenses, for collecting and paying over money for 4132
for issuing 4125
matrimony, for celebrating rites of 2851
mechanics' liens, for filing and recording 2729
physicians, for recording certificate of 3264
penalty for receiving unlawful 1368

JUDGE OF PROBATE—*Continued.* SECTION

Fees, taxes, for services in proceedings to sell lands for 4071
Forfeits half his compensation under revenue law for neglect of duty thereunder 3801
Guardian, cannot act as, for minors or persons of unsound mind 2387
but may be custodian of funds of such person in stated case 2388
duties in reference thereto 2389, 2390
balance due on settlement recoverable on motion 2391
How place supplied when incompetent 3381, 3382
Impeachment, grounds of ..... Const., Art. VII., §2, p. 87.
Incompetent, when, how place supplied 3381, 3382
Indexes, not entitled to fee for keeping, of records 1362
Is principal judge of commissioners' court 951
Itemized account, duty to make out, for services 1376
Jail, duty of, to visit and examine, once a week 1415
Liability for taking insufficient surety on appeal bond 447
on bond for neglect or omission in taking bond, etc., who may sue on— 76, 3359
for delay in furnishing transcript on appeal, or for imperfection in record 453
License, revenue, commissions for collecting and paying over money collected for 4132
fee for issuing 4125
Marriage license, penalty against for improperly issuing 2848, 2849
Matrimony, authority to solemnize rites of ..... Subd. 6, 3372
May employ a clerk 986
demand fees, in advance, for recording conveyances 986
Minors or persons of unsound mind, cannot act as guardian for 2387
but may be custodian of funds of in stated case 2388
duties in reference thereto 2389, 2390
balance due on settlement recoverable on motion 2391
Must be allowed compensation for stationery, etc 3384
sign process, etc., issued from probate court 3375
Newspapers, weekly, etc., must subscribe for, and have bound, etc 3049, 3050
Notice of death of, to be given by circuit clerk to governor 3141
Oath of office ..... Const., Art. XV., p. 103.
where filed 3065
Official seal, must keep 3362
Office and office hours 3361
Penalty against, for improperly issuing marriage license 2848, 2849
for failure to post fee bill 1355
receiving unlawful fee 1368
Personal representatives and guardians, decrees against for money, may be paid to 3369
Persons of unsound mind or minors, cannot be guardian for 2387
Process, etc., issued from probate court must be signed by 3375
Prohibited from practicing law ..... Const., Art. VI., §20, p. 86.
Public revenue, summary judgment against for, collected 3800, 3803
Qualification 3356
Recopying, duty as to, books of office 3366
Recording conveyances, may demand fees in advance for 986
Records, not entitled to fee for keeping indexes of 1362
of office, must keep free to public examination, when 3367
Revenue law, forfeits half his compensation under, for neglect of duty thereunder 3801

JUDGE OF PROBATE—*Continued.* SECTION

Seal, official, must keep 3362
Sheriff, summary judgment against, in favor of 3783
duty as to fees of, collected ..... Subd. 5, 3365
Special judge, appointment of; when and by whom 3381, 3382
State, venue of suits by, against judge and sureties 4208
Stationery, etc., must be allowed compensation for 3384
Summary judgments against, in favor of sheriff 3783
for public revenue collected 3800, 3803
Summons to county to be executed on 3280
Sureties, right of, to be discharged from bond of; new bond required 3124-3132
Term of office of ..... Const., Art. VI., §15, p. 85; 1578, 3354
Transcript, liability of for delay in furnishing, on appeal, or imperfection in record 453
Unlawful fee, penalty for receiving 1368
Vacancies filled by appointment of governor; term of appointee—
Const., Art. VI., §17, p. 85; 3355
Venue of suits by state against, and sureties 4208

JUDGMENTS AND DECREES.

Administrator ad litem, in favor of; how enforced 353-356
Against decedent, how enforced against representative 349
insolvent estate certified to probate court 319
representative, not rendered until lapse of twelve months 331, 569
how enforced 345-347
revived against successor ..... Note, p. 190.
guardian, how enforced 2349
Amendments to, within three years; power of court to allow 3334
nunc pro tunc; notice; costs; exceptions; appeal 3337-3339
Apparent errors on the record corrected at any time after final judgment 919
Appeal to supreme court, judgment on 467, 474-480
no reversal for mere clerical errors, etc 3334
confession of judgment a release of errors 477
circuit court, from judgment before justices; proceedings 481-495
Arbitration, return and effect of award as judgment 255, 513, 521
Arrested, no judgment to be, for defect of form, etc 3334
Assignee of, may have execution on 1928
revive by scire facias 1929
Assignment of, by personal representative to distributee 238
Attachment suit, when judgment may be rendered in 567, 569
Bond for injunction of judgment; effect on, of dissolution 794
Chancery decrees—
on pleas, demurrers and motions to dismiss in vacation .. Ch. R. 74, p. 1218.
enrollment of, under this rule ..... Ib.
in vacation; proceedings and process on ..... Ch. R. 79, p. 1219.
when difficult, may be rendered in vacation 845
must be in writing 845
in term time; entry of on minutes ..... Ch. R. 81, p. 1220.
orders of reference, etc., may be opened or changed before final decree—
Ch. R. 83, p. 1220.
final decree, after term ended, only questioned by bill of review—
Ch. R. 84, p. 1220.
cannot be impeached by original bill except for fraud—
Ch. R. 84, p. 1220.
orders and decrees may be made at any time by consent 847
how consent made in vacation ..... Ch. R. 80, p. 1219.
lien and priority of 848
for conveyances and releases operate as such; executed by register or commissioner 849

JUDGMENTS AND DECREES—*Continued.* SECTION

Chancery decrees—*Continued.*
enforced by attachment or sequestration ... 852
when such attachment to issue; proceedings ... 855
if such attachment is not executed, sequestration follows ... 856
process for enforcement of ... 857
return-day of ... 858
execution, when may issue for enforcement of ... 859
crops on lands decreed to be sold, when and how tenant may retain possession of ... 850
for performance of act to prescribe time ... 853
sale of property under decree to be made by register ... 854
on partition; effect of ... 860
of sale in mortgage suits ... Ch. R. 108, p. 1226.
proceedings when subsequent incumbrances discovered before sale confirmed ... Ch. R. 109, p. 1226.
registration; lien; execution ... 1920–1923
Clerk of circuit court has authority to receive payment of judgment ... 933
Compound interest on, founded on contract with guardian ... 2287
Confession, judgment by, does not entitle plaintiff to redeem lands ... 3510
of judgment a general assignment ... 2158
release of errors ... 477
Creditors' bill for enforcement of judgments ... 814
discovery of collusive judgments ... 815
assets ... 819

Default, judgment by—
attachment suit; when may be entered ... 562
ejectment suit; plaintiff must prove possession in defendant to recover costs 1548
entered without jury when instrument sued on ascertains demand ... 3316
garnishee, when conditional judgment may be rendered against ... 2195
interest and damages computed by clerk, when ... 3316
in vacation, default entered and advantage claimed next term— C. C. R. 9, p. 1196.
party entering not bound to receive plea ... Ib. 10, p. 1196.
when set aside at next term on affidavit ... Ib. 11, p. 1197.
justice of the peace not to enter before noon of return-day ... 2677
mechanic's lien, in action to enforce; when may be taken ... 2740
Detinue, judgment in; how enforced ... 1476, 1482, 1483
before justice of the peace ... 2675
Distributed as personal property of estate of decedent ... 237, 238
Ejectment suit; proof of possession as to recovery of costs ... 1548
two judgments in, bar further suit on same title ... 1554
Errors, what cured by judgment ... 3332
apparent on whole record may be corrected ... 919
Executions, judgments enforced by; form; lien, levy, sale, etc ... 1880–1952
if issued within one year, others may issue for ten ... 1924
on registered judgments and decrees ... 1922
Foreign representative, in favor of; conditions precedent ... 359–363
Form, not quashed, arrested or reversed for want of ... 3330
Gaming, judgment for money lost at; when a bar to other suit for such money ... 2165-2168
Guardian, against; how enforced ... 2349
entitled to compound interest on, when ... 2287
Injunction of judgment a release of errors ... 785
bond, effect of dissolution ... 794
Interest, bear from date of rendition ... 2628
Justice's court—
by default or nil dicit not to be entered before noon of return-day ... 2677

JUDGMENTS AND DECREES—*Continued.* SECTION

Justice's court—*Continued.*
effect of judgment as bar ... 2678
evidence of judgment ... 2679
for recovery of chattels in specie ... 2675
forcible entry and unlawful detainer ... 2133, 2134
recoupment, for excess on plea of ... 2674
set-off, for excess on plea of ... 2674
appeals, from judgments, in such court; proceedings ... 481–495
Lien created by registration in office of judge of probate ... 1921
execution in hands of sheriff ... 1892
levy of execution from justice's court ... 1938
Limitation of actions on, of court of record ... 2794
justice's court ... 2796
after arrest or reversal of judgment ... 2806
scire facias to revive ... 1931
Mistake in name, sum, quantity or date cured by judgment ... 3332
Mechanic's lien suit; when judgment by default may be entered ... 2740
enforcement of judgment in ... 2741
Probate court, in—
against guardian; how enforced ... 2349
personal representative; how enforced ... 345–347
decedent, how enforced against personal representative ... 349
in favor of personal representative enforceable by successor ... 348
representative may purchase at sale for benefit of estate ... 350
in favor of administrator ad litem; how enforced ... 353–356
may be paid to judge; duty of judge to pay to party entitled ... 3369
minute entries, authority of judge of probate to complete ... 3372
Recoupment, on plea of, for excess ... 3734
in justice's court ... 2674
Redemption by and between judgment creditors ... 3510–3519
Registration of—
money judgments, etc., by courts of record, may be registered in office of judge of probate ... 1920
creates lien for ten years; all persons charged with notice ... 1921
execution on, may issue within ten years, when ... 1922
payment and satisfaction to be entered of record; penalty ... 1923
Revivor of—
if execution issued within one year, others may issue in ten years ... 1924
scire facias to revive, when execution did not issue in one year ... 1925
notice; how given ... 1925
in favor of decedent, execution may issue in favor of representative, when 1926
may be revived in favor of representative, when ... 1927
satisfaction presumed after ten years ... 1930
scire facias barred after twenty years ... 1931
against administrator in chief, revived against administrator de bonis non—
Note, p. 190.
Satisfaction; motion to enter; notice ... 3335
set aside entry of; notice ... 3336
costs in either case ... 3338
presumed after ten years ... 1930
of registered judgments and decrees to be entered; penalty ... 1923
Scire facias when execution did not issue in one year ... 1925
notice and proceedings ... 1925
personal representative may have ... 1927
assignee may have ... 1929
Set aside, judgment not to be, if complaint contain cause of action ... 3333
motion to; notice; costs ... 3336, 3338
Set-off, on plea of, for excess ... 3729
in justice's court ... 2674

JUDGMENTS AND DECREES—*Continued.* SECTION

Set off, when judgments may be, against each other 3730
Sheriff or other officer selling property under, must pay taxes 4117
Summary judgments, *see* 3763-3824
Supreme court, judgments on appeals to 467, 474-480
Sureties, judgments for, against principal and against each other 3380-3388
Surety, when not to confess judgment 3883
Taxes, sheriff or other officer selling property must pay 4117
Tort, when on judgment for, plaintiff taxed with costs 1326, 1327

JUDICIAL CIRCUITS.

Court to be held in each county in, at least twice in each year—
Const., Art. VI., §6, p. 84.
at court-house of each county, except when otherwise provided 898
One judge to be elected for each ..... Const., Art. VI., §4, p. 83; 1573, 1574, 1578
State to be divided into; divided into thirteen ..... Const., Art. VI., §4, p. 83; 897
Times and places of holding courts in—
first circuit 899
second circuit 900
third circuit 901
fourth circuit 902
fifth circuit 903
sixth circuit 904
seventh circuit 905
eighth circuit 906
ninth circuit 907
tenth circuit 908
eleventh circuit 909
twelfth circuit 910
thirteenth circuit, ... 911

JUDICIAL DEPARTMENT.

Attorneys 579-611
Chancery divisions, etc., chancellor and register 630-667
Commissioners' courts 951-967
Constables 971-980
Constitutional provisions pertaining to ..... Const., Art. VI., pp. 82-87.
Courts of probate 3354-3384
Judicial circuits, courts, judges and clerks 897-945
powers exclusively confided to ..... Const., Art. III., pp. 68, 69.
power; in whom vested; records; substitution 2636-2653
Justices of the peace 2658-2665
Notaries ex officio justices of the peace 3034-3039
Senate sitting as a court of impeachment ..... Const., Art. VI., §1, p. 82.
Sheriffs 3735-3748
Supreme court and its officers 3825-3874

JUDICIAL POWER.

In whom vested ..... Const., Art. VI., §1, p. 82; 2636

JURISDICTION.

Chancery courts, of ..... Const., Art. VI., §7, p. 84; 638
Circuit courts, of ..... Const., Art. VI., §5, p. 83; 918
City courts, of 944
Commissioners' courts, of 957
Counties, of, over navigable streams 1400
Governor to cede jurisdiction to United States, when 628, 629
duty of, and other officers to maintain jurisdiction of state 3750

JURISDICTION—*Continued.* SECTION
Justices of the peace, of....Const., Art. VI., §26, p. 86; 2662
Notaries ex officio justices of the peace, of.... 3088
Of state; extent of.... 3749
duty of governor and other officers to maintain.... 3750
Probate courts, of....Const., Art. VI., §9, p. 84; 3363
Supreme court, of....Const., Art. VI., §2, p. 83; 3826

JURORS AND JURIES.

General provisions; pay of jurors, etc.

Accepting substitute for juror, penalty for; proceedings to recover.... 3781
Actions by or against the state, or any county, city, or town, citizens competent in.... 2657
Ad quod damnum proceedings, pay of jurors in.... 1383
Alabama National Guard, members of, exempted from jury duty.... 2889
certificate, etc., proof of exemption in any court.... 2889
Challenges, each party entitled to four peremptory.... 2655
Chancery court, pay of jurors in.... 1381
Charge of court to jury....3326–3328
Charges given in writing must be, and documentary evidence may be, taken out by the jury....3328, 3329
Circuit court, pay of jurors in.... 1381
Citizens competent jurors in actions by or against the state, or any county, city or town.... 2657
City court, pay of jurors in.... 1381
Contempt, power of court to punish jurors for.... 2638
Court, charge of, to jury....3326–3328
trial by, without jury, when may be had; findings of in such case; reservation of exceptions; revision on appeal....3319–3321
power of, to punish juror for contempt.... 2638
grand juries to be specially charged by, as to certain insurance matters, etc.... 2612
Damages assessed by jury, on demurrer to evidence.... 3325
Defaulting jurors summoned on contest of will, proceedings against.... 4290
before justice of the peace.... 2690
Demurrer, on, to evidence, damages assessed by jury.... 3325
Documentary evidence may be, and charges given in writing must be taken out by jury....3328, 3329
Each party entitled to four peremptory challenges.... 2655
Evidence, on demurrer to, damages assessed by jury.... 3325
Exempted from jury duty; members of Alabama National Guard.... 2889
certificate, etc., proof of exemption in any court... 2889
township trustees.... 3575
officers and employes of Insane Hospital.... 2569
Fire, when summoned to investigate cause of, duty of; per diem and mileage; how paid.... 2608
Grand juries invested with inquisitorial power in certain insurance matters and must be specially charged, etc.... 2612
How drawn.... 2654
Insane Hospital, officers and employes of, exempted from jury duty.... 2569
In civil cases drawn, summoned, impaneled and sworn as in criminal cases.... 2654
Insurance matters, etc., grand jury invested with inquisitorial power as to, and must be specially charged, etc.... 2612
Judge of probate, power to impanel and swear jurors.... 3372
Justice of the peace, proceedings against defaulting witnesses summoned before 2690
pay of jurors before....1382, 2693
On demurrer to evidence, damages assessed by jury.... 3325

JURORS AND JURIES—*Continued.* SECTION

General provisions; pay of jurors, etc.—*Continued.*

Pay of jurors in circuit, city, or chancery court 1381
before justices of the peace 1382, 2693
in ad quod damnum proceedings 1383
for condemning lands for turnpike road 1384
on inquisition of lunacy 1385
in probate court 1386
when summoned to investigate cause of fire, etc 2608
Penalty for accepting substitute for juror; proceedings to recover 3781
Peremptory challenges, each party entitled to four 2655
Power of courts to punish jurors for contempt 2638
probate judge to impanel and swear jurors 3372
Probate court, pay of jurors in 1386
Right to demand struck jury; proceedings 2656
Struck jury, right to demand; proceedings 2656
Tariff association, jury must add penalty, etc., if they find insurer belonged to 2620
Township trustees exempted from jury duty 3575
Trial without jury; when may be had; findings of court in such case; reservation of exceptions; revision on appeal 3319–3321
Turnpike road, pay of jurors in proceedings for condemnation of lands for 1384
When summoned to investigate cause of fire, etc., duty of; per diem and mileage; how paid 2608
Wills, proceedings against defaulting jurors summoned on contest of 4290

Trial by jury.

Appeals, on, from judgments rendered by justices 490
proceedings for erection of dams for mills, etc 1748
assessment of damages for lands for public roads 2450
Application, on contest of, for revocation of guardianship of insane person 2264
for rehearing at law 3346
Attorneys, on proceedings to remove or suspend 605
Chancery, in contest of wills in 4300
of issues out of 824–828
Claim of exemption, on contest of, in probate court, or before justice 2053
on, to money garnished 2200
Contest, in, of wills in probate court 4289
chancery 4300
on, of report of insolvency 296
claim of exemption in probate court or before justice 2053
application for revocation of guardianship of insane person 2264
Crops, on proceedings to partition 3202
Damages, on appeal from assessment of, for lands for public roads 2450
Dams for mills, etc., in proceedings for erection of 1733
such case on appeal 1748
Defaulters, in summary proceedings against, of school fund 3808
Equity, in suit by state, for recovery of money wrongfully used, etc 3761
Exemption, on contest of claim of, in probate court, or before justice 2053
Garnished, on claim to money 2200
Guardianship, on contest of application for revocation of, of insane person 2264
In proceedings by United States to acquire lands for forts, etc 627
to remove or suspend attorneys 605
personal representative 97
for erection of dams for mills, etc 1733
to partition crops 3202
Inquisition, on, of lunacy 2258
Insane person, on contest of application for revocation of guardianship of 2264

JURORS AND JURIES—*Continued.* SECTION

Trial by jury—*Continued.*

Insolvency, on contest of report of 296
Issues, of, out of chancery 824–828
Judgment, on motion to enter satisfaction of, or to set same aside 3340
Justices of the peace, before 2687–2694
on appeal from judgments rendered by 490
contest of claim of exemption before 2053
Lunacy, on inquisition of 2258
Lands, on appeal from assessment of damages for, for public roads 2450
in proceedings by United States to acquire, for forts, etc 627
Mills, etc., in proceedings for erection of dams for 1733
Motion, on, to enter satisfaction of judgment, or to set same aside 3340
Money wrongfully used, etc., in suit by state, in equity, for 3761
Personal representative, in proceedings to remove 97
Probate court, in contests of wills in 4289
Public roads, on appeal from assessment of damages for lands for 2450
Rehearing, on application for 3346
Satisfaction, on motion to enter, of judgment or to set same aside 3340
School fund, in summary proceedings against, of 3808
State, in suit by, in equity, for recovery of moneys wrongfully used, etc 3761
Summary proceedings, in 3766
against defaulters of school fund 3808
Trial by jury, the right of, shall remain inviolate ..... Const., Art. I., §12, p. 63.
United States, in proceedings by, to acquire lands for forts, etc 627
Wills, in contest of, in probate court 4289
chancery 4300

JUSTICE.

Meaning of term, when applied to a magistrate 4
Shall be administered without sale, denial, or delay .. Const., Art. I., §14, p. 64

JUSTICE OF THE PEACE.

Acknowledgments and proofs of conveyances, may take 993, 2663
Additional bond, when may be required; proceedings 3112–3118
Alias execution, may issue within three years without revivor 1951
Appeal and certiorari—
appeal, right of, guaranteed ..... Const., Art. VI., §26, p. 86.
who entitled to 481, 2144
attachments, what defects cured by 489
bond for appeal or certiorari; payee and conditions 482
amount of, how fixed 483
defects in, may be cured 487
circuit court, to, or court of like jurisdiction, within what time taken 481
jurisdiction of, from judgments before 918
costs on appeal or certiorari; how taxed 492
damages assessed if, taken for delay 491
forcible entry and unlawful detainer, bond to prevent writ of restitution .. 2145
or unlawful detainer, judgment in; writ of restitution 2146
notice of, to be served on appellee 485
how served when appellee removed, absconds, or secretes himself 486
papers and statement to be returned to appellate court 484
procedendo when justice vacates office pending appeal 494
how judgment in such case established when docket has been lost 495
right of, without prepayment of costs, to be secured by law—
Const., Art. VI., §26, p. 86.

JUSTICE OF THE PEACE—*Continued.* SECTION

Appeal and certiorari—*Continued.*
sureties on appeal bond, judgment against, on affirmance of 493
when and how cases on appeal shall be tried 488
tried without a jury 490
within what time appeal taken 481
writs of certiorari on judgments before, authority of probate judge to issue 3372
Appoints constable, when 978, 2663

Attachments—
debts and demands and in what cases may issue returnable before .. 571, 524, 575
form of 573
garnishee, answer of, to be in writing, etc., evidence on appeal 2209
contest of, and collateral issues tried without jury, when 2210
when property in hands of, not sufficient; execution 578, 2211
garnishment, provisions applicable to issue and trial of 572, 2208
grounds of 571
judgment, execution for balance of, when 578, 2211
sale of property attached before, when 576
lands, notice of levy on; how given; papers returned to circuit court 574
sale of, when garnishee answers indebtedness for purchase-money; proceedings 2212
levy on real estate, notice of, how given 574
money in hands of sheriff and other executive officers of court not subject to 575
property, what, may be sold before judgment 576
replevied to be delivered, when; execution on forfeited bond ... 577
real estate, notice of levy on; papers returned to circuit court 574
sale of, when garnishee answers indebtedness for purchase-money; proceedings 2212
what cannot be attached 575
Authority, generally 2663
to administer oaths and take affidavits 2663
take and certify acknowledgments and proofs of conveyances .. 993, 2663
issue attachments returnable to circuit court 526
appoint constable, when 978, 2663
solemnize the rites of matrimony 2841
report to judge of probate indigent minors to be apprenticed 497
remand apprentice to custody of master or commit him to jail .. 503
Beginning and duration of term of office 3055
Bond of, penalty; by whom approved; when filed and recorded 2661
payee and condition 3070
within what time must be filed 3082
additional, when may be required, proceedings 3112–3118
right of sureties to be discharged; new bond; proceedings 3124–3132
Circuit-court rules, when applicable to justice's court 2673
Commission of, when to be issued 3058–3060
Completion of unfinished business on vacancy in office 2680
Constable, duty of, to attend court and execute process 976
Contempts, may punish for, to what extent ..... Subd. 2, 2663
Contest of election of; proceedings 1686–1703
claim of exemptions; trial before, on demand of jury 2053
Contracts, jurisdiction of actions on, to amount of one hundred dollars 2662
Conveyances, may take acknowledgments and proofs of 993, 2663
Costs, security for, required of non-residents 1352
Damages, has jurisdiction in actions of, to amount of one hundred dollars; exceptions 2662

JUSTICE OF THE PEACE—*Continued.* SECTION

Death of either party pending suit; revivor, continuance, etc. 2676
Default or nil dicit judgment not to be entered before noon of return-day 2677
Depositions of witnesses, when may be taken and how 2681
Detinue, has jurisdiction when value of property not over one hundred dollars 2662
judgment in, and execution thereon 2675
Docket of cases brought in his court, duty to keep 2664
Dueling oath, required to take 3062
Duties of, generally 2664
Duty to apprehend and bind over persons selling liquor unlawfully 3523
report to judge of probate indigent minors to be apprenticed 497
discharge duties of notary, when 3031
Ejectment, has no jurisdiction in actions of 2662
Elected, to be, not exceeding two justices for each precinct, by qualified electors Const., Art. VI., §26, p. 86.
Election of; two to be elected for each precinct; time and term 1576, 2658, 3055
how contested 1686-1703
Executions—
alias, may issue within three years without revivor, when 1951
forthcoming bond, defendant may give when personalty levied on 1941
defects in form of, or stay bond, do not affect 1944
when forfeited, execution issued on; no stay then allowed 1942
proceedings on, when execution issued from another county 1943
form of execution 1933
issue and return of 1932
levy on lands; when to be made; proceedings thereon 1947
notice of, how given 1948
lien on property levied on, from time of levy 1938
may be issued immediately after judgment, when 1934
officer holding may require indemnity, when 1940
order of payment when several against same defendant 1939
plaintiff, against, for costs, when may issue 1361
sale of personal property levied on; time and place of 1945
notice of 1946
land levied on, ordered by circuit court on motion, when 1949
papers to be recorded and writ for sale issued 1950
scire facias, when necessary to revival of judgment 1952
barred after lapse of five years 1952
to another county, how certified 1936
by whom executed 1937
Fees, what entitled to, generally 1379
for issuing order to fence-viewers 2120
in estray proceedings 1762
for solemnizing the rites of matrimony 2851
in garnishment cases for taxes 4016
Forcible entry and unlawful detainer—
action of, when barred 2136
appeal, who may take 2144
judgment on; writ of restitution issues, when 2146
when, does not suspend issue of writ of restitution 2145
complaints in, to be exhibited to, and tried before what officer 2131
form of, in unlawful detainer No. 27, p. 948; 3352
forcible entry and detainer No. 28, p. 948; 3352
damages for detainer after expiration of term of lease 2137
defendant, when, may remove cause from justice's to circuit court for trial of title 2147
fees of witnesses, sheriffs and constables 2143

JUSTICE OF THE PEACE—*Continued.* SECTION

Forcible entry and unlawful detainer—*Continued.*
forcible entry and unlawful detainer cognizable before justices of peace.2124, 2662
for trial of, court always open..... 2125
forcible entry and detainer defined..... 2126
if plaintiff succeeds, writ of restitution to issue; costs..... 2133
fails, judgment entered against him for costs; execution... 2134
issue in, and trial of such action..... 2132
notice, issue of, upon complaint filed; form of..... 2129
time and mode of serving; return by officer, or proved..... 2130
on redemption of lands sold, unlawful detainer lies to recover same, when. 3508
proceedings in, no bar to other remedies..... 2138
purchaser at tax sale may maintain unlawful detainer for lands purchased, when..... 4081
removal of cause by defendant from justice's to circuit court for trial of title, when..... 2147
petition for, contents of..... 2147
order on; bond; writ to justice, etc..... 2148
trial of title in circuit court, etc., judgment; execution against sureties, etc..... 2149
sheriff or constable, penalty against, for failing to execute process..... 2140
fees of..... 2143
title not in issue in actions of..... 2135
trial of, on removal of cause to circuit court, etc..... 2149
unlawful detainer defined..... 2127
what estate in lands included..... 2128
when action barred..... 2136
witnesses, subpœna for; by whom issued..... 2139
fees of..... 2143
witnesses, fine against defaulting.....2141, 2142
testimony of, may be taken by deposition..... 2139
writ of restitution, when not suspended by appeal unless, etc..... 2145
awarded on judgment on appeal, etc..... 2146
Form of acknowledgment to conveyance..... 996
separate acknowledgment to conveyance of homestead..... 2034
attachment..... 573
execution..... 1933
notice issued upon complaint in forcible entry or unlawful detainer.. 2129
summons in suit commenced..... 2667
Forthcoming bond; when forfeited execution on; no further stay.....1941, 1942
defects in form of, or stay bond, immaterial..... 1944
proceedings on, when execution issued from another county 1943

Garnishments—
answer of garnishee; evidence on appeal..... 2209
contest of garnishee's answer and collateral issues tried without a jury.... 2210
execution for balance of judgment unsatisfied..... 2211
lien in favor of plaintiff created by service of..... 548
money in hands of sheriff or other executive officer, or debt or demand in court of record not subject to..... 575
sale of land when garnishee answers indebtedness for purchase-money.... 2212
what provisions of this Code applicable to cases before justices..... 2208
Health laws, may issue warrant in enforcement of..... 2393
Impeachment, grounds of.....Const., Art. VII., §3, p. 88.
Ineligibility of certain persons..... 3056
Judgment, effect of as a bar..... 2678
evidence when certified by justice..... 2679
in detinue, and execution thereon..... 2675
forcible entry or unlawful detainer.....2133, 2134

JUSTICE OF THE PEACE—*Continued.* SECTION

Judgment, by default or nil dicit not to be entered before noon of return-day.. 2677
Judicial power, in part, vested in..... 2636
Jurisdiction; generally.....Const., Art. VI., §26, p. 86; 2662
to issue garnishments for collection of taxes; proceeding....4014-4016
in estray proceedings.....1761-1791
as to property taken up adrift.....3525-3538
assessment of damages done by trespassing cattle..... 2116
value of partition fences..... 2119
of action to recover penalty for detention at public ferry..... 2508
excessive toll..... 2509
evading toll-gate.....1226, 1227
for enforcement of mechanics' liens..... 2733
to recover penalty against defaulting road-hand...2481, 2482
motions to recover money due teachers of public schools..... 3809
actions to recover penalty against defaulting road-hand...2481, 2482
proceeding to recover penalty against overseer failing to report defaulting road-hands..... 2485
Lien of executions..... 1938
attachments and garnishments..... 548
Limitation of actions on judgments of.....Subd. 9, 2796
scire facias to revive judgment of..... 1952
Liquor, duty to apprehend and bind over persons selling illegally..... 3523
Money collected must be paid to person entitled, without delay..... 2664
summary judgment for, with penalty, after demand..... 3814
Nuisances to health, may issue warrant in abatement of..... 2393
Oath of office; where filed.....3062, 3063, 3066
Office, must keep in his precinct..... 2664
vacated on expiration of term and failure to elect..... 3143
Precinct—
must designate particular place in, and times for trial of civil causes..... 2666
suit to be in that of defendant's residence or where cause of action arose.. 2669
brought elsewhere, dismissed on motion..... 2669
when several defendants, suit may be in precinct of any one..... 2670
suit may be brought in adjoining precinct..... 2671
removal of justice from, vacates office..... 2665
Recoupment, judgment for excess on plea of..... 2674
Removal of justice from precinct vacates office..... 2665
Resignation to be transmitted to judge of probate, who notifies governor..... 3149
Right of surety to be discharged; new bond required; proceedings..... 3124-3132
Set-off, judgment for excess on plea of..... 2674
Suit to be brought in precinct of defendant's residence or where cause arose.. 2669
may be brought in precinct of any one of several defendants..... 2670
adjoining precinct, when..... 2671
brought in wrong precinct, dismissed on motion..... 2669
Summary judgments—
may be rendered by, for not exceeding one hundred dollars; notice..... 3812
against justice for acting after vacating office..... 3813
failing to pay over money collected 3814
constable for acting after vacating office..... 3815
or sheriff for failing to make money on execution..... 3816
for failing to pay over money collected..... 3817
for failing to execute summons..... 3818
for failing to levy attachment..... 3819

JUSTICE OF THE PEACE—*Continued.* SECTION

Summary judgments—*Continued.*
may be rendered by, against constable or sheriff for failing to make return, or for making false return 3820
in favor of constable or sheriff on bond of indemnity .. 3821
motions under sections 3814 and 3817; limitation six months 3823
venue of motion; judgment against sureties having notice 3822
when motion must be made in circuit court 3824
Summons; suit commenced by; form 2667
service of, must be three days before return-day 2668
to be executed by constable 976
may be executed by sheriff 3741
branch, may issue, when; how executed and returned 2672

Trial by jury—
appeal to jury within five days, any party may 2687
bond in double amount of judgment required 2687
justice issues subpœnas for witnesses 2687
how tried; before whom and its effect 2688
how jurors summoned 2691
penalty on juror failing to attend; how deficiency supplied. 2690
oath of jurors 2692
pay of jurors 2693
mode of drawing juries; box to be filled every two years 2689
to be had only at regular terms; exception 2694
trial of contest of claim of exemptions before, on demand of a jury 2053

Trial of right of property—
affidavit and bond necessary; possession delivered to complainant 4141
returned; issue made up; burden of proof 4142
assessment of value of property; damages for delay 4143
claim by mortgagee or lien-holder; what affidavit must show 4145
plaintiff may pay secured debt, etc. 4145
damages against levying officer released by claim 4151
forfeiture of claim bond and execution thereon 4144
levy on other property not prevented by claim 4150
proceedings when process levied from another county 4148
on forfeiture of bond in such case 4149
pay of jurors on 1382
Witnesses; issue and service of subpœnas for 2682
service of subpœna for, in another county 2683
penalty against defaulting 2684
attendance, compelled by attachment; civil liability 2685
fees of 2686
when and how depositions taken 2681
Venue of actions before 2669-2671

JUSTICES OF THE SUPREME COURT.
Beginning and duration of term of office 3054
Concurrence in opinion of three necessary to a decision; exception 3836
Conservators of the peace throughout the state ..... Const., Art. VI., §16, p. 85.
Dueling oath, required to take 3062
Each has authority to issue writs of certiorari, injunction and supersedeas 3827
Election of ..... Const., Art. VI., §12, p. 85; 1573, 1574, 1578
Oath of office ..... Const., Art. XV., p. 103.
Opinion of, not conclusive upon second appeal; qualification 3840
Powers of supreme court vested in five justices 3825
Provisions as to adjournment of court when justices absent 3835
Salary of 3841

JUSTICES OF THE SUPREME COURT—*Continued.* SECTION
Special justices appointed when three or more justices disqualified 3837
one justice disqualified and remaining four equally divided in opinion..... 3838
one justice disqualified, another absent indefinitely and remaining three divided in opinion 3839
Term of office of.....Const., Art. VI., §15, p. 85; 1578, 3054
Vacancies in office of; how filled; term of appointee—
Const., Art. VI., §§15, 17, p. 85.

KEEPER OF CAPITOL.
Private secretary of governor made; duties of; pay of.....1961–1963

KEEPING ESTATES TOGETHER.
See ADMINISTRATION OF ESTATES, subtitle Keeping estates together.....278–289

KINDRED.
Degree of, computed according to the rules of the civil law..... 1456

KNIGHTS OF PYTHIAS.
Exempt from provisions of insurance law..... 2586
Provisions as to mutual aid associations not applicable to..... 1120

LABORERS.
Damages recovered by, of master or employer, exempt from payment of debts, etc..... 1750
Debts due to, as such, preferred claims against estate of decedents..... 126
Employer's liability to, for personal injuries defined; remedy, etc.....1749–1751
Lien of agricultural laborers farming on shares..... 2712
and railroad laborers; enforcement of.....2762–2773
Personal representative of, may sue for injuries resulting in death..... 1751

LAGER-BEER.
License for dealing in, exclusively; price of.....Subd. 3, 4122

LANDLORD AND TENANT.
Action, in, of ejectment against tenant, landlord made party..... 1534
when, for use and occupation lies..... 2722
rent and advances recoverable in same or separate..... 2707
Advances, lien of landlord for rent of farm-land and, declared..... 2703
when rent and, mature in absence of express stipulation..... 2704
and rent recoverable in same or separate actions..... 2707
lien for, enforced by attachment; grounds of, etc.....2708–2715
Affidavit and bond required for attachment..... 2709
Assignee of lien of landlord for rents and advances, rights and remedies of.... 2706
Assignment of lien of landlord; rights and remedies of assignee..... 2706
Attachment, liens of landlord enforced by; grounds of.....2708, 2717
affidavit and bond required for.....2709, 2718
issue and trial of; on what property leviable..... 2710
when, may be levied on crop of subtenant; vacation of such levy 2713
subtenant may require, against tenant in chief; effect of failure to attach..... 2714
lien of landlord for rent of dwelling, etc., may be enforced by.... 2717
affidavit and bond required for..... 2718
on what property leviable; priority of lien..... 2719
by what law attachment proceedings governed..... 2720
lien and remedy vests in assignee..... 2721
Attornment of tenant not essential to validity of conveyance by landlord..... 1019
but no tenant who has paid his rent without notice is liable therefor..... 1019

LANDLORD AND TENANT—*Continued.* SECTION
Bond and affidavit required for attachment for rent and advances 2709
of dwelling, store-house, etc 2718
Contract, what a, of hire; lien of laborers, and proceedings for its enforcement 2712
Crop, protection of tenant having, planted on lands decreed to be sold in equity 850
lien of landlord continues and attaches to, of succeeding year 2705
when attachment may be levied on, of subtenant; vacation of such levy 2713
Damages for detention after expiration of term 2137
Detention of tenant after expiration of term, damages for 2137
Dwelling, storehouse, etc., lien of landlord for rent of, declared 2716
for rent of, enforced by attachment; grounds of attachment 2717
affidavit and bond required for attachment 2718
on what property attachment leviable; priority of lien 2719
by what law attachment proceedings governed 2720
lien, rights and remedies of landlord vest in assignee 2721
Ejectment, in action of, against tenant, landlord made party 1534
Execution, on sale under, decree, or power of sale in mortgage, etc., notice to tenant vests right of possession in purchaser as if tenant had attorned to him, when 3506
Expiration of term, detention of tenant after, liable for damages, etc 2137
Farm-lands, lien of landlord for rent of, and advances declared 2703
Hire, what a contract of; lien of laborers, and proceedings for its enforcement 2712
In action of ejectment against tenant, landlord made party 1534
Issue and trial of attachment for rent and advances 2710
Labor, relations between party furnishing, and team and party furnishing land 2711
Landlord, lien of, for rent of farm-lands and advances declared 2703
dwelling, storehouse and other buildings declared 2716
Lands, protection of tenant having crop planted on, decreed to be sold in equity 850
relation between party furnishing, and party furnishing team and labor 2711
Leased land, mechanic's lien on; enforcement of 2725, 2726
Lease or license, tenant in possession under, from another; liability for rent .. 1535
License or lease, tenant in possession under, from another; liability for rent .. 1535
Lien of landlord for rent of farm-lands and advances declared 2703
dwelling, storehouse and other buildings declared 2716
when rent and advances mature in absence of express stipulation 2704
continues and attaches to crop of succeeding year 2705
assignment of; rights and remedies of assignee 2706
rent and advances recoverable in same or separate actions 2707
enforced by attachment; grounds of attachment 2708, 2717
affidavit and bond required for attachment 2709, 2718
issue and trial of attachment; on what property attachment leviable 2710
when attachment may be levied on crop of subtenant; vacation of such levy 2713
subtenant may require attachment against tenant in chief; effect of failure to attach 2714
relation between party furnishing land and party furnishing team and labor 2711
what a contract of hire; lien of laborers, and proceedings for its enforcement 2712
provisions of article apply to tenant in chief and subtenant ... 2715
Mechanic's lien on leased land, enforcement of 2725, 2726
Property, on what, attachment for rent and advances may be levied 2710

LANDLORD AND TENANT—*Continued.* SECTION

Protection of tenant having crop planted on lands decreed to be sold in equity 850
Provisions of article apply to tenant in chief and subtenant..... 2715
Relation between party furnishing land and party furnishing team and labor.. 2711
Rent, no tenant who has paid his, without notice of conveyance, etc., is liable therefor..... 1019
tenant in possession under lease or license from another, liability for.... 1535
lien of landlord for, of farm-lands and advances declared..... 2703
dwelling, storehouse and other buildings declared 2716
when, and advances mature in absence of express stipulation..... 2704
and advances recoverable in same or separate actions..... 2707
form of complaint for, on demise.....No. 30, p. 949; 3352
Sale, on, under execution, decree, or power of sale in mortgage, etc., notice to tenant vests right of possession in purchaser as if tenant had attorned to him, when..... 3506
Storehouse, lien of landlord for rent of, dwelling and other buildings declared 2716
Subtenant, when attachment may be levied on crop of; vacation of such levy 2713
may require attachment against tenant in chief, when; effect of failure to attach..... 2714
provisions of article apply to tenant in chief and subtenant..... 2715
Tenant, attornment of, not essential to validity of conveyance by landlord.... 1019
but no tenant who has paid his rent without notice is liable therefor.. 1019
when, on sale under execution, decree, or power of sale, notice to tenant vests right of possession in purchaser as if tenant had attorned to him..... 3506
in possession under lease or license from another; liability for rent... 1535
protection of, having crop planted on lands decreed to be sold in equity 850
damages for detention by, after expiration of term..... 2137
in chief, when subtenant may require attachment against; effect of failure to attach..... 2714
provisions of article apply to, and subtenant..... 2715
Team, relation between party furnishing land and party furnishing labor and.. 2711
Use and occupation, when action for, lies..... 2722
form of complaint for.....No. 31, p. 949; 3352

LANDS.

Bill in chancery to compel the determination of claims to, and to quiet title. 809–813
School lands, lease and sale of.....3625–3660
indemnity lands, lease and sale of.....3661–3666
Taxation, subject to.....Subd. 1, 3911
how described and by whom listed for.....3941, 3942
valued for, when minerals and timber assessed separately..... 3940
sufficiency of description in proceedings to sell for..... 4058

LANDS OF THE STATE.

Agent for salt springs appointed by governor..... 2696
compensation of..... 2697
former agents and lessees required to settle with..... 2698
Grants by state made by patent..... 2699
and patents recorded by secretary of state..... 2700
Patents issue upon payment of purchase-money..... 2701
for swamp and overflowed lands; governor authorized to issue..... 2702
Salt springs may be leased by governor..... 2695

LAND-WARRANTS.

Belonging to estates of decedents, may be sold as personalty..... 142

LAWS.

Acts of general assembly to be published and distributed.....1984, 3402–3406
General and public, required to be printed in newspaper, when..... 3399

SECTION

LAWS—*Continued.*
Newspaper containing publication of, to be sent to certain officers..... 3400
Notice of enactment of local or special; how given..Const., Art. IV., §24, p. 74; 2231
Special and local, giving greater fees than prescribed by Code, repealed..... 1370

LEASE.
Estates of decedents, lease of lands of..... 154
For more than one year, to be in writing, etc..... 2152
Homestead, of; when not an abandonment of..... 2065
Lands leased to be listed for taxation by lessors..... 3942
Limited to twenty years..... 1032
Mechanics, lien of, on leased lands; enforcement of.....2725, 2726
Of lands of wards by guardians.....2289–2295
school lands.....3626–3631
indemnity lands.....3665, 3666
Salt springs may be leased by governor..... 2695

LEGACIES.
Appeal, right of, by legatee from decree of probate court..... 458
Birth of child, effect of, after making will.....4250–4253
Child, effect of birth of, after making will.....4250–4253
death of, or descendant on legacy; does not lapse..... 4257
Legatee, when, may sue for, at law..... 344
right of appeal by, from decree of probate court..... 458
personal representative may be garnished for debts due..... 2179
Payment of, on final settlement of estate.....229–240
when order for, a protection to the personal representative..... 277
may be compelled after eighteen months.....260–266
Personal representative, when order for payment of, a protection to..... 277
may be garnished for debts due legatees..... 2179
Probate court, right of appeal by legatee from decree of..... 458

LEGAL HOLIDAYS.
What are as to commercial paper..... 872

LEGERDEMAIN.
License required for exhibition of feats of.....Subd. 21, 4122

LEGISLATIVE DEPARTMENT.
One of the three distinct departments of the state government—
Const., Art. III., pp. 68, 69.

LEGISLATURE.
General assembly, *see*..... 2213–2240

LEGITIMATING CHILDREN.
Marriage of parents legitimates children..... 364
Proceedings for, in probate court; effect of.....365, 366

LIBEL AND SLANDER.
Charge of unchastity against any woman actionable without proof of special damages..... 1440
Complaint in action of, what sufficient..... 3287
forms.....Nos. 16, 17, p. 946.
Constitutional provisions as to prosecutions for.....Const., Art. I., §13, p. 64.
General issue in actions for, "not guilty"..... 3295
form of plea of.....No. 34, p. 949; 3353
Import of words accusing of false swearing or imputing commission of crime.. 1439
Jurisdiction of circuit court in actions of..... 918
Justices of the peace have no jurisdiction of such action..... 2662

LIBEL AND SLANDER—*Continued.* SECTION

Limitation of actions for 2801
Recantation and tender; effect of 1442
Receipt of money tendered bars action; costs 1443
Retraction, etc., may be shown under general issue in mitigation of damages .. 1441
Truth of words spoken or written and circumstances admissible under general issue 1438
charges against public men may be proved, when 1437

LIBRARIAN.

Of supreme court. See SUPREME COURT 3845–3855

LICENSES.

Attorneys at law, when and how licensed to practice ..... Note, p. 257; 579–587
Bridges, causeways and ferries, for keeping 2500
Confederate soldiers and sailors, when may peddle without license. Note, p. 1139.
Dentists, when and how licensed to practice 1444–1452
Druggists and pharmacists; examination; certificate; registration 3248–3259
Employes of railroad; examination and license of 3448–3450
Ferries, bridges and causeways, license for keeping 2500
Fertilizers, commercial, license for sale of 378–380
Guarantee companies, for doing business in state 3093, 3094
Hotel and inn keepers 2538
Insurance companies, for doing business in state 2601
Marriages, for solemnizing 2844–2850
Mutual aid associations, for doing business 1117, 1118
Pharmacists; examination and certificate of competency; registration 3248–3259
Physicians; examination and certificate of qualification; record 3261–3264
Pilots to be licensed 2992, 2993
Public-school teachers; examination and license 3585–3589
Railroads; license required of; penalty for operating road without 3489
employes of 3448–3450
Refunding license-money—
when license-money refunded 4135
application therefor; how money refunded 4136
Retailers of spirituous or vinous liquors; when not granted 3520
affidavit required before grant of license 3521
license to be produced to recover judgment for such liquors retailed 3522
justice to apprehend and bind over offenders 3523
sale or exchange of liquors without license void 3524
Revenue—
persons required to take out licenses and price therefor 4122
census of the United States governs as to population ..... Subd. 58, 4122
court of county commissioners may add fifty per cent., etc 4123
payment for and issue and contents of 4125
expiration of; time for which issued 4126
for selling liquor on steamboat, when issued 4127
to retailers must be posted in plain sight near the bar 4128
form of, prepared by auditor; blanks furnished judge of probate 4129
stubs to be attached and signed before detaching 4130
judge of probate to keep record and make annual report 4131
return unused licenses and stubs 4131
must promptly pay over license-money, else no commissions allowed 4132
make quarterly reports; penalty 4132
furnish solicitor with list of licenses issued 4134
solicitors to be furnished by auditor with copies of license-reports 4133
duty of, in respect to 4133
unlawful to engage in certain businesses without license 4124

LICENSES—*Continued.* SECTION

Subjects of revenue licenses—
abstract-making....Subd. 42, 4122
auctioneers, itinerant or transient....Subds. 34, 41, 4122
bagatelle or Jenny-Lind table....Subd. 13, 4122
baseball, or foot park when admission fees are charged....Subd. 43, 4122
billiard-tables....Subds. 9, 10, 4122
bottler or bottling association....Subd. 44, 4122
bowie-knives....Subd. 27, 4122
bowling-alley....Subd. 8, 4122
brewers....Subd. 7, 4122
cane-racks....Subd. 50, 4122
cartridges....Subd. 27, 4122
cigarettes....Subd. 28, 4122
circus....Subd. 18, 4122
clock company....Subd. 38, 4122
peddlers....Subd. 39, 4122
collecting agency....Subd. 45, 4122
compounders and rectifiers of liquors....Subd. 5, 4122
concert....Subd. 17, 4122
construction company....Subd. 46, 4122
corporations....Subd. 55, 4122
detective agency....Subd. 57, 4122
dirk-knives....Subd. 27, 4122
distillers of spirituous liquors....Subd. 6, 4122
dominoes kept in connection with barroom....Subd. 14, 4122
dummy railroad....Subd. 47, 4122
electric-light company....Subd. 48, 4122
electric railroad....Subd. 47, 4122
eye-glass peddlers....Subd. 29, 4122
flying-jennies....Subd. 49, 4122
foot park....Subd. 43, 4122
fortune-tellers....Subds. 22, 23, 4122
futures, dealing in....Subd. 33, 4122
gas company....Subd. 48, 4122
gypsy traders or fortune-tellers....Subd. 23, 4122
hobby-horses....Subd. 49, 4122
Jenny-Lind table....Subd. 13, 4122
knife-racks....Subd. 50, 4122
lager-beer, exclusively....Subd. 3, 4122
legerdemain or sleight of hand....Subd. 21, 4122
lightning-rods....Subd. 37, 4122
liquors, retail....Subds. 2, 3, 4122
wholesale....Subd. 4, 4122
lung or strength testers....Subd. 50, 4122
menagerie or museum....Subd. 19, 4122
mercantile agency....Subd. 40, 4122
merry-go-rounds....Subd. 49, 4122
money-lending....Subd. 53, 4122
musical entertainment....Subd. 17, 4122
oils, illuminating or lubricating, exclusively, at wholesale....Subd. 56, 4122
pawnbrokers....Subd. 32, 4122
peddlers, generally....Subd. 31, 4122
of clocks....Subd. 39, 4122
eye-glasses....Subd. 29, 4122
medicines....Subds. 29, 30, 4122
pig-iron storage....Subd. 54, 4122
pistols or pistol cartridges....Subd. 27, 4122

LICENSES—*Continued.* SECTION

Subjects of revenue licenses—*Continued.*

pin-pool table ..... Subd. 11, 4122
playing-cards ..... Subd. 26, 4122
pool-table ..... Subd. 12, 4122
public hall ..... Subd. 16, 4122
public lecture, or exhibition or entertainment ..... Subd. 17, 4122
race-track ..... Subd. 1, 4122
railroad-ticket broker ..... Subd. 51, 4122
range company ..... Subd. 38, 4122
real estate agency ..... Subd. 52, 4122
retailers of spirituous, vinous or malt liquors ..... Subds. 2, 3, 4122
scalpers ..... Subd. 51, 4122
sewing-machine company ..... Subd. 38, 4122
shooting-gallery ..... Subd. 24, 4122
side-show ..... Subd. 20, 4122
skating-rink ..... Subd. 25, 4122
steamboat, trading ..... Subd. 35, 4122
stove company ..... Subd. 38, 4122
supply-car, trading ..... Subd. 36, 4122
theatre ..... Subd. 15, 4122
water-works company ..... Subd. 48, 4122
wholesalers of spirituous, vinous or malt liquors ..... Subd. 4, 4122
wooden figures or images, throwing at ..... Subd. 50, 4122

LIENS.

Of attachments, bonds, executions, garnishments, judgments, etc.

Attachments, of, at law 548
equitable attachments 769
or execution, lien of, not impaired by pendency of contest of exemption 2067
Auxiliary writs, lien on levy of, in suits by state for money wrongfully used ... 3759
Bonds, official, what, constitute liens on property of principals 3078
of tax-collector, lien on property of principal from date of execution and on property of sureties from date of his default 3078, 3995
Clerk of circuit court, bond of, lien upon property of principal 3078
city court, bond of, lien upon property of principal 3078
Corporation, lien of, on shares of stockholders 1268
County, lien of, for taxes 3921
when, passes to purchaser at tax sale, though sale invalid 4078
clerk, bond of, lien upon property of principal 3078
treasurer, bond of, lien upon property of principal 3078
Crops, enforcement of liens in favor of parties on partition of 3193
strangers on partition of 3194
Debtor, lien on undivided interest only a charge on share of, on partition of property 3172
Decree, recorded, lien of 1921
Enforcement of lien in favor of parties on partition of crops 3193
strangers on partition of crops 3194
Equitable attachments, lien of 769
Execution or attachment, lien of, not impaired by pendency of contest of exemption 2067
Executions, lien of 1892-1895
issued by justices of the peace 1938
Exemption, what liens not affected by, from levy and sale—
Const., Art. X., §2, p. 91; 2035

LIENS—*Continued.* SECTION

Of attachments, bonds, executions, garnishments, judgments, etc.—*Continued.*

Exemption, lien of execution or attachment not impaired by pendency of contest of 2067
Judge of probate, bond of, lien upon property of principal 3078
Judgment, recorded, lien of 1921
Justices of the peace, lien of executions issued by 1938
Levy and sale, what liens not affected by exemption from—
Const., Art. X., §2, p. 91; 2035
License to retail liquors on steamboat; lien of state on boat for price of..Subd. 2, 4122
Lien of state and county for taxes 3921
on steamboat for retail liquor license ..... Subd. 2, 4122
Lien of attachments at law 548
equitable 769
bond of tax-collector 3078, 3995
bonds, official, on property of principals 3078
corporation, on share of stockholders 1268
executions 1892–1895
issued by justices of the peace 1938
execution on attachment not impaired by pendency of contest of exemption 2067
garnishments 548
official bonds 3078, 3995
recorded judgments and decrees 1921
vendor passes by transfer of debt 878
when passes to purchaser at tax sale, though sale invalid 4078
on undivided interest only a charge on share of debtor, on partition of property 3172
levy of auxiliary writs in suits by state for money wrongfully used 3759
Money wrongfully used, lien on levy of auxiliary writs in suits by state for 3759
Official bonds, what, constitute liens on property of principals 3078
of tax-collectors a lien on property of principals and sureties, etc. 3995
On partition of property, lien on undivided interest only a charge on share of debtor 3172
Partition, on, of property, lien on undivided interest only a charge on share of debtor 3172
of crops, enforcement of liens in favor of parties, on 3193
strangers, on 3194
Property, on partition of, lien on undivided interest only a charge on share of debtor 3172
Recorded judgment, lien of 1921
Sheriff, bond of, lien upon property of principal 3078
State and county, lien of, for taxes 3921
when such lien passes to purchaser at tax sale, though sale invalid 4078
lien on levy of auxiliary writs in suits by, for money wrongfully used ... 3759
Stockholders, lien of corporation on shares of 1268
Sureties on bond of tax-collector, lien on property of, from date of default of principal 3995
Taxes, lien of state and county for 3921
when such lien passes to purchaser at tax sale, though sale invalid 4078
Tax-assessor, bond of, lien upon property of principal 3078
Tax-collector, bond of, lien upon property of principal from date of execution, upon property of sureties from date of default of principal 3078, 3995
Transfer of debt by vendor passes lien, etc 878
Vendor's lien passes by transfer of debt 878
shown by recorded deed; payment must be entered on record; penalty 1068

LIENS—*Continued.* SECTION

Of attachments, bonds, executions, garnishments, judgments, etc.—*Continued.*

Vendor's lien, entry of payment on record a release of lien 1068
What liens not affected by exemption from levy and sale—
Const., Art. X., §2, p. 91; 2035

Landlords, in favor of.

For rent of farm-lands and advances. See LANDLORD AND TENANT 2703–2715
dwelling, storehouse or other buildings. See LANDLORD AND TENANT 2716–2721

Mechanics and material-men, in favor of.

Actions at law for enforcement of; pleadings and practice 2734
parties to such 2735
Actions at law, revivor in case of death 2736
infants or lunatics, service on; how made 2737
guardian ad litem appointed for 2737
judgment binding on, etc 2737
service by publication; when allowed; affidavit for 2738
issues, verdict and judgment 2739
judgments by default against parties sui juris; when may be rendered 2740
enforcement of 2741
when rendered by justice of the peace 2742
by employes, etc.; contractor necessary party; garnishment against owner 2743
when contractor must defend, and owner entitled to withhold or recover money from contractor 2744
limitation of, for enforcement of 2746
personal representative, when longer time allowed to 2747
may be brought against, within six months 2748
Affidavit to statement, etc., before whom made out of state 2728
as to non-resident or party absent from state, etc.; publication 2738
All liens, except in favor of original contractors, on equal footing; fund prorated 2745
Assigned, claim and lien may be 2752
Assignee of claim, etc., rights and remedies of 2752
Claim and lien may be assigned; rights and remedies of assignee 2752
Claimed, when lien, by other than contractor, notice given to owner; unpaid balance subject 2731
Contractor, lien in favor of employes of, and persons furnishing materials to, limited to unpaid balance 2723
when lien claimed by other than, notice given to owner; unpaid balance subject 2731
in action by employe, etc., contractor necessary party; garnishment against owner 2743
when, must defend, and owner entitled to withhold or recover money from contractor 2744
all liens, except in favor of original contractors, on equal footing; fund prorated 2745
Death, revivor of action, in case of 2736
Declared, lien; in whose favor; for what, and extent of 2723
Default, judgment by, against parties sui juris; when may be rendered 2740
Definition of "owner or proprietor" 2751
Employes of, lien in favor of, and persons furnishing materials to contractor, limited to unpaid balance 2723

LIENS—*Continued.* SECTION

Mechanics and material-men, in favor of—*Continued.*

Employes, list of, material-men, etc., to be furnished owner on demand; effect of failure ... 2732
in actions by, etc., contractor necessary party; garnishment against owner ... 2743
Enforcement of lien in equity, when ... 2733
jurisdiction for ... 2733
limitation of actions for ... 2746
judgments ... 2741
rendered by justices ... 2742
Equity, when lien may be enforced in ... 2733
Extent of lien; in whose favor declared ... 2723
Fund prorated, when insufficient to satisfy liens in full ... 2745
Garnishment may issue against owner, when ... 2743
Guardian ad litem appointed for minors or persons non compos mentis, when ... 2737
Improvements, extent of lien when, on leased lands; rights of holder and purchaser ... 2725
In whose favor lien declared; for what, and extent of ... 2723
Issues, verdict and judgment in actions for enforcement of lien ... 2739
Judge of probate, verified statement to be filed in office of; when to be filed; contents ... 2727
Judgments binding on infants or persons non compos mentis, when ... 2737
shall be rendered for what amount, etc ... 2739
by default; against whom; when may be rendered ... 2740
enforcement of ... 2741
rendered by justices ... 2742
Jurisdiction for enforcement of lien ... 2733
Justices of the peace, when suit brought before; what statement on summons must show ... 2734
enforcement of judgments rendered by ... 2742
Leased lands, when improvements on, extent of lien; rights of holder and purchaser ... 2725
Land, selection of, covered by lien when tract exceeds one acre ... 2730
Lessor, right of, to discharge lien before sale, or to redeem from purchaser after sale ... 2726
Lien declared; in whose favor; for what, and extent of ... 2723
in favor of employes of, and persons furnishing materials to contractors, limited ... 2723
when paid, to be satisfied of record ... 2749
penalty for failure to enter satisfaction, after demand, etc ... 2750
may be assigned; rights and remedies of assignee ... 2752
Limitation of actions for enforcement of ... 2746
when longer time allowed personal representative ... 2747
List of material-men, employes, etc., to be furnished owner on demand; effect of failure ... 2732
Lunatics, service on; guardian ad litem appointed; judgment binding on ... 2737
Material-men, list of, employes, etc., to be furnished owner on demand; effect of failure ... 2732
Materials, lien in favor of employes of and persons furnishing, to contractors limited to unpaid balance ... 2723
Minors and lunatics, service on, guardian ad litem appointed; judgment binding on ... 2737
Notice given to owner, when lien claimed by other than contractor; unpaid balance subject ... 2731
Oath to statement; by whom administered out of state ... 2728
Original contractors, all liens, except in favor of, on equal footing; fund prorated ... 2745

LIENS—*Continued.*

SECTION

Mechanics and material-men, in favor of—*Continued.*

Owner, list of material-men, employes, etc., to be furnished, on demand; effect of failure 2732
garnishment may issue against, when 2743
entitled to withhold or recover money from contractor, when; contractor must defend, when 2744
"Owner or proprietor" defined 2751
Parties to actions at law for enforcement of lien 2735
against what, judgment by default may be taken 2740
Penalty for failure to enter satisfaction of lien, etc 2750
Personal representative, when additional time allowed, for filing statement and bringing suit 2747
suit may be brought against, within six months after grant of letters 2748
Pleadings and practice in actions at law for enforcement of 2734
Priority of lien 2724
Publication, service by; when allowed; affidavit for 2738
Purchaser, right of lessor to discharge lien before sale, or to redeem from, after sale 2726
Record, lien, when paid, satisfaction of, must be entered on margin of 2749
penalty for failure to enter satisfaction of, when 2750
of statement and fee therefor 2729
Remedies and rights of assignee of 2752
Revivor of action in case of death 2736
Right of lessor to discharge lien before sale, or to redeem from purchaser after sale 2726
Rights and remedies of assignee of lien 2752
Sale, right of lessor to discharge lien before, or to redeem from purchaser after sale 2726
Satisfaction of lien must be acknowledged of record, when 2749
penalty for failure to enter 2750
Selection of land covered by lien when tract exceeds one acre 2730
Service of process on infants and lunatics; guardian ad litem, etc 2737
by publication; when allowed; affidavit for 2738
Statement, verified, to be filed in office of probate judge; when to be filed; contents 2727
oath to; by whom administered out of state 2728
to be recorded; fee therefor 2729
when longer time allowed personal representative for filing 2747
Unpaid balance subject, when lien claimed by other than contractor, etc 2731
Verdict and judgment in action for enforcement of 2739
Verified statement to be filed in office of judge of probate; when to be filed; contents 2727
oath, by whom, administered out of state 2728
to be recorded in office of probate judge; fee therefor 2729
when additional time for filing allowed personal representative 2747
When lien claimed by other than contractor, notice given to owner; unpaid balance subject 2731
may be enforced in equity 2733
paid holder thereof must enter satisfaction on margin of record 2749
penalty for failure to enter satisfaction, when 2750
contractor must defend suit, and owner entitled to withhold or recover money from contractor 2744

LIENS—*Continued.* SECTION

Blacksmiths, wood-workmen and other mechanics, in favor of.

Action, proceedings when one or more fail to join in 2756
limitation of, for enforcement of 2757
Affidavit and bond for attachment 2754
Articles, on what, labor or materials, lien given 2753
Bond and affidavit for attachment 2754
Distribution; joinder of parties having liens on same property; verdict, judgment and 2755
Enforcement of lien by attachment; bond and affidavit 2754
limitation of action for 2757
Grounds of attachment 2754
In whose favor, for what labor or materials, and on what articles lien given ... 2753
Joinder of parties having liens on same property; verdict, judgment and distribution 2755
Judgment and distribution, in suit by parties having liens on same property .. 2755
Labor, for what, or materials, and on what articles lien given 2753
Lien declared 2753
may be enforced by attachment; bond and affidavit 2754
Limitation of action for enforcement of 2757
Materials, for what, or labor, and on what articles lien given 2753
Parties, joinder of, having liens on same property; verdict, judgment and distribution 2755
Proceedings when one or more fail to join in action 2756
Verdict, judgment and distribution in suit by parties having liens on same property 2755

On ships, steamboats and other water-craft.

Actions for enforcement of; jurisdiction 2758
limitation of 2759
Enforcement of lien 2758
In whose favor, and for what lien given; priority, etc 2758
Lien declared; in whose favor; for what given 2758
of state on steamboat for retail liquor license ..... Subd. 2, 4122
Limitation of actions for enforcement of lien 2759

Tenants in common on crop, in favor of.

Assignees of lien, etc., rights and remedies of 2760
Attachment, lien may be enforced by; grounds for; remedy cumulative 2761
Crop, when persons farming together on shares entitled to lien on 2760
Grounds for attachment 2761
Lien of tenant in common on crop of co-tenant declared 2760
Persons farming together on shares entitled to lien on crop, when 2760

Agricultural superintendents and laborers, and railroad employes, in favor of.

Actions, limitation of, for enforcement of lien 2764
Advances, crop not to be removed until rent and, are paid 2772
Affidavit for attachment when amount due 2765
additional, when attachment sued out before amount due 2766
Agricultural superintendent, in favor of, and laborers on crops; for what given; subordinate to other liens 2763
laborers, in favor of, on crops; for what given; subordinate to other liens 2763
Attachment, lien may be enforced by; grounds for 2765, 2766
affidavit for, if sued out before amount due 2765
additional, if sued out after amount due 2766
bond required before issue of; conditions and approval of 2767

LIENS—*Continued.*

SECTION

Agricultural superintendents and laborers, and railroad employes, in favor of—*Continued.*

Attachment, to be levied only on crop sufficient to pay demand 2768
time, notice and manner of trial of 561, 562
Bond required before issue of attachment; conditions; by whom approved 2767
Crop, lien given agricultural laborers and superintendents on; for what given 2763
attachment to be levied only on, sufficient to pay demand 2768
not to be removed until rent and advances are paid 2772
proceeds of; how to be disposed of by officer 2773
Employes and laborers of railroad, lien in favor of; for what given; extent of 2762
Enforcement of lien by attachment 2765, 2766
limitation of actions for 2764
Extent of liens 2762, 2763
Garnishment, property charged with lien, or proceeds in hands of third party, subject to; proceedings 2770
In favor of railroad laborers and employes; for what given; extent of 2762
agricultural laborers and superintendents on crops; for what given; subordinate to other liens 2763
Laborers and employes of railroad, lien in favor of; for what given; extent of 2762
agricultural, and superintendents, lien in favor of, on crop; for what given, etc 2763
Lien of agricultural laborers and superintendents subordinate to other liens, etc. 2763
extent of, in favor of laborers and employes of railroad 2762
declared in favor of laborers and employes of railroad 2762
agricultural laborers and superintendents 2763
Limitation of actions for enforcement of lien 2764
Notice, time and manner of trial of attachment 2769
Officer enforcing lien must first satisfy prior liens from proceeds of sale 2773
Other remedies to enforce lien not affected 2771
Proceeds of sale, officer enforcing lien must first satisfy prior liens from 2773
Property charged with lien, or proceeds in hands of third party, subject to garnishment; proceedings 2770
Railroad laborers and employes, lien in favor of; for what given; extent of ... 2762
may be enforced by attachment 2765, 2766
Remedies, other, to enforce lien not affected 2771
Rent and advances, crop not to be removed until, are paid 2772
Sale, officer enforcing lien must first satisfy prior liens from proceeds of 2773
Time, notice and manner of trial of attachment 2769
Trial, time, notice and manner of, of attachment 2769

Livery-stable keepers, in favor of.

Have lien on stock kept and fed for the charges 2774
Lien declared in favor of; right to retain stock, etc 2774
Power of sale to satisfy lien; notice of sale 2775
Sale, notice of, to be given by advertisement in newspaper, etc 2775

Stallions, jacks, bulls, rams, he-goats and boars, in favor of owners of.

Affidavit required before issue of attachment; contents of 2778
Attachment, lien may be enforced by 2777
affidavit and bond required before issue of 2778
grounds of 2777
Bond and affidavit required for attachment 2778
Lien in favor of owner declared; for, and upon what given 2776
Notice, time and manner of trial same as in other attachment cases 2779
Trial, time, notice and manner of, same as in other attachment cases 2779

LIENS—*Continued.* SECTION

For stumpage.

Actions for enforcement of lien, limitation of..... 2783
Affidavit required for attachment; contents of..... 2782
Assignee of lien, rights and remedies of.....2781, 2782
Attachment, lien may be enforced by..... 2781
grounds of..... 2781
affidavit and bond required for..... 2782
Bond and affidavit required for attachment..... 2782
Lien declared in favor of owners of land, or their assignees upon timber, etc.. 2780
Limitation of actions for enforcement of lien..... 2783
Notice, time and manner of trial same as in other attachment cases..... 2783
Trial, time, notice and manner of, same as in other attachment cases..... 2783

Booms and bulkheads, in favor of owners of.

Actions for enforcement of lien, limitation of..... 2787
Affidavit required for attachment; contents of..... 2786
Attachment, lien may be enforced by..... 2785
grounds of..... 2785
affidavit and bond required for..... 2786
Bond and affidavit required for attachment..... 2786
Charges, rate of, authorized to be made by owner..... 2784
Lien declared in favor of owner; for, and upon what given..... 2784
Limitation of actions for enforcement of lien..... 2787
Trial, time, notice and manner of..... 2787

Public ginners, in favor of.

Action for enforcement of lien, limitation of..... 2792
Affidavit required for attachment; contents of..... 2791
Attachment, lien may be enforced by..... 2790
grounds of..... 2790
affidavit and bond required for..... 2791
Bond required for attachment..... 2791
Lien declared in favor of, on cotton ginned..... 2788
follows cotton when removed with knowledge and consent, etc..... 2788
Limitation of actions for enforcement of lien..... 2792
Right to retain cotton, when; sale to satisfy lien; notice..... 2789
Sale to satisfy lien; notice of; how given..... 2789
Trial, time, notice and manner of..... 2792

LIFE.
Accused not to be deprived of his life, liberty, or property, but by due process of law.....Const., Art. I., §7, p. 61.
No person shall, for the same offense, be twice put in jeopardy of life or limb— Const., Art. I., §10, p. 63.

LIFE-INSURANCE.
See INSURANCE COMPANIES.

LIFE-INSURANCE COMPANIES.
See INSURANCE COMPANIES.

LIGHTNING-ROD COMPANY.
Required to take out license.....Subd. 37, 4122

LIGHTHOUSE.
United States may acquire site for.....21, 22, 628, 629

LIMITATION OF ACTIONS.

General rules.

Absence, time of, from state to be deducted..... 2805

LIMITATION OF ACTIONS—*Continued.* SECTION

General rules—*Continued.*

Accrual of cause of action, when disability not existing at, does not suspend statute 2821
when two or more disabilities coexist at, limitation does not attach until all are removed 2822
Actions seeking relief on ground of fraud, how time computed in 2813
by principals against agents or deputies, how time computed in 2819
on notes, etc., issued or circulated as money, provisions not applicable to 2824
Additional time allowed infants, persons of unsound mind and persons imprisoned on criminal charge 2807
but no disability shall extend time beyond twenty years 2807
Agent or deputy, how time computed in action by principal against 2819
Agreement or stipulation to shorten statute of limitation, void 2802
Arrest, on, or reversal of judgment, suit may be brought within one year 2806
Bar of statute, what necessary to prevent or remove the 2811
Bill in equity, provisions applicable to suits commenced by 674
Claim, presentation of, against estate of decedent, suspends statute until notice to sue 2817
personal representative may require suit brought on disputed claim within six months, etc 2818
provision does not apply to claims against estates declared insolvent .. 2818
Commencement of suit, what is 2814
Contract or stipulation to shorten time of statute, void 2802
Criminal charge, additional time allowed persons imprisoned on 2807
but no disability shall extend time beyond twenty years 2807
Current accounts, provisions not applicable to, between merchants 2809
Death, what time after, and before grant of letters not computed 2815
Demand, how time computed when a, is necessary to enforcement of a right .. 2812
Deputy or agent, how time computed in action of principal against 2819
Descent cast, right of entry not tolled by 2804
Disabilities, when two or more coexist at accrual of cause of action, limitation does not attach until all are removed 2822
Disability, when, not existing at accrual of cause of action does not suspend cause of action 2821
Effect of foreign statute as a bar in this state 2808
Entry, right of, not tolled by descent cast 2804
when, on lands presumed, and cause of action accrued 2803
Equity, provisions applicable to suits commenced by bill in 674
Estate of decedent, presentation of claim against, suspends statute until notice to sue 2817
personal representative of, may require suit brought on disputed claim within six months; exception 2818
Form of plea of limitation ..... No. 32, p. 949; 3353
Foreign statute, effect of, as a bar in this state 2808
Fraud, how time computed in actions seeking relief on ground of 2813
From what period time computed on mutual accounts 2810
Grant of letters, what time after death and before, not computed 2815
How time computed when a demand is necessary to enforcement of a right 2812
in action seeking relief on ground of fraud 2813
by principal against agent or deputy 2819
Imprisoned, additional time allowed person, on criminal charge 2807
but no disability shall extend time beyond twenty years 2807
Infants and persons of unsound sound, additional time allowed 2807
but no disability shall extend time beyond twenty years 2807
Injunction, time of, or prohibition not computed 2820
Insolvent, provisions of section 2818 not applicable to estates declared 2818

LIMITATION OF ACTIONS—*Continued.* SECTION

General rules—*Continued.*

Judgment, on arrest or reversal of, suit may be brought within one year..... 2806
Justices, provisions applicable to suits before..... 2673
Lands, when entry on, presumed, and cause of action accrued..... 2803
right of entry not tolled by descent cast..... 2804
Letters testamentary or of administration, what time after death and before grant of, not computed..... 2815
Merchants, not applicable to current accounts between..... 2809
Mutual accounts, from what period time computed on..... 2810
Notes, etc., issued or circulated as money, provisions not applicable to..... 2824
Not applicable to current accounts between merchants..... 2809
actions on notes, etc., issued or circulated as money..... 2824
On arrest or reversal of judgment, suit may be brought within one year..... 2806
Personal representative, six months during which, exempt from suit not computed..... 2816
may require suit brought on disputed claim within six months..... 2818
does not apply to estate declared insolvent..... 2818
Persons of unsound mind and infants, additional time allowed..... 2807
but no disability shall extend time beyond twenty years..... 2807
Plea of, form of.....No. 32, p. 949; 3353
Presentation of claim against estate of decedent suspends statute until notice to sue..... 2817
Prevent, what necessary to, or remove the bar of the statute..... 2811
Principal, how time computed in an action by, against agent or deputy..... 2819
Prohibition, time of, or injunction not computed..... 2820
Provisions not applicable to actions on notes, etc., issued or circulated as money 2824
current accounts between merchants..... 2809
applicable to suits before justices..... 2673
commenced by bill in equity..... 674
Remove, what necessary to prevent or, the bar of the statute..... 2811
Reversal, on, or arrest of judgment, suit may be brought within one year..... 2806
Right of entry not tolled by descent cast..... 2804
Set-off, when, not barred..... 3732
Six months during which representative exempt from suit not computed..... 2816
Suit, on arrest or reversal of judgment, may be brought within a year..... 2806
what is the commencement of a..... 2814
six months during which representative exempt from, not computed..... 2816
Suits, provisions applicable to, before justices..... 2673
commenced by bill in equity..... 674
Time of absence from state to be deducted..... 2805
additional, allowed infants, persons of unsound mind and persons imprisoned on criminal charge..... 2807
but no disability shall extend time beyond twenty years..... 2807
from what period, computed on mutual accounts..... 2810
how, computed when a demand is necessary to enforcement of a right... 2812
in action by principal against agent or deputy..... 2819
actions seeking relief on grounds of fraud..... 2813
what, after death and before grant of letters not computed..... 2815
six months during which representative exempt from suit not computed 2816
of injunction or prohibition not computed..... 2820
War, when statute suspended by..... 2823
What necessary to prevent or remove the bar of the statute..... 2811
is the commencement of a suit..... 2814
time after death and before grant of letters not computed..... 2815

LIMITATION OF ACTIONS—*Continued.* SECTION

General rules—*Continued.*

When entry on lands presumed, and cause of action accrued 2803
disability not existing at accrual of cause of action does not suspend statute 2821
two or more disabilities coexist at accrual of cause of action, limitation does not attach until all are removed 2822
war suspends the statute 2823
set-off not barred 3732

Time in which suits must be brought.

Any agreement or stipulation to shorten statute of limitations void 2802
Within the period prescribed and not afterwards 2793
Within twenty years, actions by state against a citizen thereof to recover property 2794
school land, for recovery of, by or for use of township 2794
upon a judgment or decree of any court of this or other state or United States 2794
proceedings to revive judgment or decree 1931
Within ten years, actions founded upon any contract or writing under seal 2795
against public officers for nonfeasance, misfeasance, or malfeasance in office 2795
lands, etc., for recovery of, unless otherwise provided 2795
Within six years, actions for trespass to person, liberty, or property 2796
against attorneys for failure to pay over money to clients, or for neglect or omission of duty. 2796
sureties of public officer, representative, or guardian, for misfeasance, etc., of principal; time to be computed from act done or omitted 2796
arrears of rent, for recovery of, due upon parol demise 2796
for recovery of money on a loan, or stated account .. 2796
founded on promises in writing not under seal 2796
upon judgments obtained before justices in this state 2796
land, for use and occupation of 2796
personal property, for detention or conversion of 2796
upon any simple contract or specialty not otherwise provided 2796
Within five years, actions founded on equities of redemption, in certain cases 2797
bill in equity to annul partition made by probate court 3171
proceedings to revive judgment before justice 1952
Within four years, actions against sureties on writ of error, appeal, replevy, or forthcoming bond 2798
Within three years, actions on open accounts; computed from what date 2799
attachment bonds, on 565
bills of review, applications to file, in equity 761
dower, for, against alienee of husband 1528
lands, for recovery of, sold for taxes; exception in favor of minors or lunatics 4089
of forcible entry or unlawful detainer 2136
Within two years, actions for wrongful act, omission, or negligence, causing death 27, 2800
in equity, to correct errors in settlements by representative or guardian in probate court 805

LIMITATION OF ACTIONS—*Continued.* SECTION

Time in which suits must be brought—*Continued.*

Within eighteen months, bill in equity to contest validity of will 4298
Within one year, actions for malicious prosecutions 2801
any injury to person or rights of another, not arising from contract, and not otherwise provided .. 2801
criminal conversation, seduction, or breach of marriage promise 2801
damages for wrongful act or omission causing personal injury to, or death of minor 2801
gaming, by or for use of wife or children for money lost at 2164
libel or slander 2801
penalties for injuries to trees or water-craft .. 4140, 4217
Within one year, actions for qui tam, or for penalty given by statute to party aggrieved; exception 2801
Within six months, actions by loser for money lost at gaming 2163
for enforcement of liens in favor of agricultural laborers, etc 2764
in favor of blacksmith, etc 2757
in favor of mechanics and material-men .. 2746, 2747
in favor of owners of booms and bulkheads 2787
in favor of public ginners 2792
for stumpage 2783
on ships, steamboats, etc 2759
certain motions, for summary judgments, before justices. 3823
actions against personal representative, after notice to sue on disputed claim 2818

LIMITED PARTNERSHIP.

All liable as general partners for false certificate 3215
Dissolution only made after three weeks notice 3231
For what purposes formed 3207
General partners manage business; special may examine into but cannot interfere 3209, 3224
prosecute and defend suits 3221
liable to account for their management 3225
How formed; certificate 3210
certificate acknowledged and recorded 3211, 3212
affidavit of payment of sums named 3213
partnership then complete 3214
terms published; printer's affidavit 3216, 3217
Limited partnership becomes general by alteration without renewal 3219
Names of general partners used "limited" 3220
No preference allowed on insolvency, void as to creditors 3227, 3228
Partners liable for fraud 3226
Renewals, how made 3218
Respective liabilities of general and special partners 3208
Special partner's funds not to be withdrawn 3222, 3223
partner, on insolvency, cannot claim until after other creditors 3230
may examine into the business but cannot interfere 3224
What acts, on insolvency, make special partners general partners 3229

LIQUORS.

SECTION

Affidavit required before issue of license; form and contents of 3521
Brewers, required to obtain license; price for ..... Subd. 7, 4122
Buffet, sleeping, or dining car, license required, to retail on ..... Subd. 2, 4122
Commanding officer of military may prohibit sale of, when 2891
close place where sold, when 2892
Compounders and rectifiers of, required to obtain license; price for .... Subd. 5, 4122
Definition as to who are wholesale and retail dealers ..... Subds. 3, 4, 4122
Dining-car, license required to retail on ..... Subd. 2, 4122
Distillers of, required to obtain license; price for ..... Subd. 6, 4122
Election day, unlawful to sell or give away on, or day preceding 1636
General assembly, duty of, to pass adequate laws to protect against the evils arising from use of intoxicating liquors at elections—
Const., Art. VIII., §6, p. 89.
Judgment, production of license necessary to recovery of, for liquors retailed .. 3522
Justice to apprehend and bind over offenders 3523
Lager-beer exclusively, price of license for dealing in ..... Subd. 3, 4122
License required of retail or wholesale dealers in vinous, spirituous or malt liquors; price for ..... Subds. 2–4, 4122
brewers; price of ..... Subd. 7, 4122
compounders and rectifiers of; price for ..... Subd. 5, 4122
distillers of; price for ..... Subd. 6, 4122
mode of obtaining, to retail 3520
unlawful to sell or dispose of without 4124
retailer required to post up; penalty for failure to comply 4128
where issued for selling on steamboat 4127
affidavit required before issue of; form and contents 3521
production of, necessary to recovery of judgment for liquors retailed 3522
sale or exchange without, void 3524
to or with minor or person of unsound mind void, when 3524
Military, commanding officer of, may prohibit sale of, when 2891
close place where sold, when 2892
Minor, when sale or exchange to or with, or person of unsound mind, void 3524
Mode of obtaining license to retail 3520, 3521
Offenders, justice to apprehend and bind over 3523
Penalty for failure of retailer to post up license 4128
Person of unsound mind, when sale or exchange to or with, or minor, void 3524
Place where sold, may be closed by commanding officer of military, when 2892
Production of license necessary to recovery of judgment for liquor retailed 3522
Retail and wholesale dealers defined ..... Subds. 3, 4, 4122
required to obtain license 4122
dealer required to post up license; penalty for failure 4128
mode of obtaining license by 3520, 3521
Sale of, commanding officer of military may prohibit, when 2891
close place of, when 2892
or exchange without license void 3524
to or with minor or person of unsound mind, void, when 3524
Sleeping, dining or buffet car, license required to retail on; price for .. Subd. 2, 4122
Steamboat, license required to retail on; price for ..... Subd. 2, 4122
where license issued 4127
Unlawful to sell or dispose of without license 4124
give away on election day, or day preceding 1636
Wholesale and retail dealers defined ..... Subds. 3, 4, 4122
required to obtain license 4122

LIVERY OF SEIZIN.

Not necessary to validity of conveyance of land 1037

LIVERY-STABLE KEEPERS. SECTION
Lien on stock kept and fed for charges; stock retained 2774
Sale of stock to satisfy lien 2775
notice of; how given 2775

LOANS.
Actions for money loaned, limitation of 2796
on verbal loans, brought in three years to protect against creditors 1013
Collateral securities, *see* 946–950
Creditors, loans in writing to be recorded to protect against 1012
on verbal loans, action brought in three years to protect against 1013
loans to minors, to be recorded to protect against 1014
In writing to be recorded to protect against creditors 1012
Limitation of actions for money loaned 2796
Minors, to, to be recorded to protect against creditors 1014
On verbal loans, action brought in three years to protect against creditors 1013
Rate of interest on 2626
Taxation of money loaned ..... Subd. 7, 3911
To minors, to be recorded to protect against creditors 1014

LOCAL LAWS.
Prohibited; exceptions ..... Const., Art. IV., §§23, 24, p. 74.
Regulation as to notice required 2231
When within exception, notice required ..... Const., Art. IV., §§23, 24, p. 74.

LOCOMOTIVE ENGINEER.
And conductor to be instructed by superintendent as to certain duties 3444
Duty of, to ring bell and blow whistle, when 3440
and conductors as to railroad crossings 3441
Examination of, as to capacity, etc., to fill position 3448
how and by whom conducted 3449
License to issue to, if found competent; by whom issued 3450

LOST NOTES, BILLS, ETC.
Actions on 31, 32

LOST RECORDS OR PAPERS.
All courts have inherent power to cause substitution of, etc 2647
Appeal from order granting or refusing substitution of; to what court 2652
Bills of exceptions, in proceedings to substitute, may be taken as in other civil cases 2652
Compelling production of written evidence in aid of substitution of— G. R. 6, p. 1186.
Costs of substitution of; by whom paid; exception 2651
Rules of practice as to substitution of ..... G. R. 6, 7, 8, p. 1186.
Substitution of, in pending cause or proceeding 2648
if cause or proceeding be not pending 2649
records of deeds or other instruments lost or destroyed 2650
costs of; by whom paid; exception 2651
appeal from order granting or refusing; to what court 2652
records of supreme court 2653
compelling production of written evidence in aid of— G. R. 6, p. 1186.
motion for, when, considered pending ..... Ib. 7, p. 1186.
when notice of necessary ..... Ib. 8, p. 1186.
Supreme court, substitution of records of 2653

LOTS.
Burial lots exempt from levy and sale 2036

LOTS—*Continued.*

SECTION

Town lots, survey and plat of 3899-3905
Used exclusively for religious worship, schools and charitable purposes, to what extent exempt from taxation ..... Subd. 2, 3907

LOTTERIES.

Or gift enterprises prohibited; laws prohibiting sale of tickets required; laws authorizing avoided ..... Const., Art. IV., §26, p. 75.

LUNATICS.

Appointment of guardians for, etc 2255-2271
Disqualified from voting or holding office ..... Const., Art. VIII., §3, p. 88; 1556, 3056
How far exempt from taxation ..... Subd. 5, 3907
The term "lunatic" includes all persons of unsound mind 1, 2271

MACADAMIZED-ROAD COMPANIES.

General law for incorporation of. See CORPORATIONS, subtitle Macadamized, turnpike and other toll-road companies 1205-1243

MAGAZINE.

For powder, to be built by every city or town 2971
Sites for, acquired by United States; jurisdiction over 626-628

MAGISTRATE.

The word "justice," when applied to, means justice of the peace 4

MAJORITY.

Authority given to three or more, majority may act 3

MALE.

Words used in masculine gender include the feminine and neuter 1

MALICIOUS PROSECUTION.

Actions for, limitation of 2801
Form of complaint in actions for ..... No. 20, p. 947; 3352
Limitation of actions for 2801

MALT LIQUORS.

Retail dealers in, required to obtain license; price for ..... Subds. 2, 3, 4122
Wholesale dealers in, required to obtain license; price for ..... Subd. 4, 4122

MANDAMUS.

Abatement of proceeding on performance of duty by succeeding officer, etc ... 2831
Amendment of proceedings, etc., in proceedings for, etc., when 2825
Answer, truth or sufficiency of, may be put in issue 2826
Appeal to supreme court; preferred case; when to be decided 431, 2827
  security for cost required 431
  does not operate as a supersedeas of judgment unless bond given 431
  manner of taking 432
  bill of exceptions may be taken; judgment on appeal 2828
  preferred case 2827
Application for; pleadings and right of amendment 2825
Bill of exceptions may be taken; judgment on appeal 2828
Bond necessary for supersedeas of judgment 431
Circuit judges, power of, to grant 921
Common law as to, not repealed; certain proceedings exempt from provisions of chapter 2833
Costs 2832
Judgment on appeal 2828
Pleadings and right of amendment 2826
Power of supreme court to issue ..... Const., Art. VI., §2, p. 83; 3826

MANDAMUS—*Continued.* SECTION
Power of circuit judges to issue 921
Preferred case on appeal; when to be heard 2827
Proceedings abate on performance of duty by successor; costs 2832
Return may be controverted 2826
Revivor in case of vacancy in office 2829
proceedings to revive, when against one officer 2830
several officers; costs 3832
Security for costs required to be given on appeal 431
Supreme court, power of, to issue 3826
when appeal must be decided by 2827
judgment on appeal by 2728

MANUFACTURING COMPANY.
General laws of incorporation. See CORPORATIONS, subtitle Mining, quarrying and manufacturing companies 1139–1155

MARINE INSURANCE COMPANIES.
Corporations, *see* 1099–1115
Form of complaint on policy of marine insurance ..... No. 14, p. 945; 3352
Insurance companies, *see* 2614–2618

MARINES.
Cannot acquire residence in this state by being stationed therein 1558
Disqualified from voting and holding office, when 1558, 3056
May make nuncupative wills 4269

MARK.
Requisites to signature to conveyance of lands by 982
"Signature" or "subscription" includes mark, when 1

MARKERS.
Oath of markers at election; by whom administered 1597
Of elections, appointed by inspectors 1594
Residence of 1596
Selected from list of persons furnished by whom 1595

MARKS AND BRANDS.
Cattle, hogs, sheep and goats running at large to be marked or branded 2834
Fertilizers, analysis of, to be branded upon bags or packages 391
Recorded in office of probate judge; record of, public 2835, 2836

MARRIAGE.
Actions by and against female not abated by 37
marriage being suggested upon record, suit proceeds, etc 37
revivor of, in equity upon marriage of female ..... Ch. R. 103, p. 1224.
limitation of, for breach of marriage promise 2801
Age of capacity to contract marriage 2839
Bond and consent of parent or guardian required, when 2845
Breach of marriage promise, limitation of action for 2801
By whom may be solemnized ..... Subd. 6, 3372; 2841–2843
Certificate of marriage recorded with license; certified copy evidence 2847
Clerk or keeper of minutes of religious society must keep register of marriages solemnized, etc 2842
such register, or sworn copy thereof, presumptive evidence 2842
Equity, revivor of suit in, on marriage of female ..... Ch. R. 103, p. 1224.
Evidence, register of, as 1811, 2842
licenses, or copy thereof, as 2846
certified copy of record of license and certificate of marriage as 2847

MARRIAGE—*Continued.* SECTION

Fee for solemnizing rites of matrimony ... 2851
Forfeiture by judge of probate for issuing license to minor without consent, etc.. 2848
when, not recoverable ... 2849
for solemnizing marriage without license ... 2850
Guardian, when consent of, or parent required; bond ... 2845
Illegitimate relatives included in provision as to incestuous marriages ... 2838
Incestuous, within what degree of relationship, forbidden as ... 2837
illegitimate relatives included as ... 2838
when issue of, not illegitimate ... 2840
Judge of probate authorized to issue license for ... 2844
must require consent of parent or guardian, when ... 2845
bond ... 2845
keep registry of licenses issued, etc ... 2846
record consent when in writing ... 2846
certificate of marriages ... 2847
penalty against, for issuing license improperly ... 2848
when not recoverable ... 2849
fee for license, bond and record including certificate of ... 1375
may solemnize the rites of ... 2841
clerk of, may solemnize the rites of ... Subd. 6, 3372
License from judge of probate necessary ... 2844
must issue in county in which the woman resides ... 2844
when consent of parent or guardian required for issue of ... 2845
bond required for issue of; penalty, condition, etc ... 2845
registry of, to be kept by judge of probate ... 2846
consent, when in writing, to be also recorded ... 2846
certificate of marriage to be recorded with ... 2847
record or certified copy as evidence ... 2846, 2847
penalty for issuing improperly ... 2848
when penalty not recoverable ... 2849
penalty for solemnizing, without ... 2850
Limitation of actions for breach of marriage promise ... 2801
Marriage of woman minor over eighteen relieves of disabilities of minority ... 2531
Married woman on reaching age of eighteen relieved of disabilities of minority 2531
May be solemnized by judges, chancellors and justices ... 2841
any licensed minister of the gospel, etc ... 2841
pastors of any religious society, etc ... 2842
Mennonists, or Quakers, or any other Christian society, etc., according to their forms, etc ... 2843
Minors, what, incapable of marriage ... 2839
Parents or guardians, when consent of, required; bond, etc ... 2845
Penalty for issuing license improperly ... 2848
when not recoverable ... 2849
for marrying persons without license ... 2850
Registers of, as evidence ... 1811, 2842
Registry of licenses to be kept by probate judge; record or copy thereof as evidence ... 2846
marriages to be kept by clerk or keeper of minutes of religious society ... 2842
which register, or sworn copy thereof, presumptive evidence ... 2842
Settlements, when must be recorded; effect of failure ... 1011
Solemnizing marriage without license; penalty ... 2850
fee for ... 2851
Solemnize marriages, who may ... Subd. 6, 3372; 2841-2843
Will, of man, when revoked by marriage and issue ... 4249
woman, revoked by her marriage ... 4250

SECTION

MARRIAGE—*Continued.*
Woman, actions by and against not abated by marriage of 37
marriage of, being suggested upon record, suit proceeds, etc 37
revivor of suit in equity upon marriage of .....Ch. R. 103, p. 1224.
under fourteen years of age incapable of contracting 2839
marriage of, under twenty-one and over eighteen relieves of disabilities of minority 2531
married, on reaching age of eighteen years relieved of disabilities of minority 2531
marriage of, revokes her will 4250

MARRIAGES, BIRTHS AND DEATHS.
Registers of, as evidence 1811

MARRIAGE SETTLEMENTS.
When and where must be recorded; effect of failure 1011

MARRIED WOMEN.
Husband and wife, *see* 2520–2537
Minors, over eighteen, relieved of disabilities of non-age 2531

MARSHAL OF SUPREME COURT.
Appointment; term of office; duties of 3845
must be entered on minutes of court 3850
Assistant marshal and librarian, appointment of, and removal by 3846
compensation of; how payable, etc 3847
Bond of; amount, conditions, etc.; by whom approved 3851
Is librarian of state, and supreme court libraries 3848
Libraries, justices of supreme court make rules as to 3849
Library of supreme court, annual appropriation for 3853
funds; what constitutes 3853
expended by marshal under direction of justices 3853
tax, what constitutes 3854
May appoint assistant marshal and librarian 3846
use library fund in purchase of books for attorney-general as directed by justices 3855
Salary of 3852

MASONS.
Exempt from provisions of insurance law 2586
Provisions touching mutual aid associations not applicable to 1120

MASTER AND APPRENTICE.
Apprentices, *see* 496–507

MASTER AND SERVANT.
Employer and employe, *see* 1749–1751

MATERIAL-MEN.
Lien in favor of, and its enforcement. See LIENS, subtitle mechanics and material-men, in favor of 2723–2752

MEAL.
Bolted, weight per bushel, forty-six pounds 4240
Unbolted, weight per bushel, forty-eight pounds 4240

MEASURES.
Weights and measures, *see* 4230–4240

MECHANICS' LIEN.
See LIENS, subtitle Mechanics and material-men, in favor of 2723–2752

MEDICAL ASSOCIATION. SECTION
Constituted the state board of health 2423
Health and quarantine, *see* 2392–2442

MEDICAL BOARD.
Health and quarantine, *see* 2392–2442

MENAGERIE.
License required for exhibition of; price of ..... Subds. 19, 20, 4122

MENNONISTS.
May solemnize marriage according to their forms, when 2843

MERCANTILE AGENCY.
License required of ..... Subd. 40, 4122

MERRY-GO-ROUNDS.
License required for ..... Subd. 49, 4122

MIDWIFERY.
Duty of midwife to report births and deaths 2438, 2441
Females may practice, without license 3267

MILITARY.
Alabama National Guard, *see* 2852–2896
Arms, ammunition, etc., of the state, general assembly to provide for safe-keeping of ..... Const., Art. XII., §7, p. 97.
Army, no standing, shall be kept without consent of general assembly—
Const., Art. I., §28, p. 67.
no appropriation for support of, for longer than one year—
Ib.
Arrest, when militia and volunteer forces privileged from—
Const., Art. XII., §5, p. 97.
Election and appointment of company and regimental officers of the militia—
Ib. §3, p. 97.
General assembly, no standing army shall be kept without consent of—
Const., Art. I., §28, p. 67.
in providing for the organization, etc., of the militia, to conform to United States regulations—
Const., Art. XII., §2, p. 96.
to provide for safe-keeping of arms, ammunition, etc., of the state ..... Ib. §7, p. 97.
Governor, generals and regimental and battalion commanders to appoint their own staffs, as may be provided by law ..... Ib. §6, p. 97.
shall, with the advice and consent of the senate, appoint all general officers, whose term of office shall be for four years ..... Ib.
Infantry, cavalry and artillery, volunteer organizations of, how formed—
Const., Art. XII., §4, p. 97.
Military to be in strict subordination to the civil power—
Const., Art. I., §28, p. 67.
Militia, who liable to military duty in the, of the state—
Const., Art. XII., §1, p. 96.
in providing for the organization, etc., of, general assembly to conform to United States regulations ..... Ib. §2, p. 96.
election and appointment of company and regimental officers of—
Ib. §3, p. 97.
when, and volunteer forces privileged from arrest ..... Ib. §5, p. 97.
officers and men of the militia and volunteer forces shall not be entitled to receive any pay, rations, or emoluments when not in active service ..... Ib. §8, p. 97.

MILITARY—*Continued.* SECTION

Militia, cases arising in the militia and volunteer forces in actual service; exception to provision prohibiting any person, for an indictable offense, to be proceeded against by information— Const., Art. I., §9, p. 62.

Officers and men of the militia and volunteer forces shall not be entitled to or receive any pay, rations, or emoluments when not in active service— Const., Art. XII., §8, p. 97.

Soldier, no, shall, in time of peace, be quartered in any house without consent of owner.....Const., Art. I., §29, p. 67.
nor in time of war, but in a manner to be prescribed by law....Ib.

Staffs, the governor, generals and regimental and battalion commanders to appoint their own, as may be provided by law.....Const., Art. XII., §6, p. 97.

Volunteer organizations of infantry, cavalry and artillery; how formed— Ib. §4, p. 97.

Volunteers known as Alabama National Guard; governor is commander-in-chief.....Const., Art. V., §18, p. 81; Art. XII., §6, p. 97; 2852

War, no soldier in time of, shall be quartered in any house, but in a manner to be prescribed by law.....Const., Art. I., §29, p. 67.

Who liable to military duty in the militia of the state— Const., Art. XII., §1, p. 96.

MILL-DAM.

For public grist or saw mill; proceedings to condemn land for erection of 1727-1748

MILLS AND MILLERS.

Dams for the erection of public mills.....1727-1748
Public mill defined..... 2898
Rotation in grinding; toll; owner may grind his own grain at any time..... 2897

MINES AND MINING.

Adjacent owner, etc., when, may inspect mine, when..... 2936
application by, to probate court; contents of..... 2936
security for costs, when..... 2936
costs on; how taxed..... 2936

Air in mine, state to furnish necessary instruments for testing..... 2916

Annual report of mine-operator to chief inspector; contents of..... 2913

Appeal from decision of probate judge in controversy between chief inspector and operator..... 2935
circuit court in controversy between chief inspector and operator..... 2935

Appointment of inspectors by governor..... 2899

Appropriation for defraying expenses of inspectors; to whom and how paid... 2904

Bandages, blankets, stretchers, oil, etc., to be kept in mine..... 2917

Biennial report must be made by inspectors to governor..... 2903

Board for examination of mine-bosses, who constitute..... 2905
fee to be paid, etc., compensation of members of..... 2905
to examine and give certificate of fitness, etc..... 2905
qualifications of applicants for certificates..... 2906
entitled to grant certificates of two grades..... 2906

Boys under twelve years of age not to work in mines..... 2933

Breaks-through, duty of chief inspector to require proper, to be made in all room-pillars..... 2918

Cages, safety-catches, brakes, props and indicators to be attached to..... 2926

Certificates of fitness to be given mine-bosses and foremen in mines; fees for.....2905, 2912

Character of engineers; must not allow unauthorized interference with engine 2927

Check-weighman, miners may furnish; must have access to scales, weights and accounts..... 2909

MINES AND MINING—*Continued.*

SECTION

Chief mining-inspector, appointment of; by whom; term 2899
chairman of board for examination for mine-bosses... 2905
fee paid to, by each person examined 2905
to procure, at expense of state, standards, balances and other means of adjusting scales, etc 2910
mine-operator to make annual report to 2913
shall give written instructions for working gaseous mines 2924
examine machinery, appliances, etc 2924
must investigate and make record of explosions, etc.. 2930
power to compel attendance of persons to testify 2930
Coal, scales for weighing, must be provided by owner or operator of mine..... 2907
to be weighed and full weight credited to miner at two thousand pounds a ton, when 2908
standards, balances, etc., for a just weighing of, to be procured by chief inspector 2910
Compensation of members of board for examination of mine-bosses 2905
Controversies between operators and inspectors; how settled; discretion of inspectors 2934
chief mine-inspector and operator; how settled 2935
appeal; when, by whom and to what court 2935
operator, etc., failure to comply a misdemeanor.... 2935
Costs, security for, on application of adjacent owner to inspect mine, when.... 2936
on application of adjacent owner to inspect mine; how taxed 2936
Doors to be used in ventilating system to be self-closing 2925
Employes, rules to be posted for information of 2931
no unauthorized person shall enter mine without permission, etc.— Rule 1, 2932
all, shall inform mine foreman, etc., of unsafe condition, etc..Rule 2, 2932
every workman, etc., shall examine working-place, etc.....Rule 3, 2932
Engineers, character of; must not allow unauthorized interference with engine 2927
Escapeway, not more than twenty men to work without 2922
Evidence, certified copy of map, etc., as 2923
Examiners' fund, what constitutes; examiners paid out of, etc 2905
Fee for examination of mine-bosses; paid by each person examined; amount of 2905
foreman in mine; amount of 2912
Foreman in coal-mine, who may act as; first and second-class certificate; fee for 2912
Gas, precautions against dangerous accumulations of 2928
when known to exist in mine, competent fire-boss to be employed; duties of 2929
explosions to be reported to inspector, who must investigate and make record, etc 2930
Gaseous mines, chief inspector to give written instructions as to manner of working, etc 2924
Governor appoints inspectors of mines; terms 2899
may remove inspector for incompetency or malfeasance and appoint successor 2902
Inspectors appointed by governor; terms of; salaries of 2899
one designated as chief mining-inspector; term of; salary of..... 2899
two designated as associate mining-inspectors; terms of; salaries of 2899
qualifications of 2900
duties of 2901
governor may remove, for incompetency or malfeasance and appoint successor 2902

MINES AND MINING—*Continued.* SECTION

Inspectors must make biennial report to governor ... 2903
appropriation for paying expenses of ... 2904
constitute board for examination of mine-bosses, etc ... 2905
may inspect scales and record of weights ... 2911
duty of, when informed of insufficient ventilation ... 2915
an explosion, etc., is reported ... 2930
controversies between, and operators; how settled; discretion of inspectors ... 2934
Maps of underground mines; by whom must be prepared; what must show, etc. 2923
new work to be added to every twelve months 2923
when chief inspector, etc., may refuse to receive, etc ... 2923
mine-boss must certify to correctness of ... 2923
upon what scale to be made ... 2923
who may obtain copy of ... 2923
certified copy of, evidence in any court in state 2923
Mine-bosses; qualifications of applicants for certificates; classification of ... 2906
owner or operator must provide standard scales, etc ... 2907
inspector, miners, owner of mines and other persons, etc., may inspect scales, record, etc ... 2911
Mine-operators must make annual report to chief inspector ... 2913
props and other timber to be supplied by ... 2919
Miners employed in the mines may inspect scales, record of weights, etc ... 2911
coal mined by, to be weighed and full weight credited to miner at two thousand pounds a ton, when ... 2908
may furnish a check-weighman, who shall have access, etc., to examine scales, etc ... 2909
Mines, ventilation of; special duty of inspector and assistants to look after, etc. 2914
Not more than twenty men to work in any new mine, etc., without escapeway 2922
Openings, each mine must have at least two, when required by inspector ... 2921
Operators, must provide standard scales, etc ... 2907
make annual reports to chief inspector ... 2913
props and other timber to be supplied by ... 2919
to furnish safety-lamps; how kept; duty to report injury to same.. 2920
controversies between, and inspectors; how settled ... 2934
Owner or operator must provide standard scales, etc ... 2907
adjacent, may inspect mine, when ... 2936
application by, to probate court; contents of ... 2936
security for costs, when ... 2936
costs on; how taxed ... 2936
Penalty for failure of operator or owner to comply with decision, etc., in case of controversy, etc ... 2935
Precautions against dangerous accumulations of gas ... 2928
when gas is known to exist in mine competent fire-boss to be employed; duties of ... 2929
Props and other timber to be supplied by operators, owners, or agents ... 2919
Qualification of applicants for certificates as mine-foremen; classification ... 2906
Rules to be posted for information to employes ... 2931
any person who pulls down, injures or defaces, etc., guilty of offense against chapter, etc ... 2931
no unauthorized person shall enter mine without permission, etc..Rule 1, 2932
all employes shall inform mine-foreman, or his assistant, of unsafe condition, etc ... Rule 2, 2932
every workman employed in mine shall examine working-place, etc., when ... Rule 3, 2932
Safety-catches, brakes, props and indicators to be attached to cages ... 2926
Salaries of mine-inspectors ... 2899
Scales, standard, for weighing coal, must be provided by owner or operator ... 2907

MINES AND MINING—*Continued.* SECTION

Scales, coal to be weighed and full weight credited to miner at two thousand pounds a ton, when 2908
check-weighman furnished by miners to have access to, etc 2909
may be inspected by mine-inspector, miners, owner of mines and other interested persons 2911
Security for costs may be required on application of adjacent owner to inspect mine, when 2936
Standards, balances and other means of adjusting scales to be procured, etc., by chief inspector 2910
Stretchers, blankets, oil, bandages, etc., to be kept at mines 2917
State to furnish necessary instruments for testing air in mines 2916
Ventilation of mines; special duty of inspector and assistants to look after, etc. 2914
duty of mine-inspector when informed of insufficient ventilation .. 2915
state to furnish necessary instruments for testing air in mines 2916
doors used in ventilating system to be self-closing 2925
When adjacent owner may inspect mine; proceedings for 2936
Who may act as foreman; fees for examinations and certificates 2912
Women and boys under twelve years of age not to work in mines 2933

MINING, QUARRYING AND MANUFACTURING COMPANIES.

Board of directors; election; powers 1152
Capital stock, increase of; proceedings for; notice 1154
subscriptions for 1142
Commission issued by judge of probate 1141
Consolidation of 1147
how proposal adopted; entry on minutes 1148
how consummated 1149
new corporation, name and charter of; changes 1150
property rights and liabilities of 1151
suits pending at time of 1151
Corporations for, how formed 1139
Declaration filed in office of probate judge 1140
Organization of 1143
Powers of 1144
additional 1145, 1146
Provisions applicable to corporations organized under special charter 1155
Public roads, streets and navigable waters, crossing by 1146
Stockholders meet annually 1153

MINISTERS.

Licensed, of the gospel may solemnize marriages 2841

MINORS.

Accumulating trust for benefit of, may coextend with minority 1031
Action for injury causing death of minor child 26
Appeal by, how taken; guardian ad litem not required to give security for costs 468
Appointment of guardian ad litem for, in equity ..... Ch. R. 23, p. 1207.
probate court ..... Subd. 5, 3372
Apprenticed, when and how 496–507
By whom property of, listed for taxation 3942
Conveyance of personalty to, when possession with parent; effect of failure to record 1014
Custody of, on appointment of guardian 2249, 2250
divorce of parents 1501
voluntary separation of parents 2536, 2537
Deposition as in chancery; when on proceedings in probate court to sell or divide lands, proof must be taken by 167, 194, 3166, 3181
Dissent from will of deceased husband by minor widow; how made 4262

MINORS—*Continued.* SECTION
Earnings or savings, may deposit in bank and draw out 1095
Executor, named as, in will entitled to letters on attaining majority 50
Exemptions in favor of, from estate of deceased parent 2069–2103
when minor may claim for father 2063
have homestead sold in equity 2064
purchase-money of homestead held subject to right of 2062
Father entitled to preference in granting letters of guardianship 2249
may, by will, appoint guardian of minor 2250
or mother may sue for personal injury to 25
causing death 26
limitation of such suit by 2801

Guardian ad litem—
chancery, no notice necessary in, to obtain order for appointment of— Ch. R. 5, p. 1203.
when appointed in, for infant without service .. Ch. R. 20, p. 1205.
rule for appointment of, in ..... Ch. R. 23, p. 1207.
service of notice on, in; when sufficient ..... Ch. R. 118, p. 1228.
judge of probate, authority of, to appoint; must not appoint certain persons ..... Subd. 5, 3372
may prosecute appeal without giving security for costs 468
must be defended by, of appointment of the court 17
Guardian and ward, *see* 2247–2391
may sue for use of ward 20
be substituted for next friend, when 19
Infancy, form of plea of ..... No. 39, p. 950; 3553
minor licensed to practice law cannot plead ..... Note, sec. 9, p. 258; 585
Law, minors may be licensed to practice ..... Note, sec. 9, p. 258; 585
Limitations of action for injury to, or death of minor child 2801
exceptions of statute of, in favor of minors 2807
Marriage, when minor incapable of contracting 2839
consent of parent or guardian required to issue of license 2845
penalty for issuing license to minors without such consent 2848, 2849
Married women, minors, over eighteen relieved of disabilities of non-age 2531
Mechanic's lien suit, in action to enforce, service; guardian ad litem; judgment 2737
judgment by default not rendered against 2740
Next friend, must sue by 17
guardian appointed pending suit substituted for 19
Non-age, minors over eighteen relieved of disabilities; proceedings 829–835
married woman, minor, over eighteen relieved of disabilities of 2531
Non-claim, minors without guardians excepted from operation of statute of .. 131, 307
Parent's possession of minor's personalty is minor's possession, when 1015
Representative allowed to defray expenses of maintaining and educating ... 227, 228
also guardian, when; proceedings on settlement 216
Sale or exchange of intoxicating liquors to, void 3524
Service of summons in chancery ..... Ch. R. 20, p. 1205.
mechanic's lien suit 2737
notice of proceeding to invest or loan trust property 4177
remove trust property 4181
application to prove will 4285
Sale or exchange of intoxicating liquors to, when void 3524
Suit for, by next friend; guardian substituted 17, 19
guardian 20
Taxation, how property of minors listed for 3942
Time allowed for presenting claim against county 1420
estate of decedent 131, 307

MINORS—*Continued.* SECTION

Time allowed for contesting will in equity 4299
bringing suits 2807
to set aside decree in equity rendered without personal service.. 757
make application to file bill of review 761
file bill to correct settlement by representative or guardian... 806
in case of trust for accumulation merely 1031
Trust for accumulation merely, for benefit of minor, may coextend with minority 1031

MINUTES.

Chancery court, of; caption of ..... Ch. R. 67, 68, p. 1217.
note of testimony on submission to be entered on— Ch. R. 78, p. 1219.
chancellor's decree to be entered on— Ch. R. 80, 81, pp. 1219, 1220.
Circuit court, of; duty of clerk to keep ..... Subd. 8, 934
Probate court, of; duty of judge of probate to keep ..... Subd. 2, 3365
authority of judge of probate to complete ..... Subd. 7, 3372
To be read each morning in open court and signed on adjournment 2641
constitute part of final record without being transcribed therein 2642

MISDEMEANORS.

Actions by officers calculated to depreciate securities of corporations 1279
Attorney, conviction for, involving moral turpitude, ground for removal of... 595
Bill of exception, failure or refusal by judge to sign, a high misdemeanor..... 621
Building and loan association, foreign, doing business for unlicensed 1132
Circuit court, jurisdiction of, over 918
Combustible material, etc., refusal to remove from building, etc 2610
Conviction for, involving moral turpitude grounds for removal of attorney.... 595
Corporations, actions by officer calculated to depreciate securities of 1279
Cotton, deducting from weight of, or using untested weights, etc 1389, 1390
Courts martial, party, without lawful excuse, failing to appear before and testify 2886
Deducting from weight of cotton, or using untested weights, etc 1389, 1390
Doing business for unlicensed foreign building and loan association 1132
Erasing indorsement of refusal to grant injunction 792
Escapes from quarantine may be arrested; when and how 2402
Failure or refusal of judge to sign bill of exception a high misdemeanor, when. 621
Foreign insurance company, doing business for unlicensed 2603
Grand jury may be dispensed with, and prosecutions had for misdemeanors before justices and other inferior courts ..... Const., Art. I., §9, p. 62.
Injunction, erasing indorsement of refusal to grant 792
Insurance commissioner, failing to appear before, or obstructing examination by, etc 2578
company, allowing rebates by, etc 2602
foreign, acting for unlicensed 2603
life, foreign, making oath to false statement, etc., guilty of perjury 2584
domestic, liable to same penalties, etc 2594
Judge of probate failing to keep abstract of mortgages and filing with assessor, etc 3990
Jurisdiction of circuit court over 918
Life-insurance company, foreign, making oath to false statement, etc., guilty of perjury, etc 2584
domestic, subject to same penalty 2594
Medical supplies for military, surgeon filing false or fictitious claim as to..... 2888
Military property, selling or detaining without right 2881
medical supplies for, surgeon filing false or fictitious claim as to..... 2888

SECTION

MISDEMEANORS—*Continued.*
Operator or mine-owner failing to carry out decision of court in case of controversy, etc. 2935
Quarantine, removing vessel from, without permission. 2420
person ordered to remain in, escaping before discharged. 2420
Refusal to remove combustibles, etc., from building when, etc. 2610
or failure by judge to sign bill of exception, etc., a high misdemeanor. 621
Selling or detaining military property without right. 2881
Surgeon filing false or fictitious claim as to medical supplies for military. 2888
Travelers may be compelled to perform quarantine; when and how. 2403
Vessel removing from quarantine without permission. 2420

MISSISSIPPI.
Boundary line between, and Alabama. 623

MISTAKE.
Correction of, in issue of patent to school lands. 3653
clerical, in record, within three years after judgment. 3334
in description of lands sold under order of probate court; how corrected. 184, 185
settlements made in probate court; when allowed in equity. 805–808
In name, sum, quantity or date cured by judgment. 3332

MONEY.
Action, no limitation of, on notes put in circulation as. 2824
on paper issued to circulate as. 866
Attorneys or officers, money in hands of, may be garnished. 2180
summary proceedings against, for failure to pay over money or deliver property collected. 3810, 3811
Basis of privilege of banking by foreign corporation. 1096, 1097
Change-bills, corporations must not pay out. 867
persons circulating, held makers; remedy; liability of officers of corporations. 868
suit on paper issued to circulate as; rate of interest. 866
Corporations must not pay out change-bills. 867
liability of officers of, for circulating change-bills; remedy. 868
money basis of privilege of banking by. 1096, 1097
Garnished, may be, in hands of officers or attorneys. 2180
trustee. 2181
Included in term "personal property," as used in Code. Subd. 3, 1; 3906
within meaning of revenue law. Subd. 2, 3906
Officers or attorneys, in hands of, may be garnished. 2180
Public money, duty of state treasurer in reference to. 2018
not included in word "property" as property under control of governor. 1955
Revenue law, what included in term "money" or "moneys" within meaning of. Subd. 3, 3906
"Shinplasters," persons circulating, etc., held makers; remedy; liability of officers of corporation. 868
Suits on paper issued to circulate as; rate of interest, etc. 866
Summary proceedings against certain officers, general rules as to. 3763–3767
sheriffs, coroners, and other executive officers— 3768–3781
in favor of sheriffs or coroners. 3782, 3783
against clerks and registers. 3784–3799
judges of probate, tax-collectors, tax-assessors, county treasurers, and other persons receiving money for counties. 3800–3803
for and against county superintendents of education. 3804–3809

MONEY—*Continued.* SECTION
Summary proceedings against attorneys at law 3810, 3811
before justices of the peace 3812–3824
Trustee, money in hands of, may be garnished 2181

MONEY-LENDING.
Privilege tax required of company, etc., engaged in, as principal business— Subd. 53, 4122

MONTGOMERY, COUNTY OF.
Suits by state against public officers, and on contracts for hire of convicts, when may be brought in 3792–3794, 4208, 4209

MONTH.
Means calendar month, unless otherwise expressed 8
Twenty days a school month 3598

MORTGAGES.
Acknowledgment of. See CONVEYANCES, subtitle Acknowledgment and probate 985–1004
Actions, limitation of, founded on equities of redemption 2797
in real, by mortgagee, etc., what may be pleaded by defendant 1547
when debt to be ascertained; payment after judgment bars writ of possession .. 1547
in, of detinue by mortgagee, etc., against mortgagor, etc., what may be suggested by defendant 1477
mortgagee, etc., against mortgagor, etc., debt may be ascertained, and payment bars writ, etc 1477
Assignment of debt, power in mortgage to sell lands follows 1040
Construction, as to. See CONVEYANCES, subtitle Construction and operation. 1019–1063
Creditors, void as to, when 2157
Debt, power to sell lands in mortgage, follows assignment of 1040
secured by mortgage, when mortgagee must enter partial payments on 1065
penalty for failure to do so after request 1065
on payment in full satisfaction on record to be entered 1066
such entry operates a release of the mortgage and is a bar to suits thereon 1066
penalty for failure to enter satisfaction after demand 1066
payment of, divests the title passed by 1067
Detinue by mortgagee against mortgagor, what may be pleaded by way of suggestion 1477
debt may be ascertained, and payment bars writ, etc 1477
Equities of redemption subject to levy and sale under execution 1890
limitation of actions founded on 2797
Equity, rules of practice as to subsequent incumbrances in mortgage suits in— Ch. R. 108, 109, p. 1226.
Homestead, mortgage of, by married man; how executed— Const., Art. X., §§2, 7, pp. 91, 94; 2034
acknowledgment of, by wife; form of 2034
when mortgage not affected by ..... Const., Art. X., §2, p. 91; 2035
Insurance companies may deposit, as securities, when 2584
Lands, redemption of, sold under power contained in 3505–3519
Limitation of actions founded on equities of redemption 2797
Mortgagee, etc., when, must enter on record partial payments on debt secured by 1065
penalty for failure of, to do so after request in writing 1065

MORTGAGES—*Continued.* SECTION
Mortgagee, etc., on payment in full, to enter satisfaction on record 1066
penalty for failure of, to enter satisfaction after request in writing; unless, etc.... 1066
payment of secured debt divests the title out of, passed by... 1067
in real actions by, against mortgagor, etc.; what may be pleaded by defendant 1547
when debt to be ascertained; payment after judgment bars writ of possession... 1547
detinue by, against mortgagor, etc., what may be pleaded by way of suggestion, etc. 1477
debt may be ascertained, and payment bars writ, etc 1477
trial of right of property by; proceedings 4145
Payment, partial, on debt secured by, when mortgagee must enter on record.. 1065
penalty for failure to do so after request in writing 1065
on, in full, satisfaction to be entered on record 1066
such entry operates a release of the mortgage, and is a bar to suits thereon..... 1066
penalty for failure after request in writing, unless, etc 1066
of secured debt divests the title passed by 1067
Penalty for failure of mortgagee, etc., to enter on record partial payments on debt secured by, when 1065
to enter on record satisfaction, on full payment of debt secured by, unless, etc.. 1066
Personal property, mortgage of, not valid, unless in writing subscribed by mortgagor 2151
Power to sell lands in, follows assignment of debt 1040
Record, as to, of. See CONVEYANCES, subtitle Registration 985–1004
Redemption of lands sold under power contained in 3505–3519
Rules of practice as to subsequent incumbrances in mortgage suits in equity—Ch. R. 108, 109, p. 1226.
Subsequent incumbrances, rules of practice as to, in mortgage suits in equity—Ch. R. 108, 109, p. 1226.
Trial of right of property by mortgagee; proceedings 4145
Void as to creditors, when 2157
When not affected by homestead .....Const., Art. X., §2, p. 91; 2035

MOTIONS.
Appeals from motions to dismiss for want of equity 427
Costs, to retax, in law court 1343–1345
In equity, what motions heard every morning .....Ch. R. 96, p. 1223.
to dissolve injunctions; hearing of .....Ib. 97, 98, p. 1223.
dismiss for want of equity may be heard in vacation; proceedings—Ch. R. 74, p. 1218.
at any time..Ib. 75, p. 1218.
appeals from motions to 427
on hearing of motions, necessary papers to be laid before chancellor .....Ch. R. 116, p. 1228.
submission, on call for motions .....Ib. 78, p. 1219.
Circuit courts, motion-docket in .....C. C. R. 2, p. 1195.
motion to quash in .....Ib. 13, p. 1197.
motion-day in .....Ib. 21, p. 1198.
motion, notice of, in arrest of judgment and for new trial in—Ib. 22, p. 1198.
Injunctions, to dissolve; hearing of .....Ch. R. 97, 98, p. 1223.
Judgment, in arrest of, and for new trial, notice of .....C. C. R. 22, p. 1198.

MOTIONS—*Continued.*

SECTION

New trial, motion for, and in arrest of judgment, notice of.....Ib.
On hearing of, necessary papers to be laid before chancellor—
Ch. R. 116, p. 1228.
Submissions in equity on call for motions.....Ib. 78, p. 1219.
Substitution of lost records and papers, to compel production of written evidence in aid of.....G. R. 6-8, p. 1186.
Summary judgments, motions for, general rules as to.....3763-3767
Supreme court, in, special motions on Thursday, and call of roll..S. C. R. 15, 1189.
motion-docket; notices of motions.....Ib. 16, p. 1189.
order of business on Thursday.....Ib. 17, p. 1189.

MULATTO.

Who included in the term "mulatto".....Subd. 5, 2

MUNICIPAL CORPORATIONS.

Constitutional provisions.

Exception to provision that private property cannot be taken for use of corporations.....Const., Art. I., §24, p. 66.
prohibiting taxation or forced subscription for benefit of corporations.....Ib.
prohibiting creation of corporations by special act—
Const., Art. XIV., §1, p. 99.
General assembly prohibited from authorizing to lend credit, etc.—
Const., Art. IV., §55, p. 78.
authorities of, to pass laws inconsistent with general laws of state.....Ib. §50, p. 77.
requiring payment of charges payable out of state treasury..Const., Art. XI., §9, p. 96.
May appoint officers for inspection or measure of merchandise, etc., when authorized by law.....Const., Art. IV., §38, p. 76.
Mayor or intendant of, may be impeached.....Const., Art. VII., §3, p. 88.
Maximum rate of taxation by, prescribed; exception.Const., Art. XI., §7, p. 96.
Must make just compensation for private property taken—
Const., Art. XIV., §7, p. 101.
Property of, not to be taxed.....Const., Art. IV., §52, p. 78.
Street passenger-railway not to be constructed within limits of, without consent of local authorities.....Const., Art. XIV., §24, p. 103.

Statutory provisions.

Aldermen, number of; increase of.....2942, 2949
Appeal from judgments of conviction for violation of ordinances or by-laws... 2969
Board of aldermen, quorum for transaction of business..... 2948
what vote required to remove officers..... 2948
By-laws and ordinances, printed book of, admissible in evidence, when..... 1822
Change of name or boundaries of; proceedings for 2967
Citizens of, competent jurors in actions by and against..... 2657
Deed to purchaser of real estate sold for taxes; by whom made..... 2963
Engineer of railroad, duty of, as to ringing bell and blowing whistle within limits of..... 3440
Election for intendant, aldermen, etc.....2942-2949
Female not to be punished by subjecting her to work on streets..... 2968
Hospitals, quarantine, etc., authority to establish.....2392-2442

MUNICIPAL CORPORATIONS—*Continued.* SECTION

Statutory provisions—*Continued.*

Incorporation of towns; mode of 2937
petition for, where filed; contents; by whom signed.. 2937
election directed 2938
who may vote at 2939
how conducted 2940
inspectors certify result of 2941
Incorporated towns; petition for; election; if majority for corporation, town declared incorporated 2941
Inhabitants exempt from road duty 2966
Intendant and aldermen, corporate authority vested in 2942
who eligible to office of 2943
sheriff appoints time and place for election of; notice 2944
inspectors of election 2944
qualification of electors and oath of inspectors 2945
subsequent elections, etc., ordered by corporate authorities 2946
Intendant acts as justice of peace 2951
License, authority to regulate 2954
Magazine for storage of gunpowder, etc., to be built 2971
Marshal of, power of 2952
May regulate running of railroad-trains, etc 2970
Mayor or intendant has power to close certain places in case of riot 2972
Officers hold over on failure of election 2947
removal of by board of aldermen; vote required 2948
Ordinances not enforced until published 2953
printed book of, and by-laws, admissible in evidence, when 1822
Powers of corporate authorities 2950
Property of, exempt from taxation 3907
levy and sale under process 2040
Qualification of electors in state or county elections in 1556
Quarantine, etc., authority as to 2392–2442
Railroads prohibited from discriminating against 3464
Real estate, certificate of purchase of 2962
deed to purchaser of; when and by whom made; as evidence 2963
redemption of, sold for taxes 2964
by infants, married women, etc 2965
Special tax of, to be kept separate 2973
Street-railways, authority, etc., as to 1189, 1194
Taxation, powers of 2954
assessment for, annual 2955
to be returned to intendant 2956
errors in, time for correction of; notice 2956
corrected and assessment approved 2957
when, approved has force of judgment and execution 2958
taxes, collection of, by levy and sale 2958
notice of sale for 2959
contents of 2960
hours of sale for 2961
deed to purchaser of real estate sold for taxes 2963
Towns may be incorporated, when 2937

MUSICAL ENTERTAINMENT.
Where charges made for admission, license required for; exceptions..Subd. 17, 4122

MUTES.
Alabama Institute for the Deaf, *see* 3698–3726

MUTUAL AID ASSOCIATIONS. SECTION

Exemptions in favor of beneficiaries 1121
Life-insurance companies, Masons and like orders not affected 1120
Must designate principal place of business and agent for service of process 1118
Must obtain license from auditor before commencing business 1118
Report to auditor, when 1117
Visitation by auditor, subject to 1119
What are 1116

NAME.

Adopted child, name of, may be changed 367
Illegitimate child, name of may be changed 366
Jurisdiction of probate court to change names of persons ..... Subd. 11, 3363
Of corporation, not to be that of another corporation or of a person or firm 1286
Partnership may be sued by firm name 40
When mistake in, considered as amended after judgment 3332

NATIONAL BANKS.

Taxation of shares and property of; duty of president and cashier ..... Subd. 8, 3911

NATIONAL FLAG.

When to be displayed 3752

NATIONAL GUARD.

Alabama National Guard, *see* 2852–2896

NAVIGABLE STREAMS.

Are public highways ..... Const., Art. I., §25, p. 66; 2515
Authority of court of county commissioners as to opening or cleaning out 2516
Jurisdiction of counties over 1400
May be divided into road precincts by court of county commissioners; overseer for 2517
Work on, when divided into road precincts 2518

NAVIGATION.

Accounts, monthly, of receipts and disbursements, with vouchers, to be made, etc 2991
Anchor, regulations as to vessels coming to 2985
Appointment of port-wardens and harbor-master; term; removal 2975
Bond of pilot; amount, payee and condition 2994
to be filed and preserved by commissioners 2995
new, commissioners may require, when 2995
stands as security for injury caused, etc 2995
Branch or license to pilot; examination and certificate; oath 2992, 2993
when revoked 2996
City clerk; duty of with respect to reports 2981
Damage to ship-channel, marks, etc; penalty, recovery and application of 2988
Damaged merchandise to be inspected and sold, when; certificate 2982
Fees of harbor-master and port-wardens 2989
of commissioners of pilotage 3001
accounting for; disposition of 2991
none for piloting without license 2998
of Ft. Stoddard pilot prescribed by commissioners 2999
pilotage; vessels exempt from paying 3003
when due 3004
vessel crossed bar 3008
half, required of vessel declining pilot, when 3007
of pilot detained or carried out to sea 3012
to boat taking pilot off ship 3013
Forfeitures, commissioners may sue for in their own names 3002

NAVIGATION—*Continued.* SECTION

Harbor-master—
duties and powers of; when may appoint deputy ... 2979
penalty for resisting; how collected and applied ... 2980
vessels arriving in ballast; duty of, as to ... 2984
coming to anchor; duty of, as to ... 2985
may sue for penalty against vessel violating anchor regulations ... 2986
neglect of duty by; penalty; enforcement ... 2990
statement of fees, etc., must file monthly with city clerk ... 2991

Harbor-master and port-wardens—
appointment, term and removal of ... 2975
who disqualified from appointment ... 2976
territorial limits of powers; exceptions ... 2977
office and record of official acts and fees, must keep, open to inspection ... 2978
opening hatches; survey of stowage; record; marks, etc ... 2981
must give notice in writing to consignee of time of inspection ... 2981
inspection and sale of damaged merchandise; certificate ... 2982
survey of vessel; employ of carpenters; expenses, etc ... 2983
may, by resolution, direct where ballast, etc., shall be discharged; exception ... 2984
constitute board of commissioners of pilotage ... 2992
authority of, to examine, license and discharge pilots ... 2992
administer oath and issue certificate of appointment to pilots ... 2993
take and approve bond of pilot ... 2994
must preserve bonds and affidavits of pilots ... 2995
may deprive pilot of his branch or license, when ... 2996
pilot to report improper discharge of ballast to ... 2997
prescribe rules and regulations for government of pilots ... 2998
must keep record of proceedings and rules adopted; access; copies ... 3000
fees of, as commissioners of pilotage ... 3001
may sue for forfeiture accruing under statute ... 3002
List of crew and passengers on entry of vessel to be given, under oath ... 3014
oath to, by whom administered ... 3015
where filed ... 3016
penalty for failure to give ... 3017
Mobile harbor; southern boundary of ... 2974
Notice of time of sailing to be given pilot ... 3010
Oath of pilot; administered by commissioners ... 2993
Outer-bar pilots deliver letters to vessels coming in ... 3006
Penalty for resisting harbor-master ... 2980
violating anchor regulations ... 2986
damages to ship-channel, beacon-stake, piling or mark ... 2988
harbor-master neglecting duty ... 2990
negligence or want of skill of pilot ... 2995
wrongfully piloting; fees to rightful pilot ... 3011
failure to give list of crew and passengers on arrival of vessel ... 3017
harboring or concealing deserters ... 3019
employing persons belonging to another vessel ... 3020

Pilots and pilotage—
application for license, and examination and license of pilots; prerequisites 2992
apprentices to be kept on pilot-boats; discharge; appeal ... 2992
ballast, improper discharge of, to be reported by pilot ... 2997
bond of pilot; amount, payee, condition, renewal ... 2994
who may sue on ... 2995
branch or license; when revoked ... 2996
commissioners examine and license pilots ... 2992, 2993
prescribe rules and regulations ... 2999

NAVIGATION—*Continued.* SECTION

Pilots and pilotage—*Continued.*
commissioners keep record of proceedings ... 3000
fees of, for branch, etc ... 3001
may sue for forfeitures ... 3002
limit upon the number to be branched or licensed ... 2992
pay of pilot detained or carried out to sea ... 3012
pilot bringing vessel in may take her out, when ... 3009
pilotage, rates of; certain vessels exempt ... 3003
when due ... 3004
when vessel liable for half fees ... 3007, 3008
vessels approaching, rules to be observed as to, by pilot ... 3005
Reports, monthly, by harbor-master to city clerk, of receipts, disbursements, etc ... 2991
city clerk to mayor ... 2991
laid before general council and spread on minutes ... 2991
Sailor, deserting, apprehended and delivered to vessel, when ... 3018
Salary of harbor-master; by whom and how paid ... 2991
Ship-channel; regulations as to vessels entering or passing through ... 2987
damage to, or marks; penalty, how recovered and applied ... 2988
Vessel—
anchor, coming to; regulations as to ... 2985
approaching, rules to be observed as to, by pilot ... 3005
arriving in harbor or loading; regulations as to ... 2979
attachment against, for penalty for violating harbor regulations ... 2986
ballast, must discharge as prescribed by regulations; exception ... 2984
deserting sailor apprehended and committed until departure of ... 3018
penalty for harboring or concealing ... 3019
exempt from pilotage, when ... 3003
fees of pilot, when must be paid in advance ... 3004
half must be paid ... 3007, 3008
lien against, for penalty for violating harbor regulations ... 2986
list of crew and passengers to be given, under oath, on arrival of ... 3014
by whom oath administered ... 3015
where to be filed ... 3016
penalty for failure to file ... 3017
may refuse pilot and employ tug-boat, when ... 3009
notice of time of sailing to be given pilot, when ... 3010
opening hatches, survey of stowage, record, etc ... 2981
outer-bar pilots deliver letters to, coming in ... 3006
penalty against person in charge of, resisting harbor-master ... 2980
for violating anchor regulations; enforcement ... 2986
for employing or receiving person belonging to another ... 3020
survey of; opening ceiling, strips, sheathing, etc ... 2983
of stowage; opening hatches; expenses; record, etc ... 2981

NAVIGATION COMPANIES.
Mode of incorporating ... 1247
Powers of ... 1248
Provisions for winding up affairs of ... 1250
Special meetings; notice of ... 1249

NE EXEAT.
Writs of, on what demands, and in what cases may issue ... 762
chancellor, power of, in vacation in respect to ... 763
what officers may make orders for ... 771, 921
in aid of suit by state for recovery of money wrongfully used ... 3758
restoration of on appeal from order discharging ... Ch. R. 87, p. 1221.
register may make orders for on any day ... Ch. R. 4, p. 1203.

NE EXEAT—*Continued.* SECTION
Writs of, what sufficient prayer for, in bill.....Ch. R. 17, p. 1205.
answer must be sworn to, to authorize discharge of.Ch. R. 32, p. 1209.

NEGLIGENCE.
Action for wrongful act, omission, or negligence causing injury or death.....25–27
Liability of master or employer to servant or employe for injuries, etc....1749–1751
railroads for damages to persons, or to stock or other property, etc.....3440–3443

NEGOTIABLE PAPER.
Bills of exchange and promissory notes, *see*.....869–896

NEGRO.
Railroads carrying passengers must provide equal but separate accommodations for whites and blacks.....3454, 3455
What included in the term "negro".....2

NEWSPAPERS.
Ad quod damnum proceedings; notice to non-residents published in.....1714, 1731
Advancements, in proceedings to discover, publication to non-residents..... 1470
Affidavit required of officer, publisher or manager as to contract for publication in..... 3046
Application to sell interest of decedent in partnership lands, publication of notice in..... 190
lands for payment of debts, publication of notice of..... 160
non-residents, publication as to 161
Attachment against non-resident; publication as to, and levy..... 531
Auditor to publish notice of revocation of license to guarantee company to do business, etc..... 3098
Certain weekly papers taken, filed, etc., by designated officers; expense of.3049, 3050
Chancery court, publication of notice of special term of..... 637
as to defendants whose names are unknown..... 690
non-residents in proceedings in..... 686
in proceedings to relieve infants of disabilities of non-age..... 831
service of non-residents by publication.....Ch. R. 22, p. 1206.
Circuit court, publication of notice as to special term of..... 915
Collateral securities and pledges, publication of sale of 949
Commissioners' court, publication of notice of special term of..... 956
Constitutional amendment, result of election on, made known by proclamation of governor..... 1664
Contracts, what, in respect to publications in, void..... 3046
officer and publisher or manager to file affidavit as to..... 3046
Corporations, publication of meeting to increase capital stock..... 1126
of stockholders to authorize mortgage of corporate property.....Subd. 7, 1144
of stockholders to authorize mortgage of corporate property.....Subd. 7, 1256
domestic, publication against, other than railroad corporation, having no agent in the state..... 3276
Dower, proceedings for assignment of; publication as to non-residents..... 1520
Elections, notice of, given by sheriff by publication in..... 1590
special, for congress or state officers, governor gives notice by proclamation 1601
sheriff gives notice of, in his county by proclamation..... 1602
notice of result of, given by proclamation of governor..... 1647
election of electors for president and vice-president given by proclamation of governor..... 1655

NEWSPAPERS—*Continued.* SECTION

Elections on amendments to constitution, notice of result given by proclamation of governor 1664
Eminent domain, proceedings in, notice to non-resident given by publication 1714, 1731
Estrays to be advertised in, when 1771
Evidence as to fact of publication of notice, etc 3051
Executors and administrators and guardians, publication of certain notices to; length of time 3042
publication of notice to non-resident, when 87
of appointment of; how given 122, 123
Exemptions, exceptions to allotment of; notice by publication, when 2084
For what time publication in, made when not otherwise provided 3041
General and public laws to be published in; provisions as to 3399-3401
contractor to furnish copy of paper to designated officers 3400
Ginners, public, notice of sale of cotton to satisfy lien for charges, etc 2789
Guarantee company, auditor to give notice by publication of revocation of license of, to do business 3098
Guardians, notice of sales by; how made 2326
settlements by 2340-2346
compelling final settlements by 2355
statement of account against 2359
Homestead exemptions, exceptions to allotment of; notice by publication, when 2084
Insolvent estate; notice of report of insolvency 294
day for settlement by administrator of 298
application for sale of land after declaration of insolvency 327
Interpleader at law, notice of, by publication, when 2633, 2634
Judge of probate as guardian, etc., notice of settlement by 2390
Judgment, notice of application to revive; how given 1925
motion to enter satisfaction of 3335
set aside, or decree, or to set aside entry of satisfaction 3336
to amend, decrees or orders nunc pro tunc 3337
Keeping estate together, notice of application for; how given 283
Limited partnership, publication of terms of 3216
Livery-stable keepers, publication of sale of stock to satisfy lien of 2775
Local laws, notice as to passage of, to be published .. Const., Art. IV., §24, p. 74; 2231
Lost papers, records, etc., notice of substitution of ..... G. R. 8, p. 1186; 2649
Macadamized, turnpike and other toll-road companies, notice of application for authority to locate 1214, 1215
Municipal corporation, notice of petition for incorporating 2938
meeting to correct errors in assessment 2956
Notice, newspaper evidence of the fact of publication of 3051
Partition of property, proceedings for; notice to non-residents and unknown parties 3164, 3165
crops, notice of application for 3191
Party in interest may designate paper in which publication to be made 3040
Pawnbrokers, sales by, of pledges, notice of 3245
Person of unsound mind, non-resident, notice of application for appointment of guardian of 2268
Publication in, for specified number of weeks or days defined 3043
what length of time when not otherwise provided 3041
when paper suspended or discontinued 3047
of sale under deed of trust, mortgage, etc., when paper suspended or discontinued 3048

NEWSPAPERS—*Continued.* SECTION
Public ginners, notice of sale of cotton by, to satisfy lien, etc. 2789
printing, advertisement for bidders for. 3387, 3399
Railroad, notice of meeting of stockholders to increase capital stock. 1174
Real actions, publication as to absconding defendant in. 3278
Sales by executors and administrators of personal property, advertisement of. 145
lands, advertisement of. 169
property for distribution on final settlement. 235
guardians, advertisement of. 2326
under power in deed of trust, mortgage, etc., notice of, when paper suspended or discontinued. 3048
of school lands, notice of; how given. 3642
Salvage; notice of property taken up adrift; how given. 3528–3530
School lands, notice of election for sale of. 3635
sale of. 3642
Stationery, paper, fuel, etc., for state, advertisement by secretary of state for bidders. 1978
Substitution of lost or destroyed records and papers; notice as to—
G. R. 8, p. 1186; 2649
Taxes, notice of assessor's appointments for assessment of. 3931
book of assessments, lists, etc., time for correction of errors in, notice of. 3978
collector's appointments for collection of, notice of. 4003
corporations, private, levy on shares in, for; notice of. 4017
proceedings to sell lands for, notice of, when. 4051, 4054
when lands assessed to "owner unknown," notice of. 4052
rate for advertising, by what provisions governed, etc. 4053
sale of lands for; rate for advertising; notice of. 4057
abbreviations, initial letters and figures used, etc. 4058
cost of advertising, what part paid by state; how paid 4065
collector. 4066
Testimony, proceedings to perpetuate, notice of. 1864
Trustee, sale of realty by; notice of. 4172
application to resign, notice of. 4189
appoint, notice of. 4194
to receive property in another state, notice of 4201
Trust estate, notice of register to creditors to file claims; form of. 4160
application to invest; hearing of; notice of. 4177
petition for removal of to another state; hearing of; notice of. 4181
Warehousemen and common carriers; sale of perishable freight to pay charges, notice of. 4225
other freight to pay charges, notice of. 4226
Wills, applications to probate unwritten; notice of. 4270
notice of application to probate. 4284–4286

NEW TRIALS.
Affidavit and reasons in arrest of judgment or for new trial, rule as to—
C. C. R. 22, p. 1198.
where filed; notice of motions. Ib.
Bond required before supersedeas issues. 3345
refunding, required, when. 3347
has force and effect of judgment. 3350
Chancery court, rehearings in; rule as to. Ch. R. 82, p. 1220.
Common-law court, rehearings in; rule as to. C. C. R. 22, p. 1198; 3342
Damages may be awarded when petition not meritorious. 3348
Exception may be reserved and decision reviewed on appeal, when. 434
Execution, right of circuit court to pass on validity of, not affected. 3351

NEW TRIALS—*Continued.* SECTION
In suit by state for moneys wrongfully used 3761
Notice of motions for; reasons and affidavit; where filed...C. C. R. 22, p. 1198.
Only two, to be granted to same party in any cause 3314
Rehearings in supreme court; regulations as to.....S. C. R. 41, p. 1194.
chancery court; rule as to.....Ch. R. 82, p. 1220.
at law granted within four months after judgment, when 3342
petition for, contents of; notice; how petition controverted 3343
supersedeas ordered on; power to impose terms 3344
bond for 3345
trial of; when supersedeas dismissed on sworn denial 3346
refunding bond required, on such dismissal, before execution issues 3347
damages may be awarded when petition not meritorious 3348
provisions for, applicable to plaintiffs 3349
bonds, given under article, have force and effect of judgments 3350
right to pass on validity of execution not affected 3351
Right of, on release found within two years after judgment 3341
State, in suit by; for moneys wrongfully used; may be granted, when 3761
Supreme court, rehearings in; regulations as to.....S. C. R. 41, p. 1194.
appeal to, from decision on motion for new trial 434

NEXT FRIEND.
Infants must sue by 17
Persons of unsound mind may sue by 18
Substitution of guardian for, in pending suit 19

NIL DICIT.
Judgment by, authorized in attachment suits 562
before justices not to be entered until noon of return-day 2677
On judgment by, clerk calculates interest, when 3316

NOBILITY.
No title of, shall ever be granted or conferred in this state—
Const., Art. I., §30, p. 67.

NON-AGE.
Marriage of woman, minor, over eighteen relieves of disabilities of 2531
Proceedings to relieve minors from disabilities of.....829–835

NON-CLAIM.
Estates of decedents, claims against, barred unless presented within twelve months 130
minors and persons of unsound mind allowed longer time, when 131
Insolvent estates, claims against, barred unless filed within six months 306
longer time allowed infants and lunatics, when 307
Personal representative, etc., having claim against estate must file same within twelve months 129
if claim of, accrues after grant of letters must be filed within six months 129
Presentation of claim under statute of, suspends statute of limitations until notice to sue.....2817, 2818

NON COMPOS MENTIS.
The term, includes all persons of unsound mind 1

NON EST FACTUM.
Form of plea of.....No. 33, p. 949; 3353
Plea of, must be verified by affidavit; shifts burden of proof.....1801, 1802

NON-RESIDENTS. SECTION

Appointment of, as executors and administrators....80–89
Attachment by a non-resident against another.... 530
against foreign corporation.... 535
how security for costs taken and approved in suits commenced by 534
Courts of chancery must take cognizance of cases against.... 669
How security for costs taken and approved in suits commenced by attachment 534
Must give security for costs in all courts....1347, 1352
Removal of ward's property from state when he and guardian non-residents... 2378
to another state, when permitted; proceedings....2379, 2380
When non-resident executor or administrator may sue for and recover or receive property....85–87

NONSUIT.

May be taken before jury retire; when two equivalent to verdict.... 3313
When plaintiff suffering nonsuit may take bill of exceptions.... 614
may be directed on failure of plaintiff to answer interrogatories propounded by adverse party.... 1856
to produce paper on notice—
C. C. R. 8, p. 1196.
books or writings on notice.... 1860

NORMAL SCHOOLS.

Authority of general assembly to appropriate money for—
Const., Art. IV., §34, p. 76.

NOTARIES PUBLIC.

Commercial.

Acknowledgment and proof of conveyances, may take; fees for....993, 994, 3032
Affidavits may take, and certify; fees for.... 3032
Appointment of; by whom; term of office....Const., Art. VI., §26, p. 86; 3021
Authority of....3025–3032
Bond of; by whom approved; where filed and recorded.... 3024
Certificate of demand; notice and protest as evidence.... 3030
Commission of; when to issue, etc....3058–3060
Conveyances, may take acknowledgment and proof of; fees for....993, 994, 3032
Dueling oath must take.... 3062
Fees of....3032, 3033
Governor may appoint and remove....Const., Art. VI., §26, p. 86; 3021, 3023
Justices of the peace may act as notaries, when.... 3031
May administer oaths, and take and certify affidavits; fees for.... 3032
Oath of office....Const., Art. XV., p. 103; 3062
Register, required to keep; to give certified copies therefrom, when.... 3027
disposition of, on death, resignation, etc.... 3028
certified copies of; by whom given in case of death, etc.... 3029
Removal vacates office; governor may remove.... 3023
Seal of office, must provide; design of.... 3026
Women eligible to office of.... 3022

Notaries ex officio justices of the peace.

Acknowledgment and proof of conveyances, may take....993, 994
Appointment of; term of office....Const., Art. VI., §26, p. 86; 3034
Bond of; by whom approved; where filed and recorded.... 3037
Commission of; when to issue, etc....3058–3060
Conveyances, etc., may take acknowledgment and proof of....993, 994
Docket and files to be delivered to successor.... 3039

NOTARIES PUBLIC—*Continued.*

SECTION

Notaries ex officio justices of the peace—*Continued.*

Dueling oath, must take 3062
Governor, may appoint and remove.....Const., Art. VI., §26, p. 86; 3034, 3035
Jurisdiction and powers of 3038
Oath of office.....Const., Art. XV., p. 103; 3062
Successor, docket to be turned over to, who must complete unfinished business, etc 3039
Vacates office by removal from precinct or ward, etc 3036

NOT GUILTY.

Form of plea of.....No. 34, p. 949; 3353
Is general issue in action for defamation, or for injury to the person, or to real or personal property 3295
statutory action of ejectment; effect of pleading 1532

NOTICES.

Adverse possession, notice of; form of; where filed and recorded.....1541-1543
Affidavit required of officer, publisher, etc., as to contract for publication of .. 3046
Attorney, notice to, of record as effectual as notice to party 3312
authorized to be served on, shall be served on leading counsel—G. R. 1, p. 1185.
Chancery, notice not necessary for obtaining designated orders in—Ch. R. 5, p. 1203.
in, one day's notice sufficient when, by English orders, two days' notice required.....Ch. R. 117, p. 1228.
guardian ad litem, when service on, sufficient....Ch. R. 118, p. 1228.
how time to be computed under, rules requiring notice—Ch. R. 119, p. 1228.
when service on solicitor in, valid 712
Commanding officer of regiment must give notice to officer of company, troop, etc., as to election, etc 2871
Costs of publication, not more than one cent per word for each insertion, etc.. 3045
Contracts, what, in respect to advertisement, etc., void 3046
officer, publisher, etc., required to file affidavit, etc 3046
Conveyance, record of, operates as notice 991
Declaration of trust, record of, equivalent to actual notice 1043
Equity, when service on solicitor in, valid 712
guardian ad litem, when service on, sufficient in....Ch. R. 118, p. 1228.
Evidence, newspaper, as to publication of notice 3051
Executors, administrators and guardians, length of time of publication of certain notices to 3042
Guardian ad litem, when service on, sufficient in equity....Ch. R. 118, p. 1228.
Insurance commissioner to give notice, by publication, of revocation of certificate to foreign company to do business 2579
Newspaper, party in interest may designate 3040
for what time notice to be published when not otherwise provided 3041
length of time of publication of certain notices to executors, administrators and guardians 3042
publication in, for certain number of weeks or days defined 3043
sent to officer or person making publication, and person to whom notice given 3044
cost of publication not to exceed one cent a word for each insertion 3045
what contracts in respect to publication in, void 3046
affidavit required of officer and publisher as to publication in..... 3046
when, suspended or discontinued, how publication made 3047
sale under deed of trust or mortgage 3048

NOTICES—*Continued.* SECTION
Newspapers, certain weekly, taken, filed, etc., by designated officers; expense of 3049, 3050
as evidence of publication of notice 3051
Public roads, notice to overseers and apportioners 2463
Record of conveyance operates as notice 991
declaration of trust equivalent to actual notice 1043
Sale under power in deed of trust or mortgage when paper suspended or discontinued 3048
Solicitor, when service of notice on, in equity valid 712
Time, how, to be computed under chancery rules requiring notice— Ch. R. 119, p. 1228.
one day's notice sufficient when, by English orders, two days' notice required ..... Ch. R. 117, p. 1228.
Trust, record of declaration of, equivalent to actual notice 1043

NUISANCES.
Duty of county board of health to examine into and take steps to abate 2428
To health; how abated 2393, 2394

NUMBER.
The singular includes the plural and the plural the singular 1, 3906

NUNCUPATIVE WILLS.
By soldiers, sailors and marines, when valid 4269
How probated; when 4270, 4271
Under what circumstances may be made 4268
When valid 4267

NUNC PRO TUNC.
Amendments of judgments, decrees or orders; proceedings for 3337, 3338

OATH.
Authority to administer; all courts 2639
chancellors 642
circuit judges 921
clerks of circuit court 933
clerk of supreme court 3860
commissioners of pilotage 2993
courts martial and military board 2886, 2883
judges of probate 3372
justices of the peace 2663
generally, beyond the state 1799
in proceeding to enforce mechanic's lien; beyond state 2728
notaries public 3025, 3032, 3038
quarantine officers 2397
registers in chancery ..... Subd. 12, 657
sheriff investigating cause of fire 2609
or other officer in trial of right of property ... 4141
Dueling, to be taken by all officers 3062
Includes affirmation 1
Of office, to be taken by all officers, executive and judicial, and members of the general assembly ..... Const., Art. XV., p. 103; 3062
dueling oath also to be taken 3062
by whom such oath may be administered ... Const., Art. XV., p. 103; 3063
must be written out and subscribed, etc 3063
what oaths of office filed with secretary of state 3064

OATH—*Continued.*

SECTION

Of office, of judge of probate filed with clerk of circuit court 3065
other officers filed with judge of probate 3066
deputies, how taken and filed 3067
municipal officers 3068
to be indorsed with the date of filing 3069
of attorneys at law; where filed ..... Note, sec. 8, p. 257; 587
penalty against attorneys for practicing before taking—
Note, sec. 10, p. 258; 588
of pilots filed with commissioners of pilotage 2995

OATS.

Weight per bushel, thirty-two pounds 4240

ODD FELLOWS.

Exempt from provisions of insurance law 2586
Provisions touching mutual aid associations not applicable to 1120

OFFICES AND OFFICERS.

Constitutional provisions.

Bribery of officers; what is ..... Const., Art. IV., §41, p. 77.
Corrupt solicitation of officers, etc., to be defined by law and punished—
Ib. §42, p. 77.
Crimes, persons convicted of certain designated, ineligible to office—
Const., Art. IV., §18, p. 73; Art. VIII., §3, p. 88.
Deductions from salaries of officers for neglect of duty; general assembly required to regulate cases in which shall be made... Const., Art. IV., §48, p. 77.
Impeachment of officers; grounds of ..... Const., Art. VII., p. 87.
Judges of supreme and circuit courts and chancellors prohibited from receiving fees or perquisites, or holding any office of trust or profit, except judicial, during term, etc ..... Const., Art. VI., §10, p. 84.
No religious test shall be required as a qualification for any office of public trust ..... Const., Art. I., §4, p. 60.
No title of nobility or hereditary distinction, privilege, honor, or emolument shall ever be granted or confirmed ..... Ib. §30, p. 67.
No office shall be created, the appointment to which shall be for a longer time than during good behavior ..... Ib. p. 67.
No educational or property qualification for office, nor any restraint upon same on account of race, etc., shall be made ..... Ib. §38, p. 67.
Oath of office required of all members of the general assembly, and all officers, executive and judicial ..... Const., Art. XV., p. 103.
by whom administered ..... Ib. p. 103.
Persons convicted of designated crimes ineligible to office—
Const., Art. IV., §18, p. 73; Art. VIII., §3, p. 88.
Persons holding office of profit under the United States also ineligible; exceptions ..... Const., Art. XVI., §1, p. 103.
Persons prohibited from holding two offices of profit at same time; exceptions ..... Ib. p. 103.
Powers of government divided into three distinct departments—
Const., Art. III., §1, p. 68.
pertaining to one department not to be exercised by persons being of another ..... Ib. §2, p. 69.
Returns of elections of designated officers to be made to secretary of state—
Const., Art. VIII., §7, p. 89.
State officer for inspection of merchandise, etc., prohibited—
Const., Art. IV., §38, p. 76.
Terms of senators and representatives ..... Const., Art. IV., §3, p. 71.

SECTION

OFFICES AND OFFICERS—*Continued.*

Constitutional provisions—*Continued.*

Term of governor and other executive officers two years from time of their installation.....Const., Art. V., §5, p. 79.
Terms of judges and chancellors six years.....Const., Art. VI., §15, p. 85.
Vacancies in office of secretary of state, state treasurer, state auditor, attorney-general or superintendent of education, filled by governor—
Const., Art. V., §23, p. 82.
Vacancies in office of any of the judges or chancellors filled by the governor—
Const., Art. VI., §17, p. 85.
sheriff filled by governor.....Const., Art. V., §26, p. 82.
clerk of circuit court filled by governor—
Const., Art. VI., §23, p. 86.

Statutory provisions.

Action on official bond may be in name of person aggrieved..... 14
Additional bonds, *see*.....3110–3118
All officers must reside in state and keep office as designated by law..... 3057
Beginning and duration of terms of executive and judicial officers.....3052–3055
Bonds. See BONDS, subtitle Official.....3070–3132
Books and accounts may be examined by examiner of public accounts.....1876–1879
Books, papers, etc., must, on demand, be delivered to successor..... 3133
proceedings to compel such delivery..... 3134
officer discharged on affidavit..... 3135
when officer committed to jail until delivery..... 3136
search-warrant for such books, papers, etc., when issued.. 3137
if obtained, to be delivered to successor..... 3338
proceeding to recover from another in possession..... 3139
Commissioned officers, who are..... 3058
Commission to issue in name of state, signed, sealed and countersigned..... 3059
not to issue to officer required to give bond until bond given..... 3060
Contest of right to office.....1667–1703
Conviction and sentence for crime vacates office..... 3142
reversal of, restores to office..... 3142
Defaulter, officer who is, auditor must not draw warrant in favor of..... 2006
Election of officers, general.....1573–1579
special.....1598–1604
Hold-over provisions.....3034, 3053–3055
Ineligible to office, persons who are..... 3056
Insanity vacates office pending disability..... 3144
Installation of executive officers, when takes place..... 3052
Judge or chancellor vacates office by accepting another..... 3141
Limitation of actions for nonfeasance, misfeasance or malfeasance in office.... 2795
Notice, how given, of death of member of congress or general assembly..... 3145
judge of probate..... 3146
removal of officer from state, county, etc..... 3150
judgment vacating office..... 3151
vacancies to be filled by general assembly..... 3152
failure to file bond..... 3086
Oath, *see*.....3062–3069
Residence, all officers must keep in state, etc..... 3057
Resignation of governor, transmitted to secretary of state..... 3147
duty of secretary of state on receiving..... 3147
member of congress or general assembly sent governor..... 3148
other officers, except justices and constables, transmitted to appointing power..... 3148
justices and constables sent to judge of probate who notifies governor..... 3149

OFFICES AND OFFICERS—*Continued.* SECTION

Statutory provisions—*Continued.*

Right to office restored by reversal of judgment of conviction, when 3142
revocation of proceedings in lunacy 3144
Salaries of officers due and payable on last day of each month 3153
Solicitor to be notified of failure to file bond 3086
Succeeding officer entitled to salary for day change takes place 3154
Suit on official bond may be in name of person aggrieved 14
Summary judgment, *see* 3763-3824
Usurpation or forfeiture of office—
action in name of state for, when 3420
circuit judge may direct action to be brought 3421
any person may bring action on securing costs 3421
informant may join as plaintiff with state 3426
averments of complaint 3428
in what county action to be brought 3422
court always open for trial of cause after five days service; postponement. 3424
cause tried by court unless jury demanded 3425
in whose name continued on death of informant 3427
when action abates on death of all informants 3427
true officer may be averred and judgment rendered upon right to office... 3429
right of, on judgment in his favor 3430
when validity of election not triable under this proceeding 3431
judgment of exclusion from office or franchise; costs 3432
costs against state, when; when against informant 3434
sureties of informant, when 3435
execution for, against sureties 3436
appeal, either party may, to supreme court; costs 3437
state not required to give security for costs of 3437
does not supersede execution of judgment unless bond given, etc.. 3438
when heard in supreme court 3439
Vacated, office, by death, resignation, removal, etc 3140
judge or chancellor accepting another office 3141
sentence of officer to penitentiary or hard labor 3142
failure to elect certain county officers 3143
insanity of officer 3144
failure to file bond 3085
Vacancies in all state and county offices filled by governor unless otherwise provided 3061
Venue of suits by state on bonds of officers 4208
Women eligible to office of notary public 3022
register in chancery 653

OFFICIAL BONDS.

See BONDS, subtitle Official.

OILS.

Illuminating or lubricating; license required for selling as principal business ..... Subd. 56, 4122

OLEOMARGARINE.

Duty of commissioner of agriculture to inquire into sale of, etc ..... Subd. 20, 376

OYSTERS.

Measure of, in the shell 3160
Non-residents prohibited from taking from public reefs 3157
Planting; regulations in respect to 3155

SECTION

OYSTERS—*Continued.*
Public reefs, what are ... 3156
license to take from, granted to citizens of state ... 3157
property in oysters taken from, by citizens of state ... 3158
manner and time of taking from ... 3159
non-residents prohibited from taking from ... 3157

PARDON.
Governor may grant, after conviction, except in impeachment and treason— Const., Art. V., §12, p. 80.
Political and civil disabilities not removed by, in certain cases unless so expressed ... Ib.
Right to office vacated by sentence for crime not restored by ... 3142
Secretary of state must attest ... 1974

PARENT AND CHILD.
Adoption of children; proceedings ... 367
Advancements by parent to child or other lineal descendant ... 1463–1473
Apprenticing children; proceedings ... 496–507
Bastard children inherit from mother ... 1459
legitimated by marriage of parents, if recognized ... 364
declaration filed; effect ... 365
name may be changed, how ... 366
Birth of child revokes will made before marriage, when ... 4249
after will made, child inherits, when ... 4251
how child's portion set apart ... 4252
Conveyances of personalty to minor to be recorded when; effect of failure ... 1014
Custody of children on appointment of guardian ... 2249, 2250
decree of divorce ... 1501
voluntary separation ... 2536, 2537
Death of child born after will restores will, when ... 4253
Descent of real and personal property of parents to children ... 1453–1462
Devise or legacy to child, effect on, of child's death ... 4257
Divorce for pregnancy bastardizes issue ... 1499
Exemptions in favor of minor, from estate of deceased parent ... 2069–2103
when minor may claim, for father ... 2063
have homestead sold in equity ... 2064
Father entitled to preference in granting letters of guardianship ... 2249
may, by will, appoint guardian for minor ... 2250
or mother may sue for seduction of daughter ... 24
personal injury to minor causing death ... 25, 26
Grandchildren, when take under appointment or power to child ... 1058
Incestuous marriage, issue of, not illegitimate, when ... 2840
Liability for support of indigent parents ... 3233
Marriage of parents legitimates bastard, when ... 364
child, when consent of parent required ... 2845
penalty for issuing license without such consent ... 2848, 2849
Mother or next of kin on her part inherit from bastard ... 1460
Non-age, minors over eighteen relieved of; proceedings ... 829–835
Possession of minor's personalty is possession of child, when ... 1015
Posthumous children inherit as if born in lifetime of father ... 1458
Redemption by child, of lands sold under mortgage, execution, etc ... 3515

PARTIAL PAYMENTS.
First applied to payment of interest due, balance to principal ... 2629
On recorded mortgage, to be entered on record; penalty for failure ... 1065
When will prevent bar of statute of limitations ... 2811

PARTICULARS, BILL OF.
In actions on account list of items may be had on notice ... 3290

PARTIES. SECTION

To actions at law. See ACTIONS and PLEADING AND PRACTICE.
in chancery. See CHANCERY, subtitles Bill, and Parties.
before justices of the peace 2673

PARTITION.

Of property generally.

Any property, real, personal or mixed, may be partitioned among the owners.. 3161
Appeal from probate court decree; limitation; bond for supersedeas...Subd. 7, 458
Application for partition—
may be made by one or more joint owners or tenants in common 3161
executor, administrator or guardian 3161
must be made in county where property situate 3161
when lands lie partly in different counties, may be made in either 3162
contents of 3163
on filing, day not less than thirty days thereafter fixed for hearing 3164
ten days' notice to be given resident parties 3164
non-residennts made parties by publication 161, 3164
unknown persons made parties to sworn petition as non-residents 3165
guardian ad litem appointed for infants and persons non compos mentis... 3164
proof by deposition as in chancery when minors 3166
decree on hearing; appointment of commissioners 3166
chancery court, jurisdiction to partition property or to sell for distribution 3187
practice in partition suits 828
decree of partition vests title though conveyance not executed 860
may annul probate court partition for fraud 3171
Commissioners for partition—
not more than five, three of whom may act, appointed 3166
must take oath to faithfully execute trust, etc 3167
duty and authority of, in making partition 3167
must publish notice of time of partitioning lands 3168
partition lands by lot at court-house of county 3168
act in presence of judge of probate 3169
return statement attested by judge of probate 3169
cannot make partition when adverse claim set up 3176
new, appointed when necessary 3173
fees and expenses of 3174
Costs and expenses of partition; execution may issue therefor 3181
Deceased partner's interest in partnership lands; jurisdiction of probate court of 188–200
Executors and administrators; provisions of article applicable to 3185
Guardian ad litem appointed for infants and persons non compos mentis 3164
may file application for partition 3161
Judge of probate to be present at partition of lands by commissioners 3169
must attest statement showing partition 3169
file and record papers 3170
Jurisdiction of probate court to partition property ..... Subd. 10, 3363; 3161
sell property for distribution 3178
of interest of deceased partner in partnership lands 188–200
chancery court to partition property or sell for distribution 3187
annul probate court partition for fraud 3171
Lien on undivided interest of one attaches only to his share 3172
Notice of application for partition, how given 161, 3164, 3165
time and place of making partition, how given 3168
application to sell for distribution, how given 161, 3180
sale, how given 169, 3182

PARTITION—*Continued.* SECTION

Of property generally—*Continued.*

Partition made by lot at court-house in presence of judge of probate 3169
statement of commissioners to be attested by judge of probate 3169
papers filed and registered as conveyances 3170
Provisions of article not exclusive of other remedies 3177
applicable to executors and administators 3185
not applicable to partition of crops 3186

Sale for distribution—
application may be made by one or more persons interested 3178
executor, administrator or guardian 3178
must be made in county where property situated 3178
when lands lie partly in different counties may be made in either 3178
on filing, day appointed, not less than thirty thereafter, for hearing 3179
ten days' notice to be given resident parties 3180
non-residents made parties by publication 161, 3180
unknown persons made parties to sworn petition as non-residents 3165
guardian ad litem appointed for infants, etc 3180
proof to be taken as in chancery cases 3181
when application by guardian proof must show interest of ward to sell 3181
decree; appointment of commissioner 3182
sale and subsequent proceedings conducted as sales by representatives— 3182, 169–179
payment and distribution of purchase-money 3183
shares of unknown parties paid to judge of probate 3165
compensation of commissioner 3183
new commissioner appointed if necessary 3184

Of crops.

Appeal to circuit or supreme court; how decree superseded 3204
Application in writing, by whom may be made 3188
may be made by personal representative or guardian 3188
contents and verification of 3189
day appointed for hearing 3190
guardian ad litem appointed for minors, etc 3190
notice of hearing; how given 3191
decree of partition or sale 3193
Assignees, provisions of article apply to 3206
Commissioners appointed to make partition, when 3196
summoned by sheriff, under writ 3196
oath of; duties of; return of 3196
if partition cannot be made, must report that fact 3197
new, appointed when necessary 3198
report set aside 3200
contest of report of; proceedings if set aside 3200
Costs and fees; how taxed 3203
Decree for partition, sheriff ordered to summon householders, etc 3196
sale, sheriff ordered to sell 3195
Evidence of title, papers or record thereof declared to be 3205
Forthcoming bond, when sheriff seizing crops may take 3192
if broken, sheriff must return that fact 3199
any party in interest may sue on 3192
Jurisdiction of probate court to partition crops 3188
Jury trial, when may be had; organization of jury 3202
Liens in favor of parties declared and enforced on partition 3193
strangers; how adjusted 3194
Papers filed but not recorded unless requested; effect of as evidence 3205

PARTITION—*Continued.*

SECTION

Of crops—*Continued.*

Partition, when decreed, made by householders, etc., selected by sheriff..... 3196
if cannot be made, that fact must be reported..... 3197
any party may file objections to..... 3200
when set aside, new commissioners appointed, etc..... 3200
Right of action on bond if conditions broken..... 3192
Shares delivered to parties entitled after partition..... 3201
Sheriff when ordered to take possession of crops, unless bond given..... 3192
if bond forfeited, must indorse fact and return bond to court..... 3199
to sell crops when decreed to be sold..... 3196
summon commissioners to make partition when ordered..... 3196
if no bond given, must seize crops in possession of parties..... 3196
after partition, must deliver shares to parties entitled..... 3201
Trial by jury, when may be had; how jury organized..... 3202

PARTITION FENCES.

Adjoining land-owners bear equal proportion of expense of repairing, etc..... 2118
Assessment of value by disinterested freeholders when parties disagree..... 2119
Fees of justice and fence-viewers; execution..... 2120
Oath of fence-viewers..... 2121
Partition fences defined..... 2123
When adjacent owners agree to keep up separate parts..... 2122

PARTNERSHIP.

Action by partners, proof of partnership not required unless denied by sworn plea..... 1803
may be maintained against partners in firm name; effect of judgment.. 40
against one partner maintainable for obligation of all..... 40
Limited partnerships, *see*.....3207-3231
Partnership lands, sale and partition of—
probate court may order personal representative to sell or partition, when 188
application for; contents..... 189
day fixed for hearing; guardian ad litem; notice..... 190
heirs or devisees, unknown, how made parties; notice to.191, 162
duty, etc., and compensation of guardian ad litem and special guardian..... 192
hearing and decree on..... 193
testimony, how taken; when minors, or persons of unsound mind interested..... 194
when dismissed; costs; execution..... 195
order when granted, certified copy of, to be recorded..... 196
conveyances made, report of; when confirmed; when vacated..... 197
title vested by..... 198
lands conveyed to personal representative subject to administration and may be conveyed to heirs or devisees..... 199
authority to sell or partition, may be continued in successor without application..... 200

PATENTS.

All grants and commissions issued in name of state, under great seal, signed by governor and countersigned by secretary of state..Const., Art. V., §22, p. 82.
By state made by patent; how signed..... 2699
Duty of secretary of state to record.....Subd. 3, 1974; 2700
Fee for issuing..... 1977
For school lands; when to be issued; title vested by..... 3652
secretary of state must issue; authority to correct mistakes..... 3653

PATENTS—*Continued.* SECTION
For state lands, issued on certificate of treasurer showing purchase-money all paid 2701
May be recorded; when recorded, certified copy of record evidence 1003
On application by representative to sell lands, patent sufficient evidence 186
United States and state patents admissible in evidence without further proof .. 1812

PASSENGERS.
Railroad must provide separate coaches for, of white and colored races 3454
conductor must assign each passenger to car designated for his color 3455

PAUPERS.
Burial of, at expense of county 3240, 3241
Captain of vessel bringing to state, to give bond; penalty for breach or refusal 3238
Court of county commissioners must provide and maintain county poorhouse. 3232
may appropriate money in aid of indigent soldiers, etc.; limit 3236
must pay expense of medical attention to indigent sick prisoners 3239
Liability of relatives for expense of maintenance by county; how enforced 3233
Lunatic, confined at county poorhouse, when 3237
Suit against relative, by county, for maintenance of poor 3233
certificate of judge of probate evidence in, of maintenance, etc 3234
costs of, not taxed against county 3235

PAWNBROKERS.
Auction, sale of pledge by, must be at public 3245
Book, must keep; what book must show 3242
open to inspection of the public 3244
Borrower may pay debt, interest and cost before sale 3247
Pledges must be sold at public auction after five days' advertisement 3245
not to be sold until after sixty days from delivery 3246
License required of ..... Subd. 32, 4122
Receipt must be given showing transaction 3242
failure forfeits debt 3243
Sale of pledge must not be made earlier than sixty days after delivery 3246
must be at public auction, after five days' notice 3245
borrower may prevent by paying debt, interest and costs 3247
Tender of debt, interest and costs, before sale, reinvests borrower with title ... 3247

PAYMENT.
Clerk of circuit court may receive, of judgment 933
Decrees of probate court paid to judge, when 3369
Debt, of, against estate of decedent not due 137
Deposits, of, by banks to married women and minors; when authorized 1095
Dividends, of, in corporations may be made to personal representatives 1264
Form of plea of ..... No. 35, p. 949; 3253
Interest, of, on state bonds 2019-2023
Mortgage debt, of, divests title passing by mortgage 1067
Partial payments first applied to interest due, balance to principal 2629
entry of, on record of mortgage; penalty for failure 1065
when will prevent bar of statute of limitations 2811
Recorded mortgage, of; to be entered of record; penalty for failure 1065, 1066
vendor's lien, of; to be entered; penalty for failure 1068
When made to trustee payer not responsible for application 1039
may be made to foreign executor or administrator 359-363

PEACHES, DRIED.
Peeled, weight per bushel, thirty-eight pounds 4240
Unpeeled, weight per bushel, thirty-three pounds 4240

PEAS. SECTION
Weight per bushel, sixty pounds 4240

PEDDLERS.
In a wagon, on a horse or on foot; license required of ..... Subd. 31, 4122
Of clocks, license required of ..... Subd. 39, 4122
eye-glasses, license required of ..... Subd. 29, 4122
medicines, license required of ..... Subds. 29, 30, 4122
Soldiers and sailors, Confederate; when granted license to peddle without payment of money; procedure; limitations ..... Note, p. 1139.

PENALTIES.
Actions for, limitation of ..... Subd. 3, 2801
Any citizen may sue for statutory, unless otherwise provided 15
Attorney, against, for practicing law before taking oath ... Note, sec. 10, p. 258; 588
Canoe, boat, etc., for destroying or removing, without consent of owner 4217
Cattle, for injuring, when fence broken not a lawful one 2113
setting in inclosure pits, stakes, etc., when fence not lawful 2114
Chancellor, against, for failure to attend or absence from court 646
Circuit clerk, against, for failing to certify absence of judge 923
taking insufficient security on appeal bond 447
delay, etc., in furnishing transcript on appeal 453
Circuit judge, against, for failure to attend or absence from court 923
Constable, against, for acting after removal from precinct 977
Coroner, against, for neglect of duty while acting as sheriff 1082
Defaulting juror, against, in probate court 4290
justice's court 2690
Defaulting witness, against, before arbitrators 518
in circuit court 1828
before commissioner at law 1838
in equity 739
justice 2684
in forcible entry or unlawful detainer 2141
Dog known to worry sheep, etc., may be killed without penalty 421
Estrays, for using, contrary to statute 1781
injuring or killing intentionally or disposing of unlawfully ... 1784, 1785
against justice for certain defaults in respect to 1770
False weights and measures, for selling by 4238
Foreign corporation, for doing business in state without compliance with certain requirements 1318
against agent for acting for non-complying 1319
Harbor and pilotage regulations, under. See NAVIGATION, subtitle Penalty.
Insurance companies, *see*, subtitle Penalties.
Judge of probate, against, for improperly issuing marriage license 2848, 2849
failure to post fee bills 1355
receiving unlawful fees 1368
taking insufficient surety on appeal bond 447
delay, etc., in furnishing transcript on appeal 453
default as to registration of conveyance 989
failure to pay over proceeds of escheated property 1758
money on decree in favor of administrator ad litem 357
Judgment, registered, for failing to enter partial or full satisfaction of 1065, 1066, 1923
Justice, against, for acting after removal from precinct 2665
certain defaults in respect to estrays 1770
Keeper of public ferry, bridge or causeway, against, for detention 2508
extortion 2509
Marriage, for joining persons in, without license 2850

PENALTIES—*Continued.* SECTION
Mechanic's lien, for failure to enter satisfaction of 2750
Mortgage, for failure to enter partial or full satisfaction of 1065, 1066
Officer, against, for failing to pay over state revenue 4121
accepting substitute for juror 3781
Property adrift, for concealing, destroying, etc 3537
Public lands, for making contract not to bid for 2161
Railroads, against, for operating without license 3489
violation of award in equity 3471
extortion 3460
and agent failing to open draw for steamboat on signal 3446
employes for failure to stop passenger-trains at certain stations ..... Note, p. 976; 3458
Representative, against, for failing to give notice of appointment 124
Register, for taking insufficient surety on appeal bond 447
delay in furnishing transcript, etc 453
Returning-officer of election, against, for failure to make election returns 1665
Road-hand, against, for default in road duty 2481
Sheriff failing to certify absence of chancellor 648
Steamboat, against, for attempting to go through draw of bridge without signaling 3445
Stock, killing, for, while hunting deer by fire 420
by dog known to worry stock 421
Toll-gate, for injuring, passing round or evading 2510, 1226
Toll-road company, against, for extortion 1225
failure to furnish transcript from stock-book .. 1237
keep such book 1239
not prosecuting work 1240
Transcript, for delay in furnishing, on appeal, or for imperfection 453
Trees, for cutting down or injuring on school lands 3632
destroying or injuring cypress and certain other 4137
fruit or ornamental 4139
Underwriter, against, or agent, for failure to make statement for fire-insurance patrol 2625
Vendor's lien, for failure to satisfy record of conveyance showing 1068

PENITENTIARY.

Insane convict confined in, removed to Insane Hospital; proceedings for .. 2563–2568

PERPETUATION OF TESTIMONY.

At law. See EVIDENCE, subtitle Proceedings to perpetuate testimony 1861–1875
In chancery ..... Ch. R. 54, 55, p. 1212.

PERPETUITY.

Forbidden except in conveyances to wife and children or children only 1030
Lands may be conveyed for such terms as owner thinks proper if, not created .. 1029
Lease limited to twenty years 1032
Trust for accumulation merely; limitation, when 1031

PERSON.

Includes corporation 1
Of color; meaning of 2
unsound mind; meaning of 2271
The word "person" or "party"; meaning of in revenue law ..... Subd. 5, 3906

PERSON OF COLOR.

The term "mulatto," or "person of color," meaning of 2

PERSONAL PROPERTY. SECTION

Actions for recovery of, in specie 1474–1484
form of complaint in ..... No. 25, p. 948; 3352
Advancements in, how considered on distribution of estate 1465
Choses in action not, when 1002
Contracts for, conditional sale, lease, rent or hire of, void unless in writing, when 1017
when and where must be recorded 1017
if property removed into this state or from one county to another, must be recorded within three months 1017
such contract, or a certified copy may be received in evidence ... 1018
conditional sale of railroad rolling-stock void unless recorded, when 1016
Conversion of; form of complaint for ..... No. 24, p. 947; 3352
Conveyances of personalty to minors; effect of failure to record for three years 1014
record of, brought into this state by tenant for life 1001
securing debts, etc., when recorded; effect of failure 1009
Conveyed in consideration of marriage taken as property of husband, when 1011
Deceit in sale of; form of complaint for ..... No. 21, p. 947; 3352
Distribution of, on death 1462
Included in the word "property" 2
Loans in writing, remainder, etc., in personalty void, unless recorded within three years 1012
of personalty for three years; effect of, unless suit brought 1013
Mortgage of, not valid unless in writing and subscribed by mortgagor 2151
recorded, where 999
within what time, on removal of, to another county .. 999
when and where, when property brought to this state .. 1000
What included in the words "personal property," generally ..... Subd. 3, 2
in revenue law ..... Subd. 2, 3906
Taken up adrift; proceedings 3525–3538
Who may bequeath 4247

PETITION.

The citizens have the right to apply to those invested with the power of government, for redress of grievances, or other purposes, by petition, address, or remonstrance ..... Const., Art. I., §26, p. 66.

PHARMACISTS.

Board of; appointed by governor; qualifications; term of office 3248
vacancy in, filled by governor; term of appointee 3248
power to make regulations 3249
must keep register of pharmacists 3250
examine applicants who desire to conduct business of selling at retail, compounding or dispensing drugs, etc 3251
to issue certificates to persons passing examination, etc 3252
Certificate of competency issued by board to persons passing examination, etc. 3252
must be posted 3256
Contract for sale of drugs, when void 3259
Examination of parties who desire to retail drugs, etc 3251
Pharmacists must post certificate 3256
Persons not pharmacists may keep drug-store, when 3258
Physicians may sell and compound drugs 3255
Poisons must be labeled 3254
Register of pharmacists must be kept by board 3250
Territorial operation of statute ..... Note, p. 918; 3258
Unlawful to engage in business of pharmacy unless registered 3257

PHYSICIANS.

Board of medical examiners, who constitute 3260

SECTION

PHYSICIANS—*Continued.*
Certificate of qualification must be obtained 3261
to be issued by board, when 3263
must be recorded in office of probate judge 3264
judge of probate to indorse on, certificate of fact of record 3264
authority to practice medicine throughout state 3264, 3265
such, the record thereof being certified by probate judge, evidence of authority, etc 3265
if original, lost certified copy of, record evidence 3265
Contract for medical services, when void 3266
Entry on physician's books; effect of, as evidence 1808
Fee of judge of probate for recording certificate, etc 3264
Midwifery, provisions of chapter do not apply to women engaged in practice of 3267
Standard of qualification to be prescribed by the Medical Association of State 3262
Women, provisions of chapter do not apply to, engaged in the practice of midwifery 3267

PHYSIOLOGY.
Duty of superintendent of education to make provisions for instructing pupils in all schools and colleges supported in whole or in part by public money, etc., in hygiene and physiology ..... Subd. 3, 3546
Public-school pupils to be instructed as to effect of alcoholic drinks and narcotics upon human system 3578

PISTOLS.
Dealers in, required to obtain license; price for ..... Subd. 27, 4122
pistol cartridges to obtain license; price for ..... Subd. 27, 4122

PLAYING-CARDS.
Dealers in, required to obtain license; price for ..... Subd. 26, 4122

PLEADING AND PRACTICE.
Abatement—
attachments, of actions commenced by 563, 564
ancillary, on judgment and satisfaction 560
attorney, of proceedings to remove 609
costs on abatement by defendant's death 1332
elections, no abatement in contest of, by death of contestant 1701
executors and administrators, of actions against two or more, on death of one 334
females, of actions by or against, not abated by marriage 37
justices of the peace, of actions before 2676
nominal plaintiff, on death of, action not abated 30
none where cause of action survives 38
of actions against two or more defendants on death of one 43
personal injuries, of actions for, on death of defendant 27
plea in, when to be verified by oath 3296
form and substance of 3294
how distinguished from plea in bar 3297
must appear, by indorsement, to have been filed in time—
C. C. R. 12, p. 1197.
remedial writs against officers, of applications for 2830–2833
special administrator, of actions begun by 332
usurpation of office or franchise, of actions for 3427
venue, of actions not commenced in proper 4205
Abstract of title; right to demand 1531

PLEADING AND PRACTICE—*Continued.* SECTION

Accounts—
forms of complaint in actions on....Nos. 10, 11, pp. 944, 945; 3352
in suits upon, defendant entitled to list of items.... 3290
itemized and verified, sued on, admissible in evidence, when.... 1804
Action on the case may be joined with trespass and trover.... 3293
Actions, *see*.

Adverse possession—
suggestion of, in action to recover lands; proceedings on....1536–1539
under color of title, in good faith, effect of as to rents.... 1540

Affidavits—
in commencement or progress of suit, taken beyond state before whom.1799, 2728

Agent—
service of process on station-agent of railroad company....3274, 3275
designated agent of foreign corporation; proof of agency.... 3277
Agreements must be in writing....C. C. R. 14, p. 1197.
authority of attorney to make, in cause.... 592

Amendments—
appeal from justice's court, proceedings on....487–489
attachment suits, of bond, affidavit, or writ in.... 564
errors or mistakes, what, amendable within three years after judgment... 3334
in fact, in judgment, or process, apparent upon the record.... 919
form, want of, does not vitiate proceedings.... 3330
judgment not arrested or reversed for defect not objected to, if complaint contains substantial cause of action.... 3333
of pleadings before or after judgment on demurrer.... 3304
certain mistakes considered as amended after judgment.... 3332
defects of form during progress of cause.... 3331
complaint by adding or striking out parties.... 3331
judgments, decrees, or orders nunc pro tunc....3337–3339
powers of courts to amend and control their process and orders.... 2639

Appearance in court—
failure to appear; when an abandonment....G. R. 3, p. 1185.
how entered; leading counsel and notice....Ib. 1, p. 1185.
proceedings on appearance of attorney without authority.... 593
proof of authority; when required.... 594
rights of parties....Const., Art. I., §§7, 11, pp. 61, 63; 589
who may appear....G. R. 2, p. 1185.
Arbitration and award, *see*....508–523
Argument of counsel limited to two on a side except by leave.... 3311
right to conclude when plaintiff waives opening..C. C. R. 19, p. 1198.

Arrest of judgment—
not allowed for defect or want of form.... 3330
suit may be commenced within one year after.... 2806
when, not allowed, if complaint contains substantial cause of action.... 3333

Assignee or transferee—
action by; ownership denied only by sworn plea.....C. C. R. 29, p. 1200; 1801
crops, of joint owner of, may have partition.... 3206
has lien.... 2760
landlord, of, has remedy for enforcement of his lien....2706, 2720, 2721
of judgment or decree entitled to execution.... 1928
also to scire facias to have same revived.... 1929
mechanic's lien has rights and remedies of original holder.... 2752
railroad companies, of claims against, for injuries to property, may sue.... 877
set-off against, except in case of negotiable paper.... 879

PLEADING AND PRACTICE—*Continued.* SECTION

Assignment of breaches on penal bonds ... 3289
or transfer deemed genuine unless denied by sworn plea—
C. C. R. 29, p. 1200; 1801, 1802
Assignor of negotiable paper; what necessary to charge ... 892–895
Attachment; time of filing complaint and of trial ... 561
practice in such suits ... 562
issued without affidavit and bond abated on plea, when ... 563
law liberally construed; defects of form or substance amendable 564
grounds of issue not traversable; suit on bond ... 565
judgment suspended until trial of collateral issues ... 567
on appeal from justice, not quashed for want of form, bond, etc.. 489
venue of suits on bond ... 566
Attesting witness; execution of instrument may be proved by maker without accounting for ... 1797
Attorneys—
abandonment of cause, what considered as ... G. R. 3, p. 1185.
appearance, how entered; who may appear ... G. R. 1, p. 1185.
argument of cause; but two on a side except by leave of court ... 3311
authority to bind client by agreement, etc ... 592
appearance without; proceedings on ... 593
proof of, to appear, when required; how made ... 594
to take file in pending suit ... G. R. 5, p. 1186; 2646
cannot become bail for client; may become security for costs—
C. C. R. 5, p. 1196.
notice to, as effectual as to party ... 3312
only one counsel on each side shall examine a witness.. C. C. R. 18, p. 1198.
pleadings and briefs to be signed by ... G. R. 4, p. 1186.
precluded from pleading infancy ... Note, sec. 9, p. 258; 585
Beneficiary—
action for use of, not abated by death of nominal plaintiff ... 30
considered as sole party to record, when ... 29
when suit must be in name of ... 28
judgment rendered against, for costs ... 1330
Bills and notes—
instruments governed by the commercial law ... 869, 870, 875
actions on; in whose name brought ... 28
lost note, bill, etc ... 2795, 2796
forms of complaints in ... Nos. 1–6, pp. 942, 943; 3352
set-off against non-negotiable paper ... 879
and recoupment in ... 3733
Bills of exceptions—
agreement of parties as to signing ... 616–619
arbitration proceeding, in ... 522
charge in writing, special, exception to giving or refusing, presumed, when 613
contents of; tendered by aggrieved party ... 615
if correct, duty of judge to sign; becomes part of record ... 615
establishment of, in supreme court, when ... S. C. R. 44, p. 1194; 621
when vacancy in office, etc., or judge does not sign, etc.. 622
garnishment proceedings, on trial of collateral issues in ... 2204
judgment, on application to set aside, or to enter, or set aside satisfaction of, or to amend, etc ... 3339
new trials; may be reserved on motions for ... 434
nonsuit, plaintiff suffering, may take ... 614
on trial without jury, when ... 3321
probate court, in ... 465–467
questions reserved by ... 612
refusal to sign, a high misdemeanor ... 621
special judge may extend time and sign, though appointment expired ... 928

PLEADING AND PRACTICE—*Continued.* SECTION

Bills of exceptions—*Continued.*
remedial writs, on application for ... 2828
signed, when to be ... C. C. R. 30, p. 1200; 616
in vacation by order of court, when ... 617
agreement, when ... 618
time fixed by court, or judge for signing, may be extended by agreement ... 619
extension of, not to exceed six months ... 620
Bill of particulars may be demanded in action on accounts ... 3290
Briefs to be signed by counsel when counsel employed ... G. R. 4, p. 1186.
Casual ejector dispensed with in statutory ejectment ... C. C. R. 24, p. 1199; 1530
Causes to be set for particular days and not called before day set; exception ... 3309
Challenges to jurors, peremptory, allowed ... 2655
Chancery, *see.*
Change of venue, *see* ... 4210–4216

Charge of court—
court must state the law of the case to the jury ... 3326
evidence when disputed ... 3326
not charge upon effect of evidence unless requested ... 3326
must be in writing if requested before argument begun ... 3327
special charges; how asked and passed upon ... 3328
given, must be taken by the jury ... 3328
refused, must be retained by clerk ... 3328
exception to giving or refusal presumed ... 613
Competency of parties as witnesses ... 1794
witness as affected by conviction for crime ... 1795

Complaint—
accompanies summons in all cases ... 3291
all actions on contract may be joined ... 3292
amendments allowed, when ... 3304, 3330–3334
assignment of breaches of penal bond ... 3289
warranty implied from "grant," "bargain," etc., in deed ... 1035
attachment, when complaint to be filed in ... 561
attorney, must be signed by ... G. R. 4, p. 1186; 3291
brevity and perspicuity required in ... 3285
case, trover and trespass may be joined in ... 3293
declaration dispensed with for ... 3291
defamation, what sufficient in ... 3287
forms of ... pp. 942–949; 3352
joinder of all actions on contract in, for payment of money allowed ... 3292
trover, trespass and case in ... 3293
lost instrument, on; to be accompanied by affidavit of loss ... 31
mechanic's lien, essential averments in ... 2734
profert of sealed instrument dispensed with ... 3290
stricken out for prolixity, etc., when ... 3286
verified account, on, facts to be indorsed ... 1804
waiver of exemptions to be averred in, when ... 2107
Consent rule in ejectment ... C. C. R. 24, p. 1199.
Consideration of instruments sued on impeached by plea; presumption; burden of proof ... 1800
under seal, may be impeached, or inquired into ... 3288
Consolidation of suits; when court may order ... 3318
Continuances; rules as to in circuit court ... C. C. R. 16, 17, 28, pp. 1197, 1198, 1200.
Corporation, plaintiff not required to prove existence, unless denied by sworn plea ... 1803
Days included and excluded in computing time ... 11

PLEADING AND PRACTICE—*Continued.* SECTION

Default, judgment by—
attachment suit; when may be taken ... 562
ejectment suit; plaintiff must prove possession to recover costs ... 1548
entered without jury when instrument sued on ascertains plaintiff's demand 3316
garnishee, when conditional judgment rendered against ... 2195
interest and damages computed by clerk on, when ... 3316
in vacation, default may be entered and advantage claimed at next term— C. C. R. 9, p. 1196.
party entering not bound to receive plea ... Ib. 10, p. 1196.
when set aside at next term on affidavit ... Ib. 11, p. 1197.
justice of the peace not to enter before twelve o'clock of return-day ... 2677
mechanic's lien, in action to enforce; when may be rendered ... 2740
time for pleading ... 3308

Demurrer—
must be to matter of substance ... 3303
no objection to be allowed which is not distinctly stated ... 3303
amendments allowable either before or after judgment on ... 3304
plea over after judgment on, not a waiver of error ... 3305
terms may be imposed for frivolous demurrer ... 3306
to evidence, when allowed ... 3322
testimony to be written out ... 3324
effect of such demurrer ... 3323
if overruled, damages assessed ... 3325
interlocutory judgment on, appealable by consent in certain cases ... 430
Deposition, procuring testimony by ... 1833–1849
objection to whole, must be made before entering on trial ... 1844
Detinue, *see* ... 1474–1484
Discharge found after trial, when entitles party to new trial ... 3341
Disclaimer in real actions ... 1533
Discontinuance may be entered as to parties not served, or alias summons issued ... 42
Discovery at law by examination of parties ... 1850–1858
requiring production of books and writings ... 1859, 1860

Dismissal of suit—
in vacation, allowed ... 3317
by suffering nonsuit ... 614
on failure of parties to answer interrogatories ... 1856
when recovery below jurisdiction; exception ... 3315
for want of security for costs when plaintiff a non-resident ... 1347
on plaintiff removing from state ... 1350
Distringas, delivery of property recovered in detinue compelled by ... 1483
Docket of circuit court ... C. C. R. 1, 2, p. 1195; Ib. 15, p. 1197; 934
Docket; order in which causes must be entered on ... C. C. R. 1, p. 1195.
called absolutely, when ... Ib. 15, p. 1197.
motion-docket to be kept ... Ib. 2, p. 1195.
call and hearing of ... Ib. 21, p. 1198.

Ejectment—
abstract of title, right to demand ... 1531
action of, may be brought at election of plaintiff ... 1529
action in nature of; what sufficient allegations in complaint ... 1530
adverse possession of three years, suggestion of, and proceedings on ... 1536–1539
under color of title, effect of, as to rents ... 1540
casual ejector, averments as to, dispensed with in statutory action ... 1530
consent rule in ejectment ... C. C. R. 24, p. 1199.
damages may be assessed in severalty against joint defendants ... 1550
computed to time of verdict ... 1555
default admits title, but possession must be proved to recover costs ... 1548

PLEADING AND PRACTICE—*Continued.* SECTION

Ejectment—*Continued.*
disclaimer of possession 1533
form of complaint in statutory action ..... No. 29, p. 948; 3352
general issue is "not guilty" 3295
effect of pleading 1532
landlord made party on his or tenant's application 1534
mortgage title, in suit based on; what may be pleaded; proceedings 1547
plaintiff in one action may notify plaintiff in another for same premises to defend ..... C. C. R. 25, p. 1199.
having recovered may notify plaintiff in another pending suit for same premises ..... Ib. 26, p. 1199.
after recovery, may be admitted to defend another suit— Ib. 27, p. 1200.
possession retained to gather crops, on giving bond; effect of bond 1552, 1553
rent accruing after judgment recovered on motion 1551
seal unnecessary to authorize suit by grantee 983
tax title, in action involving; special provisions 4081–4089
two judgments on same title bar further suit 1554
verdict for plaintiff, what should specify 1549
Errors; confession of judgment a release of 477
correction of, after judgment 919
injunction of judgment a release of 785
pleading over after judgment on demurrer does not waive 3305
Executors and administrators—
actions which survive to and against 27, 35, 36
when action not abated by death, may be revived against, in twelve months 38, 41, 43
liable to suit in county where letters granted 330
not to be sued until six months after grant of letters 331
except in mechanic's lien suits 2748
judgment not to be rendered against, until twelve months 569, 331
suits begun by special administrator may be continued by successor 332
suits by or against, prosecuted by or against successor 333
on death of one representative suit continued against survivor 334
damages to realty survive to 335
representatives of those who were liable, also liable 336
liability of representatives; limit 337, 338
when resignation no defense 339
executor de son tort only liable to representative; exception 340
may require suit brought on disputed claim within six months 2818
when judgment against, revived against administrator de bonis non— Note, p. 190.
decedent revived against representative 349
on plea of insolvency, judgment against, certified to probate court .. 319
Files of court—
not to be removed from county; exceptions 2643
papers to be recorded on filing 2644
taking file in pending suit from office 2646
substitution of lost or destroyed papers 2647–2653
destroyed county records 964
when record used on trial of cause 2645
Forcible entry and unlawful detainer—
removal of cause by defendant to circuit court for trial of title 2147
petition for; contents of 2147
order on; bond; writ to justice 2148
trial of title in circuit court; judgment, etc 2149

PLEADING AND PRACTICE—*Continued.* SECTION

Forms of complaints ... 3352
pleas ... 3353
executions ... 1880
Gambling and wagering contracts, *see* ... 2163–2169
Garnishments, *see* ... 2171–2212
Husband and wife, *see* ... 2520–2537
wife sues and must be sued alone ... 2527
may sue or defend for husband, when ... 16
interpose claim of exemption, when ... 2063
Infants must sue by next friend and be defended by guardian ad litem ... 17
guardian may sue for use of ward ... 19
be substituted for next friend, when ... 18
service on, in mechanic's lien suit; guardian ad litem; judgment ... 2737
Interpleader at law—
in suit upon contract for payment of money ... 2633
for recovery of chattels in specie ... 2634
affidavit when defendant a corporation; by whom made ... 2635
Interpreters may be sworn when necessary; paid as witnesses ... 1793
Joinder of actions—
all actions ex contractu may be joined ... 3292
blacksmiths and wood-workmen having liens on same property ... 2755
rent and advances recoverable in same action ... 2707
trespass, trover and case may be joined ... 3293
Joint promises—
death of one of several joint defendants does not abate action; revivor ... 43
discontinuance as to parties not served, or alias issued, when ... 42
in writing, how construed; suits on ... 39
plaintiff suing several may recover against one or more; costs ... 44
partnership, suit against, by firm name or against individuals ... 40
Judge incompetent to try cause, when ... 2637
how place filled ... Const., Art. VI., §18, p. 85.
Jurisdiction; proceedings when amount sued for or recovered is less than limit of ... 3315
Jury; drawn, summoned, and impaneled as provided in chapter 166 ... 2654
each party has four peremptory challenges ... 2655
either party may demand a struck jury; proceedings ... 2656
take out written evidence on their retirement ... 3329
Lost notes and bills, actions on; averments; presumption; proof ... 31, 32
New trial—
affidavit for, or in arrest of judgment; notice; practice ... C. C. R. 22, p. 1198.
bond required before supersedeas issues ... 3345
refunding required, when ... 3347
has force and effect of judgment ... 3350
damages may be awarded when petition not meritorious ... 3348
exception to order granting or refusing; appeal and review ... 434
execution, right of court to pass on validity of, not affected ... 3351
in suit by state for moneys wrongfully used ... 3761
not more than two to be granted same party in any cause ... 3314
rehearing within four months after judgment, when ... 3342
petition for; contents; notice; how petition controverted ... 3343
supersedeas; power to impose terms ... 3344
bond for ... 3345
trial; when supersedeas dismissed on sworn denial ... 3346
refunding bond required on such dismissal, before execution issues ... 3347
damages awarded, when ... 3348

PLEADING AND PRACTICE—*Continued.* SECTION

New trial—*Continued.*
rehearing, provisions for, applicable to plaintiffs ... 3349
bonds given have force and effect of judgments ... 3350
right to pass on validity of execution not affected ... 3351
release found; right to new trial, within two years after judgment ... 3341
supreme court required to review order granting or refusing in civil case, when ... 434
Non est factum, form of plea of ... No. 33, p. 949; 3353
plea of, must be sworn to ... 3296, 1801, 1802
Nonsuit—
may be taken before jury retire; when two equivalent to verdict ... 3313
when plaintiff suffering nonsuit may take bill of exceptions ... 614
may be directed on failure to answer interrogatories ... 1856
produce paper on notice .. G. R. 8, p. 1196.
books or writings on notice 1860
"Not guilty," form of plea of ... No. 34, p. 969; 3353
is general issue in what actions ... 3295, 1532
Nunc pro tunc; amendments of judgments, etc.; proceedings ... 3337-3339
Oyer of letters testamentary or of administration; when granted—
C. C. R. 7, p. 1196.
Parties; right to prosecute or defend suits, in person or by counsel—
Const., Art. I., §§11, 14, pp. 63, 64.
state not to be made defendant in any court ... Ib. §15, p. 64.
any party may manage his own case ... 589
as to rights of action. See ACTIONS.
Partnership, in suit by, need not be proved unless denied by sworn plea ... 1803
Pleadings—
amendments allowed before or after judgment on demurrer ... 3304
to defect of form, or striking out or adding parties .. 3331
after judgment, of mistake in name, sum, etc., considered as made ... 3332
within three years after judgment, when allowed ... 3334
attorney, must be signed by ... G. R. 4, p. 1186; 3291
Complaint, *see, supra.*
Demurrer, *see, supra.*
form, no objection allowed for want of, when ... 3285
proceedings not vitiated by want of ... 3330
forms of complaints and pleas ... 3352, 3353
substantial conformity to, sufficient ... 3286
list of items of account sued on furnished on demand ... 3290
Plea, *see, infra.*
profert of sealed instrument not required; instrument may be inspected on demand ... 3290
prolix, irrelevant or frivolous, stricken out on motion; costs ... 3286
ratable recovery on entire contract allowed, when ... 33
Replication, *see, infra.*
rules applicable to all subsequent pleadings ... 3302
successive actions on same contract; when may be maintained ... 34
Plea—
abatement, in, must be sworn to ... 3296
appear to have been filed in time .. C. C. R. 12, p. 1197.
after judgment on demurrer, not waiver of error; exception ... 3305
defendant may plead more than one; when special plea required ... 3295
consideration of contract sued on may be impeached by plea ... 1800
execution or assignment of instrument sued on or pleaded in bar impeached only by sworn plea or replication ... C. C. R. 29, p. 1200; 1801, 1802
facts relied on must be distinctly stated; no objection for want of form ... 3294

PLEADING AND PRACTICE—*Continued.* SECTION

Plea—*Continued.*
filing, must be indorsed with date of ... 3300
forms of pleas ... 3353
general issue, what is ... 3395
how character of plea determined ... 3297
insolvency, declaration of, of decedent's estate; proceedings on ... 318, 319
minors licensed to practice law precluded from pleading infancy—
Note, sec. 9, p. 258; 585
recoupment, of; when allowed; judgment for defendant for excess and costs 3734
negotiable paper not subject to ... 3733
set-off, of; when allowed; judgment for defendant for excess and costs. 3728, 3729
judgments may be set off on motion ... 3730
surety may set off debt due principal ... 3731
when not barred by statute of limitations ... 3732
negotiable paper not subject to ... 3733
form of plea of ... No. 37, p. 950; 3353
since last continuance, must be sworn to ... 3296
not a waiver of other pleas in bar ... 3299
tender, of; must be accompanied by money or thing tendered; exception. 3298
of personal property must aver readiness to deliver ... 3298
form of plea of ... No. 36, p. 949; 3353
time for pleading prescribed ... 3308
verified by affidavit, what pleas must be. C. C. R. 29, p. 1200; 3296, 31, 1801–1804
Procedendo to justice of the peace; when issues ... 494
Quash, motion to; when must be made ... C. C. R. 13, p. 1197.
notice of ... Ib. 22, p. 1198.
attachment on appeal from justice ... 489
summons or other pleadings ... 3330
Qui tam action; any citizen may sue for statutory penalty, when ... 15
Receivers may be sued without leave of court ... 803
how process served on ... 804

Records—
double records dispensed with; minutes not to be copied into final ... 2642
no record or papers to be removed from county ... 2643
pleading lost or withheld, court may order copy filed ... 3310
pleadings and other papers recorded on filing; constitute part of final ... 2644
when used on trial of cause 2645
receipt of attorney for file in pending suit ... 2646

Recoupment. Plea, *see, supra.*

Registration of judgments—
money judgments, etc., by courts of record, may be registered in office of judge of probate ... 1920
creates lien for ten years; all persons charged with notice ... 1921
execution on, may issue within ten years, when ... 1922
payment and satisfaction to be entered of record; penalty ... 1923

Rehearing. New trials, *see, supra.*

Replication—
form of general replication ... 3301
plaintiff may file more than one ... 3301
special replication; requisites of ... 3301
when must be sworn to ... 1802
Rules applicable to all subsequent pleadings ... 3302

Revivor of judgment—
if execution issued within one year, others may issue in ten years ... 1924
scire facias to revive, when execution did not issue in one year ... 1925
notice; how given ... 1925

PLEADING AND PRACTICE—*Continued.*

SECTION

Revivor of judgment—*Continued.*

in favor of decedent, execution may issue in favor of representative, when 1926
may be revived in favor of representative, when..... 1927
satisfaction presumed after ten years..... 1930
scire facias barred after twenty years..... 1931
against decedent, revived against representative, when..... 349
administrator in chief, revived against administrator de bonis non—
Note, p. 190.
Revivor of suit on death of nominal plaintiff..... 30
by or against personal representative.....27, 38
on death of defendant pending suit..... 41
one of several defendants..... 43
marriage of woman pending suit..... 37
to enforce mechanic's lien..... 2736
when a presentation of claim against decedent's estate..... 134
Satisfaction of judgments—
motion to enter; notice..... 3335
set aside entry of; notice..... 3336
costs in either case..... 3338
presumed after ten years..... 1930
of registered judgments and decrees to be entered; penalty..... 1923
Scire facias when execution did not issue in one year..... 1925
notice and proceedings..... 1925
personal representative may have..... 1927
assignee may have..... 1928
time of pleading to, and trial of.....C. C. R. 6, p. 1196.
Set aside, judgment not to be, if complaint contain cause of action..... 3333
motion to; notice; costs.....3336, 3338
Set-off. Plea, *see, supra.*
Substitution of lost records or papers—
all courts have inherent power to substitute..... 2647
appeal from order granting or refusing; bill of exceptions..... 2652
compelling production of writings in aid of .....G. R. 6, p. 1186.
costs of, by whom paid.....2645, 2646, 2651
in pending cause or proceeding..... 2648
if cause or proceeding be not pending..... 2649
motion for, when considered pending .....G. R. 7, p. 1186.
notice of, when necessary.....Ib. 8, p. 1186.
pleading lost or withheld; court may order copy filed..... 3310
records of deeds or other instruments..... 2650
record of pleadings and other papers..... 2644
when used on trial..... 2645
rules of practice as to.....G. R. 6-8, p. 1186.
Summons—
branch summons when defendants in different counties..... 3271
civil actions commenced by summons..... 3268
clerk must issue summons..... 3269
complaint must accompany summons..... 3269
coroner or special coroner, when summons directed to and executed by... 3281
county, summons to, executed on judge of probate..... 3280
corporations, how served.....3274-3277
execution and return of summons..... 3272
foreign corporations suable in any county where do business—
Const., Art. XIV., §4, p. 99; 4207
served through designated agent; proof of agency.... 3277
form of summons..... 3270

PLEADING AND PRACTICE—*Continued.* SECTION

Summons—*Continued.*
publication, when service by, against domestic corporation other than railroad 3276
defendant in real action secreting himself 3278
real action, defendant in, secreting himself served by publication 3278
receiver, foreign or domestic, holding property in state; how served 804
return-day of summons; what is 3283, 3284
summons must be executed three days before 3282
service on corporations generally 3274
person or corporation operating railroad of domestic corporation 3275
designated agent of foreign corporation; proof of agency 3277
guarantee company, foreign 3094, 3099
insurance company, foreign ..... Subd. 3, 2584
one representative sufficient 3273
when had in adjoining county or anywhere in state 3279
by publication against domestic corporation having no agent in state 3276
defendant in real action, when 3278
must be three days before return-day 3282
Sworn pleadings required, when ..... C. C. R. 29, p. 1200; 31, 1801–1803, 3296
Time for pleading 3308
to scire facias ..... C. C. R. 6, p. 1196.
Trial-term, what is 3307
in attachment suits 561
causes set for trial, not to be earlier called than day set; exception 3309
Trial without jury may be had on agreement; effect of finding of court 3319
finding may be general or special 3320
reservation of exceptions; revision on appeal 3321
Venue, *see* 566, 4205–4209
Woman, action by or against not abated by marriage of; proceedings 37

PLEAS.
Forms of 3353

PLEDGES.
Collateral securities. Pledges, *see* 946–950
Pawnbrokers, *see* 3242–3247

POLICE REGULATIONS.
Alabama Bryce Insane Hospital 2544–2574
Apprentices 496–507
Bridges, causeways and ferries 2498–2514
Estrays 1761–1789
Fences; trespassing animals 2110–2123
Fire-insurance patrol 2622–2625
Gunpowder, to prevent injuries from 2968–2973
Health and quarantine 2392–2442
Highways, bridges, causeways and ferries; watercourses 2443–2519
Hotels and inns 2538–2543
Killing animals by fire-hunting, and stock by dogs 420–425
Marks and brands 2834–2836
Mills and millers 2897, 2898
Oysters, planting of, etc 3155–3160
Paupers 3232–3241
Pharmacists 3248–3259
Physicians 3260–3267
Retailers 3520–3524
Stallions and jacks running at large 1790, 1791
Watercourses 2515–2519

POLICY OF INSURANCE. SECTION
Forms of complaints in actions on....Nos. 12, 13, 14, p. 945; 3352

POLITICAL ORGANIZATION OF STATE.
Boundaries of state....Const., Art. II., §1, p. 68; 623-625
Chancery divisions....Const., Art. VI., §7, p. 84; 630
Circuits, judicial....Ib. §4, p. 83; 897
Congressional districts....969, 970
Counties....Const., Art. II., §2, p. 68; 1396-1400
Flag of state, design of; when displayed....3751, 3752
Great seal of state....Const., Art. V., §20, p. 81; 3727
Senatorial districts....Const., Art. IX., §7, p. 90; 2214
Sovereignty and jurisdiction....3749-3752

POLITICAL PARTIES.
Inspectors of election must be members of opposing political parties, if practicable.... 1588
Markers at election must be selected from opposing political parties.... 1595
Nominate candidates and certify same to judge of probate to be printed on ballot.... 1606

POLITICAL POWER.
All political power is inherent in the people....Const., Art. I., §3, p. 60.

POLLS.
Hours of opening and closing.... 1618
Opening of, proclaimed by order of inspectors.... 1619

POLL-TAX.
Authority of general assembly to levy; applied exclusively to support of public schools....Const., Art. XI., §1, p. 94; Art. XIII., §4, p. 97; 3910
Collection and payment of, by tax-collector to state....4032-4034
Due first of October, delinquent first of January.... 3919
Members of Alabama National Guard exempt from; how membership proved. 2889
Township trustees exempt from.... 3575
Who liable for.... 3910
exempt from....Subd. 6, 3907

POOLING.
By railroads, when unlawful; when authorized.... 3464

POOL-TABLES.
License required for; price of....Subds. 11, 12, 4122

POOR.
Burial of; expenses paid by county....3240, 3241
Captain of vessel bringing pauper into state required to give bond.... 3238
penalty against for refusal to give bond; penalty for breach of.... 3238
Claims for support of poor to be preferred.... 1423
Commissioners' court may erect poorhouse, etc.... 3232
appropriate money in aid of indigent Confederate soldier or sailor.... 3236
must allow claim for medicine for insolvent sick prisoners, etc.... 3239
authority of, to make rules and regulations for support of....Subd. 5, 958
Confederate soldier or sailor, indigent, commissioners' court may appropriate money in aid of.... 3236
General assembly, duty of, to require counties to make provisions for maintenance of....Const., Art. IV., §49, p. 77.
Liability of relatives for support of poor.... 3233
Lunatic, pauper, supported by overseer of poor; may call on relatives to aid, etc. 3237

POOR—*Continued.* SECTION
Sick prisoners in jail, insolvent, county pays for medicines for, etc..... 3239
Suit by county against relatives of poor for support of..... 3233
certificate of judge of probate evidence of maintenance..... 3234
costs not to be taxed against county on failure, except for witnesses on part of plaintiff..... 3235
What relatives liable to county for support of poor..... 3233

POSSESSION.
Administrator ad litem, on decree in favor of, when writ of, not to issue..... 355
Adverse, notice of, filed in probate office; form, record, etc.....1541–1546
Chancery court, authority of, to issue writ of..... 857
Ejectment, when no writ of, to issue against defendant in, defending under tax title..... 4084
Form of writ of..... 1880
Lands, when writ of, suspended for, on which there is a crop, on defendant giving bond..... 1552
Real action, issue of writ of, on suggestion in, of permanent improvements.... 1539
Tax title, when no writ to issue against defendant in ejectment defending under..... 4084
Writ of; when issued; form of..... 1880

POSTHUMOUS CHILD.
Birth of, effect of, on estate limited to "heirs," "issue," or "children"..... 1024
Inherits as if born in lifetime of parent..... 1458

POTATOES.
Irish, weight per bushel, sixty pounds..... 4240
Sweet, weight per bushel, fifty-five pounds..... 4240

POWDER.
Building for keeping gunpowder to be provided by town or city..... 2971

POWER OF ATTORNEY.
Dower, to relinquish..... 1509
Mortgages or other liens, to enter satisfaction of..... 995
Real estate, to convey..... 995
Received in evidence as conveyances, when..... 995
What provisions governing powers do not apply to..... 1063

POWERS.
Assignee of debt, power in mortgage to sell lands passes to..... 1040
Absolute power of disposition, definition and effect of.....1046–1049
Beneficial and special, liable to claims of creditors..... 1062
Consent to execution of; how given..... 1057
Creditors, every special and beneficial power liable to claims of..... 1062
Distribution under, among joint beneficiaries..... 1055
Executed as if the owner were conveying..... 1052
by survivor in case of death..... 1061
Execution of, valid to extent of authority..... 1051
when directed to be executed by insufficient instrument..... 1054
trustee dies..... 1056
consent to; how given..... 1057
Executors, of sales by; who may execute..... 1060
In favor of children, may be executed in favor of grandchildren..... 1058
Irrevocable, when..... 1059
Joint, may be executed by majority..... 3
Lands, power in mortgage, etc., to sell, passes to assignee of debt..... 1040
provisions as to, do not apply to power of attorney to convey..... 1063

POWERS—*Continued.*

SECTION

Mortgage, etc., power in, to sell lands passes to assignee of debt..... 1040
publication of notice of sale under power in, when newspaper suspended or discontinued..... 3048
Of revocation; when grantor retaining, is owner of property..... 1045
sales by executors; who may execute..... 1060
Provisions as to, do not apply to powers of attorney to convey lands..... 1063
Publication of notice of sale under power in mortgage, etc., when paper suspended, etc..... 3048
To will or devise, executed as wills..... 1053
sell lands in mortgage, etc., passes to assignee of debt..... 1040
What, may be reserved..... 1050
When, irrevocable..... 1059

PRACTICE OF LAW.

License to practice, extent of.....Note, sec. 5, p. 257; 580
Licensed, who may be.....Note, secs. 1, 5, p. 257; 581
minors may be, by chancery, circuit or city court..Note, sec. 9, p. 258; 585
precluded from pleading infancy, etc.....Note, sec. 9, p. 258; 585
Officers, what, and deputies disqualified from..... 591
Penalty for engaging in, before taking oath.....Note, sec. 10, p. 258; 588
When attorney of another state may engage in..... 611
Who may engage in..... 579

PRECEDING.

Meaning of "preceding" and "following"..... 5

PRECINCTS.

Ballot-boxes for election precincts, number of; by whom provided..... 1587
Division of counties into election and public road precincts.....1580, 2454
Election, those established continued until changed..... 1580
establishment, change and abolition of..... 1581
may be two places of voting in..... 1582
orders relating to, to be recorded..... 1583
designation of numbers of, boundaries and places of voting in..... 1584
places of voting in..... 1585
notice of change in, and places of voting..... 1586
registrar must be at polling-place, in, on day of election..... 1564
inspectors and returning-officers for; by whom appointed..... 1588
Elector must register and vote in precinct in which he resides..... 1620
removing out of one, into another in city, may vote, when..... 1556
when place of residence in two, right to select..... 1559
Public road; county divided into..... 2454
watercourses may be divided into; governed by same law...2517, 2518

PREGNANCY.

Divorce for, bastardizes issue..... 1499
when a ground of..... 1486

PRESIDENT AND VICE-PRESIDENT.

Election of electors for.....1653–1658

PRESIDENTIAL ELECTORS.

Compensation of..... 1658
Elected by the people; time of electing.....1573, 1579
general ticket, when..... 1653
Governor estimates returns and gives notice of result by proclamation..... 1655
Meeting of, time and place; vacancies, how filled..... 1657
Returns sent to secretary of state..... 1654
Tie vote, in case of, governor decides..... 1656
Time of electing..... 1579

PRESIDENT OF SENATE. SECTION
Election of, by the senate.....Const., Art. IV., §8, p. 72.
Oath of office, may administer.....Const., Art. XV., p. 103.
Pay and mileage of..... 2226
Signing of bills by.....Const., Art. IV., §27, p. 75.
When to act as governor; compensation.....Const., Art. V., §§15, 16, p. 81.

PRICES CURRENT.
Evidence of what..... 1810

PRINCIPAL.
Judgments for sureties against, for money paid, when.....3880, 3881
principal debtor, when..... 3881
Surety not to confess judgment if principal willing to defend..... 3883
may set off debt due principal..... 3731
require creditor to sue principal..... 3884
to what not applicable..... 3885

PRINTING.
On paper, included in "writing"..... 1
Legal notices in newspapers; general provisions as to.....3040–3051
Public printing, *see*.....3385–3416

PRISONERS.
Insolvent sick prisoners medically treated at expense of county..... 3239
Record of prisoners in jail to be kept by sheriff; contents of..... 3740
duties of clerk of circuit court as to.....Subd. 18, 934
judge of probate as to.....Subd. 15, 3365

PRIVATE SECRETARY.
Of governor; salary of..... 1958
keeper of the capitol..... 1961
duties and salary of, as.....1962, 1963

PROBATE CLERK.
Authority of judge of probate to employ.....Subd. 6, 3372
Bond of; by whom approved; where filed and recorded..... 3373
Continues to perform duties of office pending vacancy; exceptions..... 3374
Powers of.....Subd. 6, 3372

PROBATE COURT AND JUDGE.

Probate court.

Adjourned or special terms may be held, when..... 3371
Always deemed open for transaction of business, except Sundays.....1726, 3371
Cession of lands to United States; jurisdiction of, to ascertain value of, and decree conveyances to..... 627
Change of venue, when; what provisions applicable..... 3383
Circuit-court rules as to evidence, depositions and compelling attendance of witnesses applicable..... 3380
Contempts, may punish for..... 3364
Depositions, rules of circuit court applicable to..... 3380
Evidence, circuit-court rules applicable to..... 3380
Garnishment, writs of, may be issued by, when; what provisions applicable.....3376, 3377
General assembly invested with power to establish, with general designated jurisdiction.....Const., Art. VI., §9, p. 84.
Judicial power, in part, vested in.....Const., Art. VI., §1, p. 82; 2636
Jurisdiction of, generally..... 3363
to ascertain value of, and decree conveyances of lands ceded to United States..... 627

PROBATE COURT AND JUDGE—*Continued.* SECTION

Probate court—*Continued.*

Jurors and witnesses, pay of, in 1386
Letters testamentary, of administration and guardianship, to be signed and dated 3375
Liability of sheriff or other officer for failure to return, etc., process 3379
proceedings for the enforcement of such 3379
May punish for contempts 3364
Pay of jurors and witnesses in 1386
Process to be signed and dated and to conform to process from courts of law.. 3375
directed, executed and returned as process from courts of law and under like penalty 3375
to what term, returnable 3378
liability of sheriff or other officer for failure to execute, return, etc.... 3379
proceedings for the enforcement of such 3379
Regular and special or adjourned terms; court always open, except Sundays 3371, 1726
Security for costs on commencing proceedings in 1352
Sheriff, liability of, or other officer for failure to execute, return, etc., process 3379
proceedings for the enforcement of such liability against 3379
duty of, to attend terms of 3739
Special or adjourned terms of, when 3371
Supplying place of judge of, when incompetent 3381, 3382
Trial of right of property on levy of process issued from; in what court 4146
Venue, change of, when; what provisions applicable 3383
Witnesses, pay of, and jurors in 1386
rules of circuit court applicable as to compelling attendance of.... 3380

Appeals from, special provisions as to.

Application, on, to execute will, or administer estate, letters not to issue pending 78
Bill of exceptions, right to, and signing of 465
transcript need only contain, and the decree, when 466
when, contains all the evidence, judgment on 467
Bond on, from order removing personal representative 461
also security for due administration pending appeal 463
execution, on affirmance, against principal and sureties on 462
Circuit or supreme court, to, from final judgment or decree of court or judge.. 457
other designated orders or decrees 458
time within which to be taken 458
Costs of, when reimbursed to party in representative capacity 469
Effect of, on contest of report of insolvency 320
Execution for costs on affirmance of; against whom 462
Guardian ad litem may take, without security for costs 468
Minors or persons of unsound mind, who may take, on behalf of 468
Partition of crops, from judgment on application for 3204
Security for costs to be given; execution, etc 464
Summary proceedings, from judgment in 3379
Supreme court, to, from judgment of circuit court on appeal from probate court 459

Judge of probate.

Additional bond; when may be required of; proceedings 3111-3118
Analysis of stomach of dead body when poison suspected; duty of, as to 3368
Appeal bond, liability for taking insufficient surety on 447
liability for delay in furnishing, etc., transcript on 453
may issue execution for costs on 456

PROBATE COURT AND JUDGE—*Continued.* SECTION

Judge of probate—*Continued.*

Attachments, authority of, to issue 526
Authority of, generally 3372
to take acknowledgment and probate of conveyances 993
solemnize rites of matrimony 2841
issue attachments 526
Beginning and duration of term of office 3054
Bond of; penalty; by whom approved 3079, 3357
where filed and recorded 3358
suit on, who may bring 3359
to whom payable; conditions 3070
a lien upon property of principal 3078
within what time to be filed 3080
additional; when may be required; proceedings 3111–3118
when, may be declared insufficient and new bond required 3119–3123
right of sureties to be discharged from; new bond required 3124–3132
liability on; who may recover 76, 3359
Books of office free for examination of all persons, when 3367
Cannot act as guardian of minors or persons of unsound mind 2387
but may be custodian of funds of such persons, when 2388
Circuit clerk to give notice of death of, to governor 3146
Clerk, authority to employ ..... Subd. 6, 3372
bond of; by whom approved; where filed and recorded 3373
continues to perform duties of office pending vacancy; exceptions 3374
Commissioners' court, is principal judge of 951
Commissions allowed on money paid to, by representatives and guardians on decrees 3370
for collecting and paying over money for revenue license 4132
Compensation under revenue law, forfeits half his, for neglect of duty thereunder 3801
must be allowed, for stationery, etc 3384
Conservator, is, of the peace 3360
Conveyances, is authorized to take acknowledgment and probate of 993
may demand fees in advance for recording 986
Corporations, duty as to filing and recording declaration, etc., of 1284
charter fees of; duty to collect 1287, 1288
fees for filing and recording declaration, etc 1285
Costs, may issue execution for, on appeal 456
County treasurer, duty to approve, file and record bond of 1428
to appoint an expert accountant to examine books and vouchers of 1433
summons to, to be executed on 3280
Custodian, may be, of funds of minors or persons of unsound mind, when 2387
duties as, in reference thereto 2389, 2390
balance due on settlement in such case recoverable on motion 2391
Dead bodies, duty as to; analysis of stomach when poison suspected 3368
Death of, notice of, to be given by circuit clerk to governor 3146
Decrees against representatives and guardians for money may be paid to 3369
commissions allowed thereon 3370
Dueling oath, required to take 3062
Duties of, generally 3365
to subscribe for and file weekly newspapers, etc 3049, 3050
as to recopying books of office 3366
to keep records free to public examination, when 3367
Duty as to dead bodies; analysis of stomach when poison suspected 3368
to make out itemized account for services 1376

PROBATE COURT AND JUDGE—*Continued.*

SECTION

Judge of probate—*Continued.*

Duty to visit and examine county jail once a week.....Subd. 15, 3365; 1415
approve, file and record bond of county treasurer..... 1428
appoint an expert accountant to examine books and vouchers of county treasurer..... 1433
as to sheriff's fees collected..... 3365
filing and recording declarations of corporations.....1284, 1285
Election of; term of office.....Const., Art. VI., §12, p. 85; 1573, 1574, 1578, 3354
how contested.....1686–1703
Eligibility for office..... 3356
Execution, may issue, for costs, on appeal..... 456
Expert accountant to be appointed by, to examine books and vouchers of county treasurer..... 1433
Fee bill, must keep, posted..... 1354
penalty for failure to post..... 1355
Fee-book, must keep, free to public inspection, showing all fees received, etc.. 1366
Fees allowed generally..... 1375
crops, in proceeding to partition..... 3203
decrees, for receiving money, against representatives and guardians..... 3370
dentists, for recording licenses of..... 1448
exemptions, for filing, recording, etc., declarations of..... 2044
incorporating companies, for services in..... 1285
licenses, for collecting and paying over money for..... 4132
for issuing..... 4125
matrimony, for celebrating rites of..... 2851
mechanics' liens, for filing and recording..... 2729
physicians, for recording certificates of..... 3264
penalty for receiving unlawful..... 1368
taxes, for services in proceedings to sell lands for..... 4071
Forfeits half his compensation under revenue law for neglect of duty thereunder 3801
Guardian, cannot act as, for minors or persons of unsound mind..... 2387
but may be custodian of funds of such persons in stated case..... 2388
duties in reference thereto— 2389, 2390
balance due, on settlement, recoverable on motion..... 2391
How place supplied when, incompetent.....3381, 3382
Impeachment; grounds of.....Const., Art. VII., §2, p. 87.
Incompetent, when, how place supplied.....3381, 3382
Indexes, not entitled to fee for keeping, of records..... 1362
Is principal judge of commissioners' court..... 951
Itemized account, duty to make out, for services..... 1376
Jail, duty of, to visit and examine, once a week..... 1415
Liability for taking insufficient surety on appeal bond..... 447
on bond for neglect, etc., in taking bond, etc., who may sue on....76, 3359
for delay in furnishing transcript on appeal, or for imperfection in record..... 453
License, revenue, commissions for collecting and paying over money collected for..... 4132
fee for issuing..... 4125
Marriage license, penalty against for improperly issuing.....2848, 2849
Matrimony, authority to solemnize rites of..... 2841
May employ a clerk.....Subd. 6, 3372
demand fees, in advance, for recording conveyances..... 986
Minors or persons of unsound mind, cannot act as guardian for..... 2387
may be custodian of funds of, in stated case 2388

PROBATE COURT AND JUDGE—*Continued.* SECTION

Judge of probate—*Continued.*

Minors or persons of unsound mind, duties in reference to funds of....2389, 2390
balance due on settlement, recoverable on motion.... 2391
Must be allowed compensation for stationery, etc.... 3384
sign process, etc., issued from probate court.... 3375
Newspapers, weekly, etc., must subscribe for, and have bound, etc....3049, 3050
Notice of death of, to be given by circuit clerk to governor.... 3146
Oath of office....Const., Art. XV., p. 103; 3062
where filed.... 3065
Official seal, must keep.... 3362
Office and office hours.... 3361
Penalty against, for improperly issuing marriage license....2848, 2849
failure to post fee bill.... 1355
receiving unlawful fee.... 1368
Personal representatives and guardians, decrees against, for money, may be paid to.... 3369
Persons of unsound mind or minors, cannot be guardian for.... 2387
Process, etc., issued from probate court must be signed by.... 3375
Prohibited from practicing law....Const., Art. VI., §20, p. 86.
Public revenue, summary judgment against, for, collected....3800, 3803
Qualification.... 3356
Recopying, duty as to, books of office.... 3366
Recording conveyances, may demand fees in advance for.... 986
Records, not entitled to fee for keeping indexes of.... 1362
of office; must keep free to public examination, when.... 3367
Revenue law, forfeits half his compensation under, for neglect of duty thereunder.... 3801
Seal, official, must keep.... 3362
Sheriff, summary judgment against, in favor of.... 3783
duty as to fees of, collected....Subd. 5, 3365
Special judge, appointment of; when and by whom....3381, 3382
State, venue of suits by, against judge and sureties.... 4208
Stationery, etc., must be allowed compensation for.... 3384
Summary judgments against, in favor of sheriff.... 3783
for public revenue collected....3800, 3803
Summons to county to be executed on.... 3280
Sureties, right of, to be discharged from bond of; new bond required....3124–3132
Term of office....Const., Art. VI., §15, p. 85; 1578, 3354
Transcript, liability of, for delay in furnishing, on appeal, or imperfection in record.... 453
Unlawful fee, penalty for receiving.... 1368
Vacancies filled by appointment of governor; term of appointee—Const., Art. VI., §17, p. 85; 3355
Venue of suits by state against, and sureties.... 4208

PROCEDENDO.

On appeal from judgment of justice....494, 495

PROCESS.

Alias and pluries process issued without order in chancery...Ch. R. 26, p. 1208.
Chancery court, power of, to enforce execution of.... 640
return-day of process from.... 858
sheriff to execute and return process from....Subd. 1, 3739
for execution of decrees in.... 857
alias and pluries process issued without order in...Ch. R. 26, p. 1208.
on decrees rendered in, during vacation....Ch. R. 79, p. 1219.

PROCESS—*Continued.*

SECTION

Chancery, infants, how served with summons on bill in.....Ch. R. 20, p. 1205.
corporation, service of, on.....Ch. R. 21, p. 1206.
non-resident defendants to bill in, service of.....Ch. R. 22, p. 1206.
Circuit court, issue of process from..... 934
return of process to, and on judgments rendered at special and adjourned terms of.....916, 917
power of, to correct errors in, after judgment..... 919
prevent abuse of..... 919
motions to quash, in, to be made at first term..C. C. R. 13, p. 1197.
sheriff to execute and return process and orders of..... 3739
Constables, duty of, to execute process returnable to justices..... 976
Corporations, how served.....3274-3277
service on religious, educational, benevolent, etc..... 1305
insurance companies to have agent in state upon whom, may be served.....1107, 1108
mutual aid associations to have agent in state upon whom, may be served..... 1118
Decrees, process for execution of, in chancery..... 857
on, rendered in chancery during vacation...Ch. R. 79, p. 1219.
for enforcement of, against guardians, etc., rendered by probate court..... 2349
Errors in, power of circuit court to correct, after judgment..... 919
Executors and administrators, non-resident, service of, on.....86, 87
Exempt property, when no action lies against officer levying on..... 2066
Foreign corporation; service on designated agent of; proof of agency..... 3277
Foreign insurance company; service on insurance commissioner, when..Subd. 3, 2584
guarantee company; how served 3094, 3099
Form, no process vitiated for want of..... 3330
How served on receivers..... 804
Issue of, from circuit court..... 934
by justices..... 2664
and return of, issued by probate court.....3365, 3375, 3378
Insurance companies to have agent in state on whom process may be served 1107, 1108
Justices, issue of, by..... 2664
duty of constables to execute process returnable to..... 976
Justification under process regularly issued, etc..... 1807
Motions to quash, in circuit court to be made at first term..C. C. R. 13, p. 1197.
Mutual aid associations to have agent in state on whom, may be served..... 1118
No process vitiated for want of form..... 3330
Officer selling under, must first pay taxes out of proceeds of sale..... 4117
when no action lies against, for levying on exempt property..... 2066
Overseers of public roads may execute process against road defaulters..... 2484
Penalty for failure to execute or return process issued by probate court..... 3379
Power of chancery court to enforce execution of..... 640
Probate court, issue and return of, issued by.....3365, 3375, 3378
penalty for failure to execute or return process issued by..... 3379
for enforcement of decrees against guardians, etc..... 2349
Public roads, overseers of, may execute process against road defaulters..... 2484
Return of process to, and on judgments rendered at special and adjourned terms of circuit court.....916, 917
Return-day of process from chancery court..... 858
Railroad companies to have agent in state on whom process may be served..1179, 1180
how served..... 3274
when road operated by others..... 3375
Real action, in; how served when defendant secretes himself..... 3278
Receivers, how process served on..... 804

PROCESS—*Continued.* SECTION
Service on religious, educational, benevolent, etc., corporations 1305
non-resident executors and administrators 86, 87
Sheriff to execute and return process and orders of courts of record ... Subd. 1, 3739
authorized to execute process of justice's court; fees and liability .. 979, 3741
penalty for failure of, or other officer to execute or return process issued by probate court 3379
Taxes, officer selling under, must first pay, out of proceeds of sale 4117
The style of all process shall be, "The State of Alabama"—
Const., Art. VI., §28, p. 87.
Toll-road companies, how served on 1234
When no action lies against officer for levying on exempt property 2066

PROFERT.
Of sealed instruments sued on, not required 3290

PROHIBITION, WRIT OF.
Abatement of proceeding on performance of duty by succeeding officer, etc 2831
Amendment of proceedings, etc., in proceedings for, etc., when 2825
Answer, truth or sufficiency of, may be put in issue 2826
Appeal to supreme court; preferred case; when to be decided 431, 2827
security for cost required 431
does not operate as supersedeas of judgment unless bond given 431
manner of taking 432
bill of exceptions may be taken; judgment on appeal 2828
preferred case 2827
Application for; pleadings and right of amendment 2825
Bill of exceptions may be taken; judgment on appeal 2828
Bond necessary for supersedeas of judgment 431
Circuit judges, power of, to grant 921
Common law as to, not repealed; certain proceedings exempt from provisions of chapter 2833
Costs 2832
Judgment on appeal 2828
Pleadings and right of amendment 2826
Power of supreme court to issue ..... Const., Art. VI., §2, p. 83; 3826
circuit judges to issue 921
Preferred case on appeal; when to be heard 2827
Proceedings abate on performance of duty by successor; costs 2832
Return may be controverted 2826
Revivor in case of vacancy in office 2829
proceedings to revive, when against one officer 2830
several officers; costs 3832
Security for costs required to be given on appeal 431
Supreme court, power of, to issue 3826
when appeal must be decided by 2827
judgment on appeal by 2828

PROMISES.
Damages for breach of promise to accept bill of exchange 883
Joint promises in writing, joint, and several; suits on 39
Limitation of actions on, in writing not under seal ..... Subd. 4, 2796
breach of marriage promise ..... Subd. 2, 2801
What, within statute of frauds 2152

PROMISSORY NOTES.
Choses in action, *see* 869–896

PROPERTY.
Administration, property exempt from, and payment of debts 2069–2077

PROPERTY—*Continued.*

SECTION

Ad quod damnum proceedings, damages for property taken in.....1712-1748
Adrift, right to take up and secure..... 3525
appraisement of such property taken.....3526, 3527
notice as to, when; contents of.....3528-3530
restored on proof of title..... 3531
compensation to taker.....3532, 3533
fees of appraisers..... 3534
time allowed for making claim; if none made, property vests in taker.. 3535
remedy of owner when taker refuses to deliver property..... 3536
penalty for concealing, destroying, etc..... 3537
on death of taker, his representative acts..... 3538
Aliens may take, hold and transmit..... 419
All property of decedent charged with payment of debts..... 125
Attachment, what property subject to levy and sale under..... 540
Damages for, under ad quod damnum proceedings.....1712-1748
Dams for mills, etc., provisions as to taking property for erection of.....1727-1748
other public uses.1712-1726
Decedent, all property of, charged with payment of debts..... 125
when property of, escheats to state..... 1752
Descent and distribution of.....1453-1476
Escheats, when property of decedent, to state..... 1752
Execution, what property subject to levy and sale under..... 1890
Exempt, what property, from levy and sale and from administration—
2033-2040, 2069-2077
Includes property, real and personal..... 2
Levy and sale, what subject to, under attachment..... 540
execution 1890
Meaning of when applied to custody of property of state..... 1955
the terms "real property" and "personal property" in revenue law..... Subds. 1, 2, 3906
Military property, selling or detaining, misdemeanor, when..... 2881
No one to be deprived of, but by due process of law....Const., Art. I., §7, p. 61.
property qualification for suffrage or office allowed..Const., Art. I., §38, p. 67.
Of state, under control of governor..... 1955
county, under control of county commissioners; powers over..... 1402
Partition of, generally; provisions as to.....3161-3187
crops, provisions as to.....3188-3206
Private property not to be taken or applied for public use, unless just compensation be first made therefor—
Const., Art. I., §24, p. 66.
for private use, or for use of corporations, except municipal, without owner's consent.....Const., Art. I., §24, p. 66.
Public roads, taking property for; provisions as to.....2443-2447
Subject to levy and sale under execution..... 1890
attachment..... 540
Suffrage or office, no property qualification for, allowed—
Const., Art. I., §38, p. 67.

PROSECUTIONS.

Accused not compelled to testify against himself.....Const., Art. I., §7, p. 61.
must not be deprived of life, liberty, or property but by due process of law.....Ib.
right of, to be heard by himself and counsel.....Ib.
demand nature and cause of accusation, and to have copy thereof.....Ib.
be confronted by witnesses against him.....Ib.
a speedy public trial by an impartial jury, etc.....Ib.

PROSECUTIONS—*Continued.* SECTION
Answer of witness on contest of election not evidence on prosecution against him for illegal voting ... 1669
compelled, to bill charging fraud, etc., not evidence on indictment for fraud ... 816, 817
in action for money lost at gambling not evidence in criminal prosecution ... 2169
In prosecutions for publications investigating official conduct, etc., truth thereof may be given in evidence ... Const., Art. I., §13, p. 64.
No person to be accused or arrested or detained except in cases ascertained by law, and according to forms prescribed ... Ib. §8, p. 62.
punished except by law established and promulgated prior to offense, and legally applied ... Ib.
twice put in jeopardy of life or limb for same offense— Const., Art. I., §10, p. 63.
for an indictable offense, to be proceeded against criminally by information; exceptions ... Ib. §9, p. 62.
No party to be debarred from prosecuting or defending civil suit— Const., Art. I., §11, p. 63.
On indictment for libel, jury have right to determine law and facts, under direction of court ... Ib. §13, p. 64.
Party, on discovery at law, not required to make answers subjecting him to criminal prosecution ... 1858, 2169
Prosecution not necessary to maintain civil action for felonious injury ... 22

PROTECTION OF ESTATES.
Of intemperate persons; proceedings in equity for ... 836–843

PROTEST.
Authority of notary to make ... 3025
justice to make ... 3031
Certificate of, evidence ... 3030
Damages on protested bills of exchange ... 885–889
Notice of ... 890, 891
Not required in case of paper issued to circulate as money ... 866
Of paper due on holidays ... 872
What paper subject to ... 869, 870

PUBLIC HALL.
Let for hire, license required for; price of ... Subd. 16, 4122

PUBLIC HEALTH.
Health and quarantine, *see* ... 2392–2442

PUBLIC LANDS.
Agreements not to bid at, etc., sales of, void; penalty for making ... 2159–2161
Books, etc., of surveyor-general public archives; certified copies evidence ... 1815
Certificates of registers of land-office vest title and received in evidence ... 1813
Deeds made and signed in land-office; how proved ... 1814
Distribution of books and papers relating to ... 1989
Duties of secretary of state in respect to ... 1974
Grants by state made by patent; issue and record of ... 2699–2702
Improvements on may be sold ... 2162
Patents from this state or the United States may be recorded in probate office 1003
certified copy of record of, evidence ... 1003
issued by United States or any state of the United States received as evidence ... 1812
Secretary of state, duties of, as to ... 1974

PUBLIC MONEY.

SECTION.
Duty of state treasurer in reference to 2018
Not included in the word "property" as property of state under control of governor ..... 1955.

PUBLIC PRINTING.

Acts and joint resolutions—
copies of; how and when prepared for publication 3402
index to, how must be prepared 3403
certificate required on title page of each volume; marginal notes, etc.... 3404
copies of, when must be furnished to printer by secretary of state 3406
penalty for not delivering, to printer 3407
quality of paper and style of printing 3408
when to be completed by printer 3410
Advertisement, biennially, for proposals for 3387
bids for, if rejected, readvertisement for 3390
Auditor, contract for, must be approved by 3392
publication of laws, etc., in newspaper, must be approved by 3401
Bidders, advertisement for 3387, 3390
bond to be filed by; conditions 3388
Bidder, contract awarded to; failing to enter into, liable for damages 3391
Bills, etc., copies of, number of, to be furnished secretary of state when ordered printed by either house of general assembly 3411
Blanks must be printed on good paper, size and type as directed 3397
parchment for, when necessary, to be furnished by state 3397
Bond must accompany proposals for bid 3388
conditions of; to whom payable 3388
new or additional, may be required of state printer, when 3392
for publication of laws in newspaper; penalty, conditions, approval and record 3401
Classes, work divided into four 3386
printing and binding in class 4, where done 3395
Commissioner of agriculture—
payment for printing ordered by; out of what fund paid 3415
Contract, public printing and binding to be done under 3385
awarding of 3391, 3392
approved by whom 3392
declared forfeited for cause; new contract 3393
action on; venue 3394
for publication of general and public laws in newspaper 3399, 3400
by whom approved 3401
Contractor—
failing to execute contract faithfully, etc., liable on his bond for damages 3393
damages, what includes 3393
for publication of general and public laws in newspaper; officers to be furnished with 3400
new or additional bond may be required of 3392
actions against; venue 3394
Governor, contract for, must be approved by 3392
publication of laws in newspaper must be approved by 3401
Indexes, acts and joint resolutions, to, by whom prepared 3403
Journals, how prepared, indexed, and bound 3405
completed by printer in what time 3410
Laws, general and public, to be published in newspaper 3399
copies of, when furnished contractor; officers to whom paper furnished 3399
Manuscript furnished contractor for publication in newspaper 3400
of acts and journals furnished printer 3406
penalty for not delivering 3407

PUBLIC PRINTING—*Continued.* SECTION

Newspaper, laws, general and public, must be published in.....3399, 3401
maximum rate for..... 3399
officers to whom paper shall be furnished..... 3400
contractor must execute bond; conditions..... 3401

Number of copies of—
acts and journals to be printed and delivered..... 3410
department reports; disposition of..... 3398
revenue laws..... 3409
bills, ordered printed by either house of general assembly, to be furnished secretary of state..... 3411
Paper, all blanks shall be printed on good quality of..... 3397
quality of, and style of printing acts, resolutions and journals..... 3408
Parchment for blanks, when necessary, to be furnished by state..... 3397
Penalty against secretary of state for not delivering copies of acts and joint resolutions to printer..... 3407
Pay for printing, ordered by either house of general assembly..... 3412
of laws and journals..... 3413
revenue laws..... 3414
for commissioner of agriculture..... 3415
railroad commissioners..... 3415
ordered by both houses of general assembly..... 3416
Printing and binding, maximum rate for..... 3389
in class 4, must be done in state..... 3395
style of, and quality of paper..... 3408
Proposals for, advertisement for..... 3387
must be in writing, accompanied by bond..... 3388
sealed; how addressed..... 3388
opened in presence of whom..... 3390
examination of; accepted or rejected; when..... 3390
if rejected, readvertisement for..... 3390
Rates, maximum, for printing and binding..... 3389
Railroad commissioners, payment for printing ordered by..... 3415
out of what fund, and how paid..... 3415
Reports, department, when to be made; how printed..... 3398
copies of; number retained; remainder distributed..... 3398
Revenue laws, printed not only with acts and resolutions, but separately..... 3409
Secretary of state, duty of, to advertise biennially for bids for..... 3387
open bids for, in presence of governor, etc..... 3390
readvertise if bids rejected..... 3390
indorse bids accepted and notify bidder..... 3391
contract for publication of general and public laws in newspaper..... 3399
furnish contractor with copies of general and public laws..... 3400
prepare copies of acts and joint resolutions for printing..... 3402
have prepared index to same..... 3403
prepare marginal notes to sections of acts..... 3404
have acts certified; how..... 3404
furnish printer with copies of acts and joint resolutions..... 3406
penalty for failure of, to comply with preceding section..... 3407
duty of, to receipt printer for requisite number of acts and journals delivered..... 3413
file and record bonds of contractors.....3392, 3401
State treasurer, contract for, must be approved by..... 3392
publication of laws, etc., in newspaper must be approved by.. 3401

PUBLIC PRINTING—*Continued.*

SECTION

Supreme court reports, printing and binding of, under supervision of supreme court ... 3396
specifications as to ... 3396
after approval by court, must be delivered to secretary of state ... 3396
publisher must file affidavit that all copies printed have been delivered ... 3396
Time within which laws and journals must be completed ... 3410
Venue of suits against contractors for public printing and binding ... 3394

PUBLIC SCHOOLS.

Schools, *see* ... 3539-3666

PUBLIC USES.

Private property not to be taken or applied for public use, unless just compensation be first made therefor ... Const., Art. I., §24, p. 66.
Taking property for. See EMINENT DOMAIN ... 1712-1748

PUPILS.

At public schools. See SCHOOLS ... 3539-3666
to be instructed in state and federal constitutions ... Subd. 4, 3546
hygiene and physiology ... Subd. 3, 3546
as to effect of alcoholic drinks, etc ... 3578

PURCHASE-MONEY.

Of lands; transfer of note, etc., carries vendor's lien ... 878
sale, when garnishee answers indebtedness for, in suit before justice 2212

PURCHASERS.

Not bound to see to application of purchase-money of trust property ... 1039
Of railroad may organize as a corporation ... 1181-1183
street-railroad may organize as a corporation ... 1199-1201
toll-road may organize as a corporation ... 1241-1243
Redemption of land from ... 3505-3519
Right of purchaser of mortgaged property to have payments entered on record ... 1065, 1066
at sales under decree, or process, or power, to possession ... 3506
sale by representative to have report of sale ... 180, 181

QUAKERS.

May solemnize rites of marriage ... 2843

QUARANTINE.

Health and quarantine, *see* ... 2392-2442

QUARTERMASTER.

Of brigade, appointment; rank of; duties of ... 2856, 2857
regiment, appointment; rank of ... 2858
squadron or battalion, appointment; rank of ... 2858

QUARTERMASTER-GENERAL.

Appointment; rank of; duties of ... 2853, 2854

QUARRYING COMPANY.

General laws of incorporation relating to. See CORPORATIONS, subtitle Mining, quarrying and manufacturing companies ... 1139-1155

QUASH, MOTION TO.

Attachment on appeal from justice, not to be sustained for want of form, bond, etc ... 489

QUASH, MOTION TO—*Continued.* SECTION
Must be made at first term at which it can be made.....C. C. R. 13, p. 1197.
Notice of.....C. C. R. 22, p. 1198.
Summons, complaint, etc., on other proceedings for defect or want of form not to be sustained 3330

QUI TAM ACTIONS.
Any citizen may bring, when not otherwise provided..... 15
Limitation of; exception..... 2801

QUORUM.
A majority of each house of general assembly a quorum; power of less number to adjourn and compel attendance of absent members—
Const., Art. IV., §10, p. 72.

QUO WARRANTO.
Actions in nature of—
corporation, to vacate charter of; by whom instituted, and grounds for.... 3417
when solicitor directed to commence; any person may sue on securing costs..... 3418
in what county action to be brought..... 3419
on judgment of forfeiture, corporation dissolved; costs..... 3433
when alleged, may be joined as party defendant without prejudice..... 3423
judgment and execution may go against it by its alleged corporate name..... 3423
usurpation, for, or forfeiture of office or franchise; grounds of..... 3420
action may be directed by circuit judge; any person may sue on securing costs..... 3421
in what county to be brought..... 3422
in action for, true officer may be averred..... 3429
right of officer on judgment in his favor..... 3430
when validity of election not triable in..... 3431
judgment of exclusion..... 3432
Appeal from order on application for..... 431
the state, informant, or defendant may; costs thereof..... 3437
security for costs of, to be given, except by state..... 3437
when does not supersede execution of judgment unless bond be given.. 3438
heard by the supreme court..... 3439
Averments of complaint..... 3428
Bond, on appeal, required to supersede execution of judgment..... 3438
Cause to be tried by court unless jury demanded..... 3425
Circuit judge, authority of, to grant writs of..... 921
may direct solicitor to commence action against corporation.... 3418
action brought for usurpation, etc..... 3421
Complaint must concisely and clearly set forth act or omission complained of.. 3428
Costs, when against state; when against defendant..... 3434
on abatement..... 3435
appeal..... 3437
judgment of forfeiture, and dissolution of corporation..... 3433
exclusion from office or franchise..... 3432
security for before commencing action.....3418, 3421
on appeal..... 3437
Court always open for trial of cause which stands for trial after five days' service of summons; postponement..... 3424
cause to be tried by, unless jury demanded..... 3425
Execution for costs, when issued, on judgment of exclusion from office or franchise..... 3432
forfeiture, etc., by corporation..... 3433
against informant's sureties, when..... 3436

QUO WARRANTO—*Continued.* SECTION

Informant joined as plaintiff with state, when 3426
in whose name continued on death of; when it abates 3427
execution for costs against sureties of, when 3436
Jury, either party may demand trial by; when demand made, etc 3425
Security for costs, any one may bring action on giving 3418, 3421
required on appeal 3437
Solicitor may be directed by circuit judge to commence action 3418, 3421
Summons; when returnable; after five days' service of, cause stands for trial 3424
Supreme court, power of, to issue writs of ..... Const., Art. VI., §2, p. 83; 3826
when appeal must be heard by; notice, etc., when 3439
Venue 3419, 3422
When action abates 3427
judgment against sureties of informant for costs 3435

RACE-TRACK.

License required for; cost of ..... Subd. 1, 4122

RAILROADS.

Constitutional and general statutory provisions.

Aid to, or purchase and lease of other roads 1170, 1171
All railroads shall be public highways and common carriers—
Const., Art. XIV., §21, p. 102; 3459
Authority of city or town to regulate running of trains within corporate limits 2970
Branch roads may be constructed 1172, 1173
Change-bills, must not pay out 867
Claims against, for injury to property may be assigned in writing, etc 877
assignee, and each successive assignee of, may sue, etc 877
Condemnation of lands for use of. See EMINENT DOMAIN 1712–1726
Consolidation of railroad corporations; proceedings 1166–1168
Contracts for conditional sale of rolling-stock to be recorded 1016–1018
Domestic companies must have principal place of business within state 1180
General assembly, duty of, to correct abuses and prevent unjust discrimination and extortion in rates ..... Const., Art. XIV., §22, p. 102.
Incorporation of. See CORPORATIONS, subtitle Railroad companies 1156–1187
License required for supply-car; price of ..... Subd. 36, 4122
License-tax against, how ascertained 3489
License, penalty for operating without 3489
Lines may be extended, or branch roads constructed 1172, 1173
Not to have benefit of any future legislation, with stated exception, except on condition of acceptance of provision of article .. Const., Art. XIV., §25, p. 103.
Passes, prohibited from granting free, or selling tickets or passes at a discount, etc., to any member of general assembly or officer—
Const., Art. XIV., §23, p. 103.
Private property, right to condemn, for public uses; provisions in respect to—
Const., Art. I., §24, p. 66; Art. XIV., §7, p. 101.
Process, service of, upon, when operated by others 3275
receiver 804
Right of eminent domain not to be construed so as to allow taxation or forced subscriptions for benefit of railroads ..... Const., Art. I., §24, p. 66.
to construct and operate a railroad between any points in the state, and to connect at state line with railroads of other states—
Const., Art. XIV., §21, p. 102.
intersect or connect with or cross any other railroad ..... Ib.
Rolling-stock, contracts for conditional sale of, to be recorded 1016, 1018
Shall receive and transport each other's freight, passengers and cars without delay or discrimination ..... Const., Art. XIV., §21, p. 102.
Supply-car, license required for, when; price of ..... Subd. 36, 4122

RAILROADS—*Continued.* SECTION

Constitutional and general statutory provisions—*Continued.*

Taxation, property of, subject to.....Subd. 12, 3911
property, principles of valuation of, for..... 3972
returns of, made to auditor, when..... 3964
failure to make, duty of auditor..... 3965
penalty for..... 3968
other property made to assessor..... 3976

Regulations affecting public safety.

Bridge, draw of, to be opened on signal; penalty for failure..... 3446
signals by; lights to be placed on by; regulations as to..... 3447
steamboat when approaching..... 3445
Conductor and engineer, duty of, to stop near railroad crossing..... 3441
Draw of bridge to be opened on signal; penalty for failure; limitation of action 3446
Employes of, must be examined..... 3448
examination of, how conducted; papers evidence, etc..... 3449
license to be issued to, if found competent..... 3450
Engineer, duty of, as to ringing bell and blowing whistle..... 3440
and conductor, duty of, to stop near railroad crossing..... 3441
to be instructed by chief superintendent, etc..... 3444
Injuries, liable for, to person or property; burden of proof in action for..... 3443
License to be issued, etc., to competent employes..... 3450
Penalty for failure to open draw of bridge on signal of steamboat; limitation of action..... 3446
Signals by steamboat when approaching drawbridge..... 3445
draw to be opened on; penalty for failure..... 3446
Sign-boards; where to be erected as danger-signals..... 3442
Steamboat, signals by, when approaching drawbridge..... 3445
Superintendent to instruct engineers and conductors as to certain duties..... 3444

Passengers, regulations affecting convenience of.

Appeal from decree of chancery court relative to erection of depot conveniences, etc..... 3453
Attorney-general to be notified of failure of railroad company to comply with orders of railroad commissioners as to depot conveniences, etc..... 3453
may direct solicitor to file bill, etc., or take other steps, etc. 3453
Commission, railroad, service of order of, as to depot conveniences..... 3452
time allowed for compliance with order of..... 3452
to notify solicitor and attorney-general of failure to comply..... 3453
designate stations nearest county-seats at which trains must stop.....Note, secs. 1, 3, p. 976.
Conductor must assign each passenger to a seat in the car designated for his color..... 3455
police powers of, of passenger-trains..... 3457
County-seat, trains must stop at stations nearest; penalty..Note, secs. 1, 2, p. 976; 3458
Depot conveniences, what, to be provided for passengers.....Note, p. 974; 3451
railroad commission, service of order of, as to..... 3452
time allowed for compliance with order of, as to..... 3452
solicitor and attorney-general to be notified, etc..... 3453
chancery court, bill may be filed in, by, etc..... 3453
appeal from decree of chancery court 3453

RAILROADS—*Continued.* SECTION

Passengers, regulations affecting convenience of—*Continued.*

Jury trial may be demanded by, and had by person or corporation, when..... 3453
Lights to be kept on night trains, and fresh drinking-water on all trains..... 3456
Passengers, what depot conveniences provided for..... 3451
equal but separate accommodations provided for white and colored 3454
conductor must assign each, a seat in car designated for his color.. 3455
Penalty for failure to stop train at advertised stations; at station nearest county-seat.....Note, sec. 2, p. 976; 3458
sell ticket to stations designated, etc..Note, sec. 2, p. 976.
Police powers of conductors of passenger-trains..... 3457
Separate coaches must be provided for white and colored races..... 3454
conductor must assign seats in, designated for color, etc..... 3455
Service of order of railroad commission; time allowed for compliance, etc..... 3452
Solicitor, under direction of attorney-general, to file bill, etc., to enforce order of railroad commission..... 3453
to be notified, etc., of failure of railroad company to comply with order, etc..... 3453
Trains to stop at advertised stations; at station nearest county-seat; penalty— Note, p. 976; 3458
does not apply to vestibuled or limited, etc.....Note, sec. 1, p. 976.
all, shall stop at Letohatchie in Lowndes county and Eppes Station— Note, sec. 1, p. 976.
penalty for refusal to sell ticket, etc., or to stop train, etc.— Note, sec. 2, p. 976.
Whites and blacks; separate coaches for..... 3454
conductor must assign seats to, in car designated for their color..... 3455

Commercial regulations.

Agreements for pooling; when unlawful; when authorized..... 3464
Award of railroad commissioners; proceedings in chancery court on..... 3469
revival, amendment and change of, when..... 3470
penalty for violation of..... 3471
costs; against whom taxed..... 3472
when provisions of sections do not apply..... 3473
Chancery court, proceedings in, on award of railroad commissioners..... 3469
revival of proceedings in, when..... 3470
fees of register to be fixed by chancellor; costs; against whom taxed..... 3472
Connecting railroads, disagreements between; how settled.....3467-3469
Costs of proceedings in settlement of disagreement between connecting roads; against whom taxed..... 3472
Disagreement between connecting railroads; how settled..... 3467
railroad commission to hear petition relative to..... 3468
award of, in case of, certified to register, etc..... 3468
proceedings in chancery court on..... 3469
costs of proceedings on, against whom taxed..... 3472
revival, amendment and change of, when..... 3470
penalty for violation of..... 3471
when provisions as to, do not apply..... 3473

RAILROADS—*Continued.* SECTION

Commercial regulations—*Continued.*

Extortionate, approval of rates by commissioners evidence that they are not.. 3461
Extortion by, liability for..... 3460
Freight or passengers may be transported free..... 3463
passenger trains to stop at railroad crossings for, when..... 3465
rates on, to be posted at depot; discrimination unlawful..... 3462
what evidence that they are not extortionate..... 3461
Intersection of railroads; transportation on such roads, and on connecting lines..... 3466
Meaning of term "railroad company," as used in chapter..... 3474
Penalty for violation of award of railroad commissioners, etc..... 3471
Pooling, agreements for; when unlawful; when authorized..... 3464
Public highways, main tracks of, are..... 3459
Rates of freight to be posted at depot; discrimination unlawful..... 3462
approval of, by commissioners evidence that they are not extortionate.. 3461
"Railroad company," meaning of term, as used in chapter..... 3474
Trains to stop at railroad crossings for passengers and freight, when..... 3465

Live stock, regulations affecting.

Appraisers to assess damages for stock killed, etc.; by whom selected..... 3476
if the two, selected are unable to agree, they select a third..... 3476
award of; to whom delivered; effect of, as evidence..... 3476
fees of; how paid, etc..... 3479
Cattle-guards to be put upon railroads, when..... 3480
Justice of the peace acts for owner unknown..... 3477
Owner must be notified by section-master, of injury to stock..... 3475
when, unknown, justice of the peace acts for him..... 3477
or agent to select one of the appraisers..... 3476
two of the appraisers when section-master fails or refuses..... 3477
Section-master, duty of, to notify owner of killing or injury to stock..... 3475
to select one of the appraisers..... 3476
when, fails or refuses to act, owner, etc., to select two appraisers..... 3478
Stock, owner must be notified of killing of, or injury to..... 3475
when owner of, unknown justice of the peace acts for him..... 3477
appraisers to assess damages to, etc..... 3476

RAILROAD COMMISSIONERS.

Accident, when, to be reported to; proceedings thereon..... 3499
Annual report must be made by, to governor, with recommendations..... 3503
authority to notify railroads of desired changes or repairs; notice to be included in..... 3494
to be made to commission by railroads..... 3498
Appointment of; by whom; terms of office..... 3481
Books of railroad, right to examine, upon application by parties interested.... 3500
Changes or repairs, authority to notify railroad of desired; notice to be included in annual report..... 3494
Clerk, appointment of, by; salary of..... 3486
not to contract with railroad; exception..... 3488
Connecting roads, proceedings before, on reference by chancellor of disagreement between.....3467–3469
when must recommend joint local rates to..... 3493
Determination of commissioners, effect of; evidence of..... 3496
Disagreement between connecting railroads; how settled.....3467–3469
Disqualification for office of..... 3484

RAILROAD COMMISSIONERS—*Continued.* SECTION
Dueling oath, must take ... 3062
Duty to attend sessions of state board of assessment ... 3502
Expenses for stationery, office furniture, etc.; amount; how drawn, etc ... 3486
of commission as basis of license-tax for operating railroad ... 3489
Effect of adoption of recommendations of commissioners ... 3461, 3504
determination of commissioners; evidence of, etc ... 3496
Fencing, authority to notify railroads of necessity of; effect of failure to fence on notice ... 3495
Free passage, shall have right of, with employes ... 3490
Impeachment of; before what court; grounds of ... 3485
Information, to be furnished by railroads with, when requested, and list of stockholders ... 3497
Joint local rates, when must recommend, to connecting roads ... 3493
License-tax against railroads; how amount ascertained; penalty for operating without license ... 3489
Oath of office ... Const., Art. XV., p. 103; 3062
Office at capitol; meetings, time of; record of proceedings ... 3487
expenses, etc.; what must not exceed ... 3486
Printing done for commissioners, payment for; out of what fund ... 3415
Provisions of chapter not to affect duties, etc., of railroads ... 3504
Recommendations of, effect of adoption of ... 3461, 3504
Room in capitol to be assigned to ... 1956
Revision of railroad tariffs; right to recommend changes; certificate of approval 3491
must hear complaints against; proceedings ... 3492
Salaries of ... 3486
Shall not contract with railroads, etc.; exception ... 3488
State board of assessment, must attend sessions of ... 3502
Stockholders, railroads must furnish list of, when requested ... 3497
Supervision of railroads; recommendations as to management; right of free passage, etc ... 3490
Tariffs, revision of railroad; right to recommend changes; certificate of approval ... 3491
must hear complaints against approved; proceedings thereon ... 3492
when must recommend joint local rates to connecting roads ... 3493
Vacancy in office of; how filled; term of appointee ... 3483
Witnesses may be summoned and examined by; compensation of ... 3501

RAILROAD LABORERS.
Lien in favor of; enforcement of ... 2762–2773

RAILROAD-TICKET BROKER.
License required of ... Subd. 51, 4122

RAMS.
Owners of, have lien for service of; enforcement of ... 2776–2779

RANGE COMPANY.
License required of ... Subd. 38, 4122

REAL ACTIONS.
Ejectment, *see* ... 1529–1555
Service of process in, when defendant secretes himself ... 3278

REAL ESTATE AGENCY.
License required of ... Subd. 52, 4122

REAL PROPERTY.
Coextensive with lands, tenements and hereditaments ... 2
Included in word "property" ... 2

SECTION

RECANTATION.
In actions for defamation; effect of, with tender 1441, 1442

RECEIPTS.
By common carriers, warehousemen, etc., regulations as to 4218–4223
tax-collector for taxes; what must show; effect of, as evidence 4009
Effect of receipt of tender in actions of defamation 1443
written receipt of debts or demands 1805, 1806

RECEIVERS.
Appeal from order appointing, or refusing 429
when returnable 438
bond or security for costs on 445
notice of 449
Appointed by chancellor or register; notice 799
to take possession of property of domestic insurance company, when 2580
Appointment of, by register subject to appeal; suspension of order 800
complainant must give bond before 801
Bond, complainant must give, before appointment of 801
any person damaged may sue on 802
Complainant must give bond before appointment of 801
Corporation, appointment of, on dissolution of; duties of 1294
for, how selected; bond required of 1295
pays debts of; contested claims 1296
Creditors' bills, when may be appointed on; authority of, etc 821
Insurance company, domestic, when appointed to take possession of property of 2580
Listing of property in hands of, for taxation 3942
railroad property in hands of, for taxation 3964
May be sued without leave of court 803
One for same property, though more than one suit ..... Ch. R. 112, p. 1227.
Order; when there is one receiver in two or more suits ..... Ch. R. 113, p. 1227.
Sales of personal property in hands of, order in vacation ..... Ch. R. 115, p. 1228.
Service of process on 804

RECORDING SECRETARY.
Of governor; salary of; governor may discontinue, etc 1959, 1960

RECORDS.
Adjutant-general to furnish, blanks, books, forms, etc., to Alabama National Guard 2854
Chancery court, of, free for examination 665
what papers of, to be recorded ..... Subd. 7, 657; 2644
not to be recorded 658
Circuit clerks, compensation for, to be allowed 940
recopy of books in offices of, provisions for 936
Circuit court, of, open for examination 935
what papers of, to be recorded ..... Subd. 9, 934; 2644
Clerk of supreme court, books to be furnished 3863
County officers, books, etc., for; where bought; when payment for to be refused 963
treasurer, books for, to be furnished by county 1431
commissioners, court of, proceedings of, to be recorded by probate judge 959
records or papers of, not to be removed out of county, except, when, etc 2643
Court, no records or papers of any, to be removed out of county, except in case of invasion, etc 2643
Double records dispensed with 2642
Judge of probate to be allowed reasonable expenses for books, stationery, etc .. 3384
recopy of books in office of, provisions for 3366
to record proceedings of court of county commissioners 959

RECORDS—*Continued.* SECTION
Minute entries constitute part of record in cause..... 2642
No records or papers of any court must be removed out of county, except, etc.. 2643
Papers, what, to be recorded on filing; when recorded part of final record.... 2644
Probate court, of, free for examination..... 3367
recopy of records of, provisions for..... 3366
Register in chancery, compensation for books, stationery, etc., to be allowed..661, 662
recopy of books in office of, provisions for..... 664
Sheriff, books, stationery, etc., to be furnished to, by county..... 3747
Substitution of record-books destroyed, etc., duty of court of county commissioners as to..... 964
Supreme court, what constitutes records of..... 3861
pay for binding records of..... 3862
delivery of records to reporter, etc..... 3864
books, blanks and stationery for, furnished to clerk of..... 3863
What papers to be recorded on filing, and when recorded part of final record.. 2644

RECOUPMENT.
Judgment allowed defendant for excess of damages on plea of, when..... 3734
Proceedings before justices in case of plea of, etc..... 2674

RECTIFIERS.
Of liquors, required to take out license; price of.....Subd. 5, 4122

REDEMPTION.
By debtor, his vendee, etc., of land sold under execution, decree, mortgage, or deed of trust..... 3505
one creditor from another..... 3512
judgment creditor; provisions for, and terms of..... 3510
not allowed if judgment obtained by confession..... 3510
when title vests in creditor, and purchaser must convey to him..... 3510
how prevented by purchaser; when creditor required to credit additional sum..... 3511
when title vests in creditor..... 3511
Child, to whom parent has conveyed, may redeem, when..... 3515
Creditor, by one, from another..... 3512
judgment, by; provisions for, and terms.....3510, 3511
entitled to writ of unlawful detainer..... 3513
Creditors, certain parties deemed..... 3514
Debtor, his vendee, etc., may redeem from a redeeming judgment creditor.... 3516
Equity of redemption, subject to levy and sale under execution.....Subd. 3, 1890
limitation of actions founded on..... 2797
Penalty for refusal to appoint referee as to value of improvements, etc..... 3518
Personal property sold for taxes cannot be redeemed..... 4011
Permanent improvements, value of, to be paid; ascertained by referees..... 3517
Plaintiff purchasing at his own sale deemed a creditor, when..... 3514
Possession to be delivered on demand; notice to tenant dispenses with attornment..... 3506
Purchase-money, ten per cent., and lawful charges to be tendered; effect of tender; duty of purchaser to convey..... 3507
Redemption-money to be paid into court on trial of unlawful detainer suit.... 3509
Representatives of estates, redemptions by and from..... 3519
Right of redeeming creditor to bring unlawful detainer..... 3513
may be asserted by and against representatives of estates..... 3519
Taxes, of lands sold for; persons entitled to, and time allowed for..... 4090
mode and terms of..... 4091
of distinct lot or parcel separately, when and by whom 4092

REDEMPTION—*Continued.* SECTION
Taxes, of lands sold for; application for, contents of; with whom filed 4093
of separate lot or parcel submitted to auditor, when 4094
certificate of, and of release; by whom and when issued 4095
money paid; where deposited; how paid over 4096
rents, purchaser not liable for, when; exception 4099
lands bid in by state, former owner of, notified and allowed to redeem, when 4101
effect of failure to redeem 4105
by towns 2964
infants, persons of unsound mind, etc 2965
Tender, upon, and refusal to deliver possession, debtor entitled to writ of unlawful detainer 3508
The debtor, his vendee, etc., may redeem from a redeeming judgment creditor. 3516
Value of permanent improvements to be paid: value ascertained by referees.. 3517

REFERENCES.
Before register. See CHANCERY, subtitle References 741–745

REGISTER IN CHANCERY.
Acknowledgment and proof of conveyances, may take 993
Administrator ad litem, power to appoint 352
Affidavits, may take and certify ..... Subd. 12, 657
Appeal bond, liability for taking insufficient surety on 447
Appointment of; term of office ..... Const., Art. VI., §21, p. 86; 653
Bond of; additional bond 654, 655
Books, duty of, as to recopy of 664
and stationery, claim for, to be allowed 661
expense of, how apportioned when district more than one county 662
Compensation, such fees and commissions as may be provided, etc.— Const., Art. VI., §21, p. 86.
Contempt, may punish for 668
Costs, unpaid, on appeal, may issue execution for 456
Depositions, etc., not to be recorded; papers; transcript on appeal 658
Duties of, general 657
in relation to trusts and trustees 4152–4204
Execution, may issue, for unpaid costs on appeal 456
Fees allowed to 1373
prohibited from receiving, for indexes 1362
not entitled to, not entered on book 1365
Fee bill, must keep, posted up in office 1354
penalty for failure to post 1355
Fee-book, must keep 1364
File in pending suit, rule as to 2644, 2646
Indexes, to keep general, direct and reverse 663
prohibited from receiving fees or allowances for 1362
Injunctions, has no authority to grant or dissolve 659
Newspapers, duty as to taking and filing 3049, 3050
Office of, place of 656
Order-book to be kept by ..... Ch. R. 3, p. 1203.
Pays money to successor 666
Practice law, register, his deputy, or partner not allowed to, where 667, 591
Records of office free to examination of public, when 665
Removal of, from office ..... Const., Art. VI., §24, p. 86; 653
Rule as to allowing file in pending suit to be taken from office 2644, 2646
Special register, appointment of, when ..... Ch. R. 6, p. 1203; 660
duties and powers of ..... Ch. R. 6, p. 1203.
Summary judgment against 3784–3789

REGISTER IN CHANCERY—*Continued.* SECTION

Testimony, powers and duties as to perpetuating....1861–1875
Transcript on appeal, duty as to....Ch. R. 85, p. 1220; 658
liability for delay in furnishing.... 453
Trusts and trustees, powers and duties as to....4152–4204
Women eligible to office of.... 653

REGISTRAR.

County, of elections; appointment; oath; term of; vacancy; how filled.... 1561
appoints precinct registrars.... 1561
may act in precinct of his residence.... 1561
register himself.... 1562
precinct registrar failing to act, etc., appointment of, by.... 1571
Precinct, makes registration of electors; how and when.... 1562
may register himself.... 1561
absent on day of election, county registrar appoints, etc.... 1564
copy of registration-list made by; original and copy, where filed.... 1566
compensation of; how and by whom paid.... 1570
failing to act, or in case of vacancy, county registrar appoints.... 1571
identity of elector, examination as to, by.... 1572

REGISTRATION.

Births, of, and deaths....Subd. 1, 2436
Conveyances, of. See CONVEYANCES, subtitle Registration....985–1004
Electors, of. See ELECTIONS, subtitle Registration....1560–1572
Judgments, of, and decrees; when and where.... 1920
registered, or decree a lien on property of defendant.... 1921
Marks and brands recorded in office of probate judge.... 2835
Marriage license, of, by probate judge; record or copy of, as evidence.... 2846
Marriages, of, by religious society; copy of record as evidence.... 2842

REHEARINGS.

At law. See PLEADING AND PRACTICE, subtitle New trial....3342–3351
In chancery....Ch. R. 82, p. 1220.
supreme court; regulations as to....S. C. R. 41, p. 1194.

RELATIONSHIP.

Degree of, computed according to rules of civil law.... 1456
Within what degrees of, marriages prohibited....2837, 2838

RELATOR.

Or informant joined as plaintiff with state, when.... 3426

RELEASE.

Composition of debts, in writing, valid though no release under seal is given, etc.... 1806
Confession of judgment a release of errors.... 477
Decrees for, in equity, operate as fully as if executed.... 849
Defamation, of defendant from damages in action of.... 1443
Found after trial; when given right to new trial.... 3341
Injunction of judgment a release of errors.... 785
Interposing claim to try right of property levied on a release of officer from damages.... 4151
In writing, has effect according to intention of parties.... 1805
Of defendant from damages in action of defamation.... 1443

RELIGION.

Incorporation of religious societies; powers....1302–1307
Ministers and pastors of churches or religious societies authorized to solemnize rites of matrimony....2841–2843

SECTION

RELIGION—*Continued.*
None to be established by law.....Const., Art. I., §4, p. 60.
No preference to be given by law to any sect, society, denomination, or mode of worship.....Ib.
one shall be compelled to attend any place of worship.....Ib.
nor to pay any tithes, etc., for building or repairing any place of worship, or for maintaining any minister or ministry.....Ib.
religious test shall be required as a qualification to any office or public trust.....Ib.
citizen's civil rights, privileges, or capacities shall be, in any manner affected by his religious principles.....Ib.
money raised for public schools shall be applied to support of any sectarian or denominational school.....Const., Art. XIII., §8, p. 98.
Registers of marriages, etc., kept by any church or religious society, as evidence 1811
Sectarian or denominational school, no money raised for public schools shall be applied to support of any.....Const., Art. XIII., §8, p. 98.
Taxation, when property, used exclusively for religious worship, not to be subject to.....Const., Art. IV., §52, p. 78.
property used exclusively for religious worship, schools, charitable purposes, etc., exempt from..... 3907

RELIGIOUS SOCIETIES.
Incorporation, powers and privileges of.....1302–1307, 1311–1315

RELINQUISHMENT.
Of dower interest; how made.....1509–1514

REMAINDER-MAN.
Interest of, in land does not pass by tax sale or title..... 4074
Warranty by tenant for life void as against..... 1034

REMAINDERS.
After estate for life in lands; when void as to creditors, etc., unless recorded.. 1008
Birth of posthumous child, effect of, upon..... 1024
Contingent remainder in land operates an executory devise..... 1022
For what terms lands may be conveyed.....1029, 1030
In personalty; when void as to creditors, etc., unless recorded..... 1012
Interest of remainder-man does not pass by tax sale or tax deed..... 4074
Limited after death without "heirs" or "issue"; how construed..... 1023
Not to be defeated by person having possessory or ulterior interest; exception 1026
Rule in Shelley's case abolished..... 1025
Warranties by tenants for life void as against remainder-men..... 1034

REMEDIAL WRITS.
Appeals from orders made on application for.....431, 2827, 2828
Application for, and rules of procedure.....2825–2832
Circuit judge, authority of, to issue..... 921
Common law as to, not repealed..... 2833
Supreme court, power of, to issue.....Const., Art. VI., §2, p. 83; 3826

REMEDY.
Code not to affect any existing remedy..... 10
General assembly prohibited from reviving a remedy barred by time or statute—Const., Art IV., §56, p. 78.
Obligations of contracts not to be impaired by destroying or impairing the remedy.....Ib.

RENT.
Accrued after judgment, recovered on motion..... 1551
Computed to time of verdict..... 1555
Damages for detention after expiration of term..... 2137
Defendant in real action, when, only liable for one year's rent..... 1540
Farm-lands, lien for rent of; remedy for enforcement.....2703–2715

RENT—*Continued.*

SECTION

Form of complaint in action for recovery of, on demise.....No. 30, p. 949; 3352
use and occupation.....No. 31, p. 949; 3352
In what may be payable on lease of mineral lands by guardian..... 2293
Liability of purchaser at tax sale for, on redemption; exception..... 4099
Lien for rent of farm-lands; remedy for enforcement.....2703–2715
houses; remedy for enforcement.....2716–2721
Mineral lands, in what rent may be payable on lease of, by guardian..... 2293
Real actions, in, when defendant only liable for one year's rent..... 1540
proceedings on suggestion of improvements, etc., in.....1536–1539
School lands, of, payable to township..... 3628
Storehouse, dwelling-house, etc., lien for rent of; remedy for enforcement.2716–2721
Tax sale, liability of purchaser at, for, on redemption; exception..... 4099
Tenant, when, only liable for rent in arrear, etc..... 1535
Use and occupation, when action for, lies..... 2722
form of complaint in action for.....No. 31, p. 949; 3352

REPEAL.

What laws repealed and what laws not repealed by Code..... 10

REPLICATION.

Form of general replication; requisites of special replication..... 3301
Not required to answer in equity..... 701
Plaintiff may file more than one..... 3301
When to be sworn to..... 1802

REPORTER OF SUPREME COURT.

Appointed by the justices of the supreme court..... 3864
Assistant reporters appointed, when..... 3865
Compensation of reporter..... 3866
assistant reporters..... 3865
Receives records and opinions from clerk; duty to return same..... 3864
Time within which reports to be published..... 3867
What reports shall contain..... 3868
See, also, SUPREME COURT, subtitle Reporter and reports.

REPRESENTATION.

Concerning the character, credit, etc., of another to be in writing, or else not actionable..... 2155

REPRESENTATIVES.

General assembly, *see*.....2213–2240

REPRIEVES.

Authority of governor to grant.....Const., Art. V., §12, p. 80.

RESIDENCE.

All officers must reside in the state..... 3057
As qualification to vote.....Const., Art. VIII., §1, p. 88; 1556
Right to select in certain cases..... 1559
Temporary absence from state shall not cause forfeiture of—
Const., Art. I., §32, p. 67.
When not lost..... 1558
acquired.....Const., Art. VIII., §1, p. 88; 1558

RESIGNATION.

By officer of Alabama National Guard; loses grade, when..... 2872
Executors, of, and administrators.....107, 110, 339
Guardian, of..... 2362
Officers, of. See OFFICES AND OFFICERS.....3140–3152
Trustee, of. See TRUSTS AND TRUSTEES.....4188–4204

RETAILERS. SECTION
Affidavit required before grant of license ... 3521
License required of; price of ... Subds. 2, 3, 4122
for steamboats, etc., price of; where taken out ... Subd. 2, 4122
sleeping, dining, or buffet car; price of ... Subd. 2, 4122
to be posted up; penalty for failure ... 4128
Magistrates to apprehend and bind over offenders ... 3523
Mode of obtaining license; when not to be granted ... 3520
Production of license necessary to recovery for liquors sold by ... 3522
Sale or exchange of liquors without license void ... 3524
to minor, or person of unsound mind, void, when ... 3524

RETURNING-OFFICER OF ELECTION.
Appointment of precinct; when and by whom ... 1588
Certified statement and poll-list delivered to county returning-officer ... 1641
Compensation of, preferred claim; how paid ... 1643
Counting vote, duty of, as to ... 1638
If all inspectors absent, appointment of, by ... 1591
Sheriff returning-officer of county ... 1589

REVENUE.
Auditor not to receive unless expressly authorized ... 2007
duty of, in respect to ... 1995
Duty of state treasurer in respect to ... 2018
Revenue laws to be printed separately ... 3409, 4112
See, also, TAXATION ... 3906–4136

REVERSION.
Conveyances of personal property in, when, void as against creditors, etc ... 1012
real estate in, when, void as against creditors, etc ... 1008
Tax sale nor tax deed does not convey interest of reversioner ... 4074

REVIEW, BILL OF.
Application to file; when to be made ... 761
Decree may be suspended on presenting; bond and decree thereon ... 760

REVIVOR.
Actions, of, at law. See PLEADING AND PRACTICE, subtitle Revivor.
Appeals, of ... S. C. R. 40, p. 1194; 473
Attachment, of collateral proceedings in ... 2207
Chancery, in. See CHANCERY, subtitle Bill of revivor.
Exemption, of claims of, on contest ... 2063
Judgments, of, and decrees ... 1924–1931
assignee of, may have ... 1929
Justices of the peace, of actions before ... 1951, 1952, 2676
Mechanics' liens, of actions to enforce ... 2736
Remedial writs, of applications for ... 2829–2832
Usurpation or forfeiture of office or franchise, of actions for ... 3427

RIGHT OF PROPERTY.
Trial of right of property, *see* ... 4141–4151

RIGHT OF WAY.
Eminent domain, *see* ... 1712–1748

RIGHTS.
Enumeration of, in bill of rights, not to impair or deny others retained by the people ... Const., Art. I., §39, p. 67.

RIVERS.

SECTION

Damages for diverting waters of 2519
Jurisdiction of counties over 1400
Navigable streams are public highways ..... Const., Art. I., §25, p. 66; 2515
may be divided into road precincts 2517
hands apportioned to work on, as road duty 2518
Railroads, right of, to cross 1164
Removal of obstructions from, county commissioners authorized to contract for 2516
United States may acquire material for improvement of 626

ROADS.

Public roads.

Appeal by owner of land from judgment confirming assessment of damages 2450
Application, by petition, for new road, or change of road; notice of 2446
viewers appointed to mark out road and assess damages 2447
oath of; report of; notice 2448
hearing of objections to report and valuation 2449
accepting route; opening road, etc 2449
Apportioners appointed, who appoint overseers 2454
term of 2455
excuse of resignation of; what must show 2465, 2466
vacancy in office of; how filled 2456
fill vacancies in office of overseer 2457
oath of 2458
duties of 2468
service of notice to 2463
Copy of order appointing overseers and apportioners furnished sheriff 2460
statement to be attached to, for apportioners 2461
County commissioners vested with general superintendence of 2443
established, changed, etc., on application to 2445
to divide county into road precincts 2454
jurisdiction of, over roads, bridges, etc 957
Defaulters, penalty against 2481
overseer may excuse 2482
list of, returned to justice; proceedings on 2482-2484
presumptive evidence of default 2483
proceedings and penalty for failure to prosecute 2485
no property exempt from execution on judgment for default 2486
Established, changed, or discontinued on application to county commissioners 2445
Excuse or resignation of apportioners and overseers; to whom sent 2465
what, must show 2466
how passed on 2467
Extent of liability of person or hand to work on 2453
Fences not to be joined to bridges without an order therefor 2471
Gates, county commissioners may authorize erection of 2491
Grades for 2444
Hands to be apportioned on nearest road 2469
apportionment of, valid until new one made 2472
liable to work when no apportionment made 2473
mode of warning 2478
persons giving warning to, exempt 2479
where to work if warned on two roads 2480
extent of liability to work on 2453
Insane Hospital, not to be established through grounds of; exception 2572
Judge of probate to furnish sheriff with copy of order appointing apportioners and overseers 2460
Jurisdiction of county commissioners over 957
Mile-posts and sign-boards, contracts for 2474

ROADS—*Continued.* SECTION

Public roads—*Continued.*

Navigable waters shall forever remain public highways. Const., Art. I., §25, p. 66.
streams may be divided into road precincts 2517
hands apportioned to work on as road duty 2518
New road, application to establish, to be by petition; notice of 2446
divided into precincts; appointment of overseer for 2459
who to aid in opening 2477
Notice to overseer and apportioners; when and how served 2463
valid from time of service 2464
Other public roads may be established; proceedings for 2492–2494
who to keep in repair 2495
Overseers of, appointed by apportioners 2454
age of; return of list of; commissions to issue, etc 2454
term of 2455
vacancies in office of; how filled 2457
of new roads; term of 2459
duties of 2470
excuse or resignation of; what must show 2465, 2466
what order appointing, must show 2462
service of notice to 2463
Railroads, right of, to use, cross, or change 1164
Road-book to be kept by probate judge 2487
Road duty, who liable to do 2451
persons exempt from 2452, 2479, 2569, 2966, 3575
extent of liability to work 2453
precincts, county to be divided into, by county commissioners 2454
navigable streams may be divided into 2517
Telegraph-lines, right of way granted for, along 2490
Telegraph company, duty of, as to its lines along 2488
fine of, for default; proceedings to recover 2488
notice to, in absence of officer or agent, etc 2489
when wires of, fallen across, a nuisance 2489
proceedings for abatement of such nuisance 2489
Timber, contracts for; value of; how assessed 2475
Tools, other than farming-tools, how obtained 2476

Private roads.

By whom opened and repaired 2496
Damages to be assessed and paid to owner of land, etc 2497
May be established by county commissioners 2496
Proceedings for establishing same as in case of public roads 2497
Where not to be located 2497

ROLLING-STOCK.
Railroads, of, contract for conditional sale of, to be recorded 1016
When acknowledged and recorded, contract self-proving; copy as evidence 1018

RULES.
Chancery, when practice in, regulated by rules of English chancery court—
Ch. R. 7, p. 1203.
rules of practice in ..... 1–119, pp. 1202–1228.
heretofore adopted and of force recognized; power of supreme court to modify or adopt others 864, 865
Chancellors may adopt rules to facilitate business
Circuit and inferior courts of common-law jurisdiction, rules of practice in—
1–34, pp. 1195–1202.

RULES—*Continued.*

SECTION

General rules of practice.....1–8, pp. 1185, 1186.
Supreme court, rules of practice in.....1–46, pp. 1187–1195.

SALARIES.

Chancellor, deductions from salary of, for stated defaults.....646, 652
Circuit judge, deductions from salary of, for stated defaults.....923, 930
Compensation of special chancellor..... 651
solicitor acting as special chancellor..... 649
special judge..... 929
Deputy insurance commissioner, salary of, fixed by governor..... 2577
Exempt, when part of salary, from levy under process for collection of debts, etc..... 2038
No extra compensation shall be allowed to officer, employe, or contractor after services rendered or contract made.....Const., Art. IV., §29, p. 75.
Of designated officers not to be increased or diminished during term for which elected.....Const., Art. V., §7, p. 79.
Payable, when..... 3153
Succeeding officer entitled to salary for day change takes place..... 3154
Vote necessary to increase.....Const., Art. XI., §8, p. 96.

SALES.

Agreements not to bid at sales of public lands, void; penalty.....2159–2161
Attachment, sale of perishable property under.....549–553
returnable before justice..... 576
Bad or doubtful claims, sale of, by personal representative.....138, 139
By warehouseman, common carrier, or wharfinger; when prohibited..... 4221
Choses in action, sale of, by guardian of ward.....2308–2311
Collaterals, of, or property pledged.....948–950
Common carriers, of freight by, for charges.....4225–4227
Conditional sales, leases, etc., of personal property to be recorded; when and where..... 1017
of railroad rolling-stock to be recorded; when and where... 1016
Contracts of sale to be construed in reference to standard of weights and measures..... 4231
Corporations, of shares of stock in, under process..... 1265
private, shares in, subject to levy and sale for taxes of owner.... 4017
Cotton, regulations as to sales of.....1389–1395
Crops, for division of.....3193–3206
Division or partition, of property for.....3178–3187
of crops for.....3193–3206
Equity, irregular sales under decrees of probate court confirmed in..... 808
of property under decree in, to be made by register..... 854
Estates of decedents, jurisdiction of probate court to order sales of property of 3363
Execution, of property under.....1905–1915
issued by justice.....1945–1950
Freight, of, by common carriers, for charges.....4225–4227
warehouseman, common carrier, or wharfinger; when prohibited 4221
Guardian, of choses in action of ward by.....2308–2311
property of person of unsound mind by.....2317, 2318
ward for maintenance and education of, by.....2319, 2320
reinvestment by.....2321, 2322
hours of sale by..... 2327
Homestead, of, on bill in equity by wife or minor child..... 2064
under process, when cannot be set aside.....2060–2062
Hours of sale by executors, administrators and guardians.....146, 2327
Improvements on public lands may be sold..... 2162
Insolvent estates, of lands by personal representatives of..... ...326, 327
Irregular sales under decrees of probate court confirmed in equity..... 808.

SECTION

SALES—*Continued.*
Justice, of perishable property under attachment returnable before..... 576
property under execution issued by.....1945–1950
lands when garnishee before, answers indebtedness for purchase-money..... 2212
.....4046–4077
Lands, of, for taxes..... 4059
time and place of sale.....2959–2962
by towns.....155–187
by personal representatives.....326, 327
of insolvent estates.....188–200
partnership, on death of one of the partners.....
when garnishee before justice answers indebtedness for purchase-money..... 2212
Limited partnership, sale by, or partner; when void.....3227, 3228
Liquors, of; when void..... 3524
Minor, of property of, for his maintenance or education, by guardian.....2319, 2320
reinvestment.....2321, 2322
Partition, of property for division or.....3178–3187
Partnership lands, of, on death of one of the partners.....188–200
Perishable property, of, by special administrator..... 64
under attachment.....549–553
returnable before justice..... 576
freight, of, by warehousemen and common carriers for charges.4225–4228
Personal property, of, for taxes.....4011, 4012
by towns.....2959–2962
shares in private corporations subject to levy and sale for taxes of owner..... 4017
of, by personal representatives.....Ch. R. 115, p. 1228; 142–153
orders by register in chancery for sale of..Ch. R. 4, p. 1203.
Personal representatives, of bad or doubtful claims by.....138, 139
personal property by.....Ch. R. 115, p. 1228; 142–153
lands by.....155–187
by, of insolvent estates.....326, 327
Person of unsound mind, of property of, by guardian 2317, 2318
Probate court, jurisdiction of, to order sales of property of estates of decedents 3363
irregular sales under decrees of, confirmed in equity..... 808
Public lands, agreements not to bid at sales of, void; penalty.....2159–2161
improvements on, may be sold..... 2162
Real estate, when, may be sold for taxes..... 4018
Register in chancery, of property under decree in equity to be made by..... 854
orders by, for sale of property.....Ch. R. 4, p. 1203.
Reinvestment, of property of ward for.....2321, 2322
School lands, of; proceedings for.....3635–3660
indemnity lands, of; proceedings for.....3661–3666
Shares of stock in corporations; sale of, under process..... 1265
in private corporations subject to levy and sale for taxes of owner..... 4017
Special administrator, sale of perishable property by..... 64
Taxes, sale of personal property for.....4011, 4012
lands for.....4046–4077
real and personal property for, by town.....2959–2962
when real estate may be sold for..... 4018
shares in private corporations may be sold for taxes of owner... 4017
Ward, of property of, by guardian for reinvestment.....2321, 2322
maintenance and education of.....2319, 2320
debts or choses in action of.....2308, 2309
Warehousemen, common carriers, etc., sale of property by, for charges, etc.—
4225–4228
sales by, or wharfinger; when prohibited... 4221

SALES—*Continued.*

SECTION

Weights and measures, contracts of sale to be construed in reference to standard of..... 4231
Wife, power of, to alienate or mortgage her real and personal property..... 2528

SALT LANDS AND SPRINGS.

Agent, governor may appoint, to lease or superintend..... 2696
removable by governor..... 2697
compensation of, to be fixed by governor..... 2697
Former agents and lessees to settle, etc..... 2698
Governor may lease, etc..... 2695

SALVAGE.

Adrift, all property, may be taken up by any person and secured..... 3525
Appraisement of property by appraisers..... 3526
copy to taker; original retained by justice..... 3527
Appraisers appointed by justice, when..... 3526
fees of; by whom paid..... 3534
Compensation and expenses of taker to be paid.....3532, 3533
Fees of appraisers; by whom paid..... 3534
Forfeiture by taker for not delivering property..... 3536
Notice of taking when value over thirty dollars..... 3528
not over thirty dollars..... 3530
contents of..... 3529
Owner recovers property on proof, etc., and payment of legal costs and charges 3531
allowed certain time to reclaim; otherwise, title vests in taker..... 3535
remedy of, when taker refuses to deliver property..... 3536
Penalty for concealing, destroying, etc., property taken up..... 3537
Provisions of chapter applicable to personal representative of salvor..... 3538
Remedy of owner when taker refuses to deliver property..... 3536

SAMPLING COTTON.

Regulations as to.....1391, 1392, 1394
Warranty of sales by sample..... 1395

SANITARY REGULATIONS.

Health and quarantine, *see*.....2392–2442

SATISFACTION.

Judgments, of, and decrees.....3335, 3336
registered..... 1923
Mechanics' liens, of, to be entered on record..... 2749
Mortgages, of, to be entered on record..... 1066
Vendors' liens, of, to be entered on record..... 1068

SCALPERS.

Or railroad-ticket brokers; license required of.....Subd. 51, 4122

SCHOLASTIC PERIODS.

Scholastic year begins on October first and ends September thirtieth..... 3598
month, twenty days constitute..... 3598
day shall be not less than six hours..... 3598

SCHOOLS.

Constitutional and general provisions.

Appropriations for public schools..... 3539
when, accrue, and placed to credit of educational fund..... 3540
General assembly shall establish, organize and maintain system of public schools, etc.....Const., Art. XIII., §1, p. 97.

SCHOOLS—*Continued.* SECTION

Constitutional and general provisions—*Continued.*

General assembly to provide for levying and collecting poll-tax annually, to be applied to support of public schools in counties in which levied and collected—
Const., Art. XIII., §4, p. 97; Art. XI., §1, p. 94.
duty of, to increase, from time to time, the school fund as condition of treasury and resources of state will admit—
Const., Art. XIII., §5, p. 98.
General designation of officers for administration of public schools..... 3541
Lands or other property given or appropriated for educational purposes, and escheats to be applied to maintenance of public schools—
Const., Art. XIII., §3, p. 97.
Mobile county, provisions of article do not apply to—
Const., Art. XIII., §11, p. 99.
Normal schools; authority of general assembly to appropriate money for—
Const., Art. IV., §34, p. 76.
amount for support of, set apart out of educational fund..... 3602
Poll-tax, general assembly to provide for levying and collecting, annually, to be applied to support of public schools in counties in which levied and collected.....Const., Art. XIII., §4, p. 97; Art. XI., §1, p. 94.
Principal of designated funds to be preserved inviolate, and income applied to objects of grants or appropriations.....Const., Art. XIII., §2, p. 97.
Public schools, etc., general assembly shall establish, organize and maintain system of.....Const., Art. XIII., §1, p. 97.
to be for equal benefit of the children between ages of seven and twenty-one.....Ib.
but separate schools to be provided for the children of citizens of African descent.....Ib.
designated funds and moneys to be applied to support of—
Const., Art. XIII., §5, p. 98.
appropriations for..... 3539
officers for administration of, general designation of..... 3541
Scholastic periods, what are..... 3598
School fund, principal of designated funds to be preserved inviolate, and income applied to objects of grants or appropriations—
Const., Art. XIII., §2, p. 97.
not exceeding four per cent. of, to be used or expended except for payment of teachers.....Ib. §6, p. 98.
but section may be suspended by vote of two-thirds of each house.....Ib.
no part of, to be used for support of any sectarian or denominational school.....Const., Art. XIII., §8, p. 98.
when appropriations accrue, and placed to credit of..... 3540
Sectarian or denominational school, no part of school fund to be used for support of any.....Const., Art. XIII., §8, p. 98.

Superintendent of education.

Agricultural and Mechanical College, ex officio member of board of trustees of.....Const., Art. XIII., §9, p. 98; 3686
Alabama Institute for the Deaf, member of board of trustees of..... 3699
Alcoholic drinks, etc., shall make provision for instructing pupils as to effect of, upon human system.....Subd. 3, 3546
Beginning and duration of term of office..... 3052
Biennial reports to be made by, to governor; contents of..... 3547
printed and distributed..... 3548
Bond of; by whom approved, etc.; where filed..... 3543
time within which to be filed..... 3080

SCHOOLS—*Continued.*

SECTION

Superintendent of education—*Continued.*

Bond of; failure to file vacates office; to be certified and vacancy filled..... 3085
Books, etc., subject to examination by examiner of public accounts..... 1876
of county superintendent subject to examination by superintendent 3558
Branch experiment stations and schools, ex officio member of board of control 405
Clerks, authorized to employ two; salaries of..... 3545
Constitutions, state and federal, shall make provision for instructing pupils in—
Subd. 4, 3546
Costs, when must pay, taxed against townships..... 1346
may request auditor to draw warrant for, when..... 1346
County superintendent, may remove, when..... 3551
require new or additional bond of; effect of notice to give..... 3554
fixes and approves bond of.....3552, 3553
shall fill vacancy in office of; term of appointee..... 3559
books and accounts of, subject to examination by.... 3558
Dueling oath, required to take..... 3062
Duties of, generally..... 3546
as to apportionment and disbursement of school funds.....3601–3623
and powers of, as to sale and lease of school indemnity lands.....3661–3666
Election of.....Const., Art. XIII., §7, p. 98; 1573–1575
Enumeration, new, of children, when may order; expense of; how paid..... 3574
Executive department, one of the.....Const., Art. V., §1, p. 78.
Experiment stations, branch, and schools, ex officio member of board of control 405
Fixes amount of, and approves bond of county superintendent.....3552, 3553
Hygiene and physiology, shall make provision for instructing pupils in, etc.—
Subd. 3, 3546
Impeachment of, grounds of.....Const., Art. VII., §1, p. 87.
May remove county superintendent, when..... 3551
require new or additional bond of county superintendent..... 3554
effect of notice to give..... 3554
Oath of office.....Const., Art. XV., p. 103; 3543
Office, books, papers and records.....1956, 3544
Patent, when certificate by, necessary to issue of, for school lands 3654
Poll-tax, monthly reports of, to be made to, by tax-collector..... 4033
annual consolidated report of, to be made by tax-collector..... 4034
Powers, duties, term of office, and compensation to be fixed by law—
Const., Art. XIII., §7, p. 98.
Public schools, supervision of, vested in.....Ib.
Salary of..... 3542
School fund, duties as to apportionment and disbursement of.....3601–3623
indemnity lands, duty and power as to sale and lease of.....3661–3666
Shall fill vacancies in office of county superintendent..... 3559
Supervision of public schools vested in.....Const., Art. XIII., §7, p. 98.
Tax-collector to make monthly and annual reports to, of poll-tax.....4033, 4034
Term of office of..... 3542
Township, must pay costs taxed against, when..... 1346
may request auditor to draw warrant for 1346
University of Alabama, ex officio member of board of trustees of—
Const., Art. XIII., §9, p. 98; 3667
Vacancy in office of, filled by governor; term of appointee—
Const., Art. V., §23, p. 82; 3549
county superintendent filled by superintendent..... 3559

County superintendent..

Annual report, etc., required to make.....Subd. 6, 3556
forfeiture for failure to make..... 3557

SCHOOLS—*Continued.* SECTION

County superintendent—*Continued.*

Appeal from township trustees, decision on, final ... 3565
Appoints three township trustees for each township or other school district ... 3560
members of county board of education ... 3583
Apportions funds unused for two years; report of ... 3619
Approves contracts with teachers ... 3569
Authority to employ counsel ... 3805
Board of education, county, president of ... 3583
members of, appointed by ... 3583
Bond of; amount fixed by superintendent of education; conditions, etc ... 3552
approval, filing and record of ... 3553
new or additional, may be required; effect of notice to give ... 3554
Books and accounts of, may be examined by superintendent of education, etc ... 3558
Compensation of, when may be used by, etc ... 3555
Counsel, authority to employ ... 3805
County board of education, president of ... 3583
members of, appointed by ... 3583
Decision on appeal from township trustees final ... 3565
Dueling oath, must take ... 3062
Duties of, generally ... 3556
as to bonds of township trustees, when lands about to be sold or leased ... 3659
making pay-rolls, paying teachers, etc ... 3610–3616
Election of, unless special act for appointment ... 3550
by qualified electors; time of ... 1573, 1577
term of office; superintendent of education may remove, etc ... 3551
Enumeration of children, must report, to superintendent of education, when ... 3573
Funds unused for two years apportioned by; report of ... 3619
Judgments, summary, in favor of ... 3804–3808
against, in favor of teachers ... 3809
Must make to superintendent of education report of enumeration ... 3573
Oath of office and bond ... 3552
dueling, must take ... 3062
Penalty for failing to make pay-rolls, sign receipts or pay teachers ... 3616
President of county board of education ... 3583
teachers' institutes ... 3591
Summary judgments in favor of ... 3804–3808
against, in favor of teachers ... 3809
Teachers, approves contracts with ... 3569
institutes, president of ... 3591
summary judgments against, in favor of ... 3809
Term of office of; may be removed by superintendent of education, when ... 3551
Township trustees; appoints three for each township or other school district ... 3560
decision on appeal from, final ... 3565
duty as to bonds of, when lands about to be sold or leased by ... 3659
Vacancies in office of; how filled; term of appointees ... 3559

Township trustees.

Appointment of three, for each township or district by county superintendent; term ... 3560
Bonds must be given by, when school lands about to be sold or leased ... 3659
Compensation of, for holding election and making sale of lands; penalty for certain defaults ... 3650
Contract with teachers; contract for transferred pupils ... 3569
Duties and powers of, as to lease and sale of school lands ... 3625–3660

SCHOOLS—*Continued.*

SECTION

Township trustees—*Continued.*

Each district under management of, as to matters connected with public schools 3594
Employing teachers and opening schools, rules in reference to 3568
Enumeration, must make, of children within educational age; when 3573
report of, to county superintendent; when 3573
county superintendent must report, to superintendent; when .. 3573
new, may be ordered by superintendent, when; expense of; how paid 3574
Exempt from road and jury duty, and from poll-tax 3575
Have supervision of, and power to establish public schools 3561
Jury duty, exempt from 3575
Local school funds, have charge of apportionment and expenditure of; exception 3617
Location of school when only one in a township; how located; change of location 3566
and employment of teachers, to what regard must be had in 3567
May be removed from office by county superintendent ..... Subd. 7, 3556
Meetings with parents and guardians; business transacted thereat 3562
report to county superintendent number and location of schools, etc., within ten days after such 3563
notice and duration of; effect of failure to attend 3564
appeal to county superintendent from decision of trustees at such ... 3565
Must visit schools in their district at least once during each scholastic year 3570
Penalty for certain defaults in reference to sale of school lands 3650
Poll-tax, exempt from 3575
Road duty, exempt from 3575
School lands, must report income from sale or lease of 3634
duties and powers as to lease and sale of 3625–3660
compensation for holding election and making sale of 3650
Teachers, to what regard must be had in locating schools and employing 3567
employing, and opening schools, rules in reference to 3568
execution of contracts with; contract for transferred pupils 3569
may remove, but must pay for time taught 3571
must require, to register daily attendance of pupils 3572
Transferred pupils, must contract with teachers for 3569
Vacancies in office of, filled by county superintendent ..... Subd. 7, 3556

Public schools.

Attendance of pupils to be registered 3572, 3580
Board of education; how constituted; vacancies; by whom filled 3583
meetings of 3584
examination of applicants to teach; proceedings; effect of diploma 3585
persons holding normal-school diplomas exempt from 3586
must keep register of licenses issued and canceled 3587
power to cancel licenses; cause for cancellation 3588
examination, license and register necessary before teacher employed, etc 3589
Child to attend but one public school, etc., except by consent, etc 3596
when non-resident, entitled to school privileges 3597
Constitutions, state and federal, to be taught in ..... Subd. 4, 3546; 3577
Contracts for, invalid, when 3606
Location of, when but one in township; how located; change of location 3566
to what regard must be had in 3567
meeting as to, number, etc., of schools 3562

SCHOOLS—*Continued.* SECTION

Public schools—*Continued.*

Must be visited at least once during scholastic year by trustees..... 3570
separate schools for the two races..... 3600
Non-resident, when, entitled to school privileges..... 3597
Normal-school diplomas, persons holding, need not be examined by board, etc.. 3586
Opening schools, rules in reference to..... 3568
Pupils entitled to instruction in..... 3595
attendance of, to be registered..... 3572, 3580
child to attend but one, except by consent, etc..... 3596
when non-resident, entitled to school privileges..... 3597
public examinations and certificates to..... 3599
must be instructed as to the nature of alcoholic drinks and narcotics... 3578
in state and federal constitutions.....Subd. 4, 3546
Rules in reference to opening schools..... 3568
Scholastic periods, what are..... 3598
School districts; establishment and supervision of; capacity to hold property 3594
Teachers; certificates of qualification; three grades..... 3576
examination of..... 3577
shall instruct as to nature of alcoholic drinks and narcotics and their effects, etc..... 3578
how long certificates to, are valid..... 3579
register of attendance of pupils to be kept by and submitted, etc... 3580
must make quarterly reports to county superintendent; contents of, etc..... 3581
not entitled to compensation until reports made..... 3581
to be paid quarterly and receipts taken.....3582, 3612
when paid monthly..... 3614
to what regard must be had in employing..... 3567
rules in reference to employing..... 3568
execution of contracts with; contract for transferred pupils..... 3569
removal of, by trustees; payment for time taught..... 3571
must keep register of daily attendance of pupils..... 3572
examination of applicants to teach; by whom; effect of diploma, etc. 3585
normal-school diplomas, effect of..... 3586
cause for cancellation of license to teach..... 3588
not to be employed, unless examined, licensed, and license registered..... 3589
summary remedy in favor of, for salary..... 3809
Teachers' institutes; duty of board of education to organize..... 3590
officers and members of; no fee imposed without consent 3591
meetings of; address; attendance, etc..... 3592
business of..... 3593
To be established by, and be under supervision of township trustees..... 3561
what regard must be had in locating..... 3567
Two races, separate schools for the..... 3600

School funds, apportionment and disbursement of.

Apportionment; basis of, and how made..... 3605
to be recorded and certified to county superintendents..... 3606
and expenditure of local school money..... 3617
of income from trust fund when township divided..... 3618
Auditor certifies amount of money to credit of educational fund..... 3601
amount certified by, to be apportioned by superintendent, drawn and disbursed, etc..... 3601
amounts apportioned certified to; no warrant drawn in excess; balance unapportioned certified to treasurer..... 360 3

SCHOOLS—*Continued.*

SECTION

School funds, apportionment and disbursement of—*Continued.*

Auditor, amount due each county apportioned and certified to..... 3609
shall draw warrant in favor of county superintendent..... 3611
file said warrant and pay-roll with the treasurer..... 3611
must prepare blank pay-rolls, receipts, etc..... 3613
Contingent expenses and amount for normal schools set apart, residue apportioned 3602
fund for department of education..... 3622
unexpended part of, credited to next year..... 3623
Dogs, tax on registered, appropriated to schools in county where collected.... 425
Each county receives poll-tax collected therein, and no more..... 3607
township and race entitled to its poll-tax; report as to..... 3608
Fund, what, first set apart; effect of apportionment..... 3604
once apportioned, not used for other purposes until reapportioned..... 3620
unused for two years apportioned by county superintendent..... 3619
what part of income of townships new districts are entitled to..... 3621
Local school money, apportionment and expenditure of..... 3617
New districts, what part of income of townships, entitled to..... 3621
Pay-rolls, county superintendents shall make quarterly..... 3610
duplicate, to be forwarded to superintendent..... 3610
if correct, approved and filed with auditor..... 3610
auditor shall draw warrant for amount of, in favor of county superintendent 3611
must file warrant and, with treasurer..... 3611
treasurer must forward money, pay-roll and duplicate receipts, etc.. 3611
teachers paid, and duplicate pay-rolls to be signed by..... 3612
duplicate, returned to superintendent..... 3612
auditor must prepare blank, receipts, etc..... 3613
when teachers paid monthly, duty of county superintendent as to... 3614
if any balance in hands of county superintendent deducted from next quarterly..... 3615
county superintendent failing to make, sign receipts, or to pay teachers, etc., must be removed from office..... 3616
Poll-tax, each county receives, collected therein, and no more..... 3607
township and race entitled to its; report as to..... 3608
separate account of, paid by each race kept by tax-collector..... 4032
reported and paid into state treasury monthly by collector..... 4033
monthly reports of, to be made to state and county superintendents..... 4033
annual consolidated report of, to be made to county and state superintendents..... 4034
abstract of, to be furnished superintendent by judge of probate..... 3988
duty of assessor as to noting, assessed to each race, etc..... 3954
final settlement of, by collector with auditor, when..... 4038
State treasurer, duty of, as to forwarding money, etc., to county superintendent 3611
Teachers, payment of; when made; manner of taking receipts, etc..... 3612
when paid monthly; duty of county superintendent..... 3614
Township divided, apportionment of income from trust fund when..... 3618

School lands.

Attorney-general, duty of, as to collection of notes for purchase-money of— Subd. 4, 2028
past-due notes to be placed in hands of, etc..... 3655
for indemnity school lands placed in hands of, when..... 3663
appointment of agents, etc., by..... 3656

SCHOOLS—*Continued.* SECTION

School lands—*Continued.*

Bonds required of trustees when lands about to be sold or leased 3659
Clerk of court to certify certain facts, etc., to superintendent of education; penalty for failure 3649
Collection of notes for purchase-money of 2028, 3655-3657
Compensation to township trustees for holding election for, and sale of 3650
Costs not to be taxed against township when no money recovered, etc 3649
Definition as to what are school lands, and in whom vested 3625
Election as to sale of 3635
oath of inspector of 3636
if inspector absent, how place supplied 3637
polls to be opened and closed at what hours 3638
manner of voting at 3639
if majority for sale, survey made, and minimum price fixed 3640
plat of lands with minimum price marked to be kept for inspection .. 3641
Faith and credit of state pledged for payment of interest on school fund, etc .. 3658
Fines under provisions of sections 3649 and 3650 go to school fund 3651
Incorporation of townships 3624
Indemnity school lands, sale of, authorized 3661
manner and terms of sale of 3664
proceeds of sale of; how disposed of 3662
notes taken by superintendent, etc 3663
when, turned over to attorney-general 3663
lease of, provisions as to 3665
what provisions as to trespass, resale, etc., applicable 3666
Issue of patents; correction of mistakes, etc 3652-3654
Limitation of actions for recovery of 2794
Other lands may be leased; terms; rent; notice; duties of lessee, etc 3627-3630
Patent, when, to be issued 3652
issue of, by secretary of state; correction of mistakes 3653
in other cases; certificate of superintendent necessary, etc ... 3654
Penalty against clerk of court for failure to certify certain facts, etc 3649
township trustees for certain defaults relative to sales, etc 3650
for injury to timber on 3632, 3633
Plat of, with minimum price marked, etc., to be kept open for inspection 3641
Proceeds of sale of, to be covered into state treasury 3658
faith and credit of state pledged for payment of interest on 3658
Provisions of article as to sale of, directory 3644
what, applicable to trespass on, resale, etc., of indemnity lands 3666
Purchase-money, collection of notes for 2028, 3655-3657, 3663
Report of income from leasing or renting 3634
Resale of; when may be made 3646
Revesting of title; clerk to certify facts; penalty for failure; costs 3649
Sale of, election for 3635-3639
if majority for, survey made and minimum price fixed 3640
plat with minimum price marked, etc., to be kept free to inspection ... 3641
notice of 3642
at public auction; terms of 3643
provisions as to, directory 3644
report of; disposition of purchase-money and notes 3645
resale, when 3646
certificate of purchase 3647
effect and operation of 3648
revesting of title, etc 3649
compensation to township trustees for making; penalty for defaults .. 3650
proceeds of, covered into state treasury 3658
bond required of trustees when, or lease about to be made 3659

SCHOOLS—*Continued.*

SECTION

School lands—*Continued.*

Sale of, by whom duties as to, etc., performed when township divided 3660
school indemnity lands, authorized 3661
proceeds of; how disposed of 3662
notes taken by superintendent of education ... 3663
when, to be placed with attorney-general 3663
manner and terms of 3664
School indemnity lands, lease of 3665
provisions applicable to 3666
Secretary of state; issue of patent by; correction of mistake 3653
State, faith and credit of, pledged for payment of interest on school fund 3658
Timber lots reserved 3626
how used 3631
penalty for injury to timber on 3632, 3633
Township, incorporation of 3624
credited with collections on notes given for sale of 3657
when, divided, by whom duties as to lands performed 3660
trustees, compensation of, for making sale, etc 3650
Trustees, township, compensation of, for making sale, etc 3650
See AGRICULTURAL AND MECHANICAL COLLEGE 3686–3697
Also AGRICULTURAL EXPERIMENT STATIONS AND SCHOOLS 398–415
ALABAMA ACADEMY FOR THE BLIND 3712–3719
ALABAMA INSTITUTE FOR THE DEAF 3698–3711
ALABAMA SCHOOL FOR NEGRO DEAF MUTES AND BLIND 3720–3726
UNIVERSITY OF ALABAMA 3667–3685

SCIRE FACIAS.

Barred after twenty years 1931
Judgment or decree, to revive, when execution did not issue in one year 1925
in name of assignee 1929
against personal representative 349
administrator de bonis non—
Note, p. 190.
of justice, when, necessary to revive; when barred 1952
Time for pleading to, and trial of ..... C. C. R. 6, p. 1196.

SEAL.

Auditor, of, and its device 1994
fee for annexing seal of 1996
Bond, when, required, undertaking without seal sufficient 9
Clerk of circuit court, of; fee for certificate and seal 1372
Composition of debts, seal not necessary to 1806
Consideration of sealed instruments may be inquired into 3288
Conveyance of lands, seal not necessary to 983
Great seal of the state; by whom used and what called .. Const., Art. V., §20, p. 81.
description of 3727
secretary of state custodian of—
Const., Art. V., §21, p. 82.
official acts of governor to be authenticated by ..... Ib.
grants and commissions to be sealed with—
Const., Art. V., §22, p. 82.
fee for annexing 1977
Instruments purporting to be under, have effect as if seal affixed 1036
Insurance commissioner, fee for affixing seal of office, with certificate 2601
Judge of probate, of 3362
fee for certificate and seal 1375
Notaries, of 3026
fee for affixing 3033

SECTION

SEAL—*Continued.*
Limitation of actions on contracts under seal 2795
Seal of weights and measures 4237
Register in chancery, fee for certificate and seal 1373
Sealed instrument, consideration of, may be inquired into 3288
profert of, not required in pleading 3290

SEAMEN.
May make nuncupative wills, when 4269
Navigation, *see* 2974–3020

SEARCHES.
Constitutional guarantee against unreasonable searches—
Const., Art. I., §6, p. 61.
No warrant to issue to search any place, without probable cause, supported by oath or affirmation ..... Ib.

SEARCH-WARRANT.
For official books, papers, etc 3137, 3138

SECESSION.
There can be no secession of any state from the Union—
Const., Art. I., §35, p. 67.

SECRETARY OF SENATE.
Duty as to papers after close of session 2221–2224
and pay of secretary and assistant; how certified 2234, 2239
to file papers, etc., and furnish copy of journal to public printer; compensation 2240
Election of; term of office; may be removed, etc 2233
Oath, by whom administered 2232

SECRETARIES OF GOVERNOR.
Appointment of; salaries; duties of, etc 1958–1963

SECRETARY OF STATE.

Constitutional provisions.

Absence of governor from state, etc., to notify president of senate or speaker of house of; when ..... Const., Art. V., §15, p. 81.
Compensation to be fixed by law, and not changed during term ..... Ib. §7, p. 79.
Election of, constitutional provisions as to ..... Ib. §§3, 4, p. 79.
Executive department, one of ..... Ib. §1, p. 78.
Fees of office to be paid in advance into state treasury ..... Ib. §25, p. 82.
not to receive any, etc., other than salary ..... Ib.
Great seal, is custodian of, and shall therewith authenticate official acts of governor ..... Ib. §21, p. 82.
Impeachment, grounds of ..... Const., Art. VII., §1, p. 87.
Increase of salary; what vote required ..... Const., Art. XI., §8, p. 96.
Official acts of governor, etc., shall keep register of ..... Const., Art. V., §21, p. 82.
Qualifications for office ..... Ib. §19, p. 81.
Residence of, constitutional provisions as to ..... Ib. §7, p. 79.
Returns of elections, when, to be made to ..... Const., Art. VIII., §7, p. 89.
Shall perform such duties as may be required by law ..... Ib. §21, p. 82.
Term of office of ..... Ib. §5, p. 79.
Vacancy filled by governor ..... Ib. §23, p. 82.

Statutory provisions.

Account for books sold to be kept, and money paid over 1981
Acts and other public documents, duty as to distribution of 1984–1989

SECRETARY OF STATE—*Continued.*

SECTION

Statutory provisions—*Continued.*

Acts of congress to be sent to judges of probate; expense, how paid 1990
other books and documents, distribution of 1991
Amendments to the constitution, returns of election for, made to 1663
counted by, etc 1664
Banks, incorporation of, duty as to 1088
Beginning and duration of term of office of 3052
Bond of, by whom approved; where filed 1975
Books, etc., subject to examination of examiner of public accounts 1876
and papers relating to public lands, distribution of 1989
in possession of, files list of, with governor and makes returns to auditor 1980
of surveyor-general of United States, to furnish certified copies of, when; effect as evidence 1815, 1974
receipt of doorkeeper of senate and house sufficient voucher for, etc... 1983
Commissions issued must be countersigned by 3059
Corporation, declaration altering or amending charter of, duty of, on filing.... 1284
charter fees of, must collect and pay into treasury 1287, 1288
Custodian of books kept for sale by state; liability on account thereof 1979
Duties of, general ..... Const., Art. V., §21, p. 82; 1974
under section 30, article four, p. 75, of constitution 1978
Dueling oath, required to take 3062
Election of, provisions as to ..... Const., Art. V., §§3, 4, p. 79; 1573–1575
Election, what returns of, sent to ..... Const., Art. VIII., §7, p. 89; 1646
counting returns of, sent to; in whose presence 1647
returns of, for governor, etc., kept in office of 1651
tie vote in, duty of, to decide, when 1652
must notify solicitor of failure of officer to make returns of 1666
Fees to be charged by, paid into state treasury 1977
Fertilizer-tags, to be present at destruction of, and certify to same 383
Field-notes, for certified copy of, for counties, claim of, to be preferred 1423
Foreign corporation, declaration of, appointing agent; certificate of, evidence 3277
when process against, served on secretary of state—
Subd. 3, 2584; 3277
Fuel, duty as to preservation of 1992
Grants and patents to be recorded by 2700
"Insurance commissioner ex officio"; duties and powers of 2577
may appoint deputy; salary of 2577
Insurance companies, subtitle Insurance commissioner, *see.*
Insurance companies, duty as to incorporation, etc., of 1102, 1105, 1112
Interest, rates of, of other states must be printed in pamphlet acts; effect as evidence 1823
Members of congress, returns of election of, made to 1654
to be estimated in presence of.... 1655
certificates of election furnished to, by 1650
general assembly, certificates of election furnished to, by 1650
Navigation companies, duty as to incorporation, etc., of 1247
Oath of office of ..... Const., Art. XV., §1, p. 103; 3062
Oaths of office, what, to be filed with 3064
Official bonds required to be filed in office of, within what time 3080
must certify failure to file, to governor 3085
also notify solicitor of such failure 3086
On expiration of term of office, duty and liability of 1982
Patents, must attest, issued by state 2699
when to issue 2701
for school lands, must issue; authority to correct errors 3653
Presidential electors, returns of election of, made to 1654
to be estimated in presence of.... 1655

SECRETARY OF STATE—*Continued.* SECTION

Statutory provisions—*Continued.*

Publication of general and public laws in newspaper, to contract for..... 3399
contract for, by whom must be approved..... 3401
Public printer, bonds of, to be filed and recorded by.....3392, 3401
payment of, etc., duty as to.....3412–3416
ten copies of bills, etc., to be delivered by, to, when..... 3411
to be receipted for requisite number of acts and journals delivered..... 3413
acts and joint resolutions, to furnish copies of, to; penalty for failure..... 3407
Public printing, to advertise biennially for bids for..... 3387
bids for, to be opened by, in presence of, etc..... 3390
indorse accepted, and notify bidder..... 3391
acts and joint resolutions, to prepare copies of..... 3402
have prepared index to..... 3403
to prepare marginal notes to sections of..... 3404
have, certified, how..... 3404
general and public laws, to contract for publication of, in newspaper..... 3399
furnish contractor with copies of 3400
Railroad companies, declaration of incorporation of, filed in office of..... 1157
commission issued to, by..... 1158
certificate of incorporation of, issued by..... 1161
record of declaration, etc., to be made by..... 1162
consolidation of, agreement as to, etc., filed in office of... 1167
increase of capital stock of, proceedings for, recorded in office of..... 1174
purchasers of, may organize as a corporation; duties, etc. 1182
Rates of interest of other states, to have printed in pamphlet acts; effect as evidence..... 1823
Resignation of governor to be transmitted to, when; duty of, in reference to.. 3147
Room in capitol to be assigned to..... 1956
Salary of.....Const., Art. V., §7, p. 79; 1976
Smith's condensed reports, duties of, as to sale of, etc..... 3874
State board of assessment, is one of.....3966
Statutes of other states, certified by, as being deposited in his office or in supreme-court library, evidence..... 1821
Supreme court reports, duty as to distribution of.....3871, 3872
delivery of, to; copies set apart by..... 3870
sale of, by; price of, etc.....Note, p. 1062; 3873
Tie vote in election, when decided by..... 1652
Toll-road companies, articles of association, etc., filed in office of..... 1205
certified copy of articles by; effect as evidence..... 1206
purchasers of, may become incorporated; duties as to.....1242, 1243
Transcript of books, papers, etc., in office of, duly certified, evidence..1815, 1816, 1819
Weights and measures, standards of, duty as to.....4232–4239

SECRETARY OF SUPREME COURT.

Appointment of; term of office; duties of; salary..... 3842–3844

SECURITIES.

Guarantee companies, deposited by; when value of, impaired by sale or depreciation the same must be made good..... 3106
sale of, of; when, how and by whom made..... 3102
proceeds of; how and by whom disposed of 3102

SECURITIES—*Continued.* SECTION

Guarantee companies, of, sale of, may be at private or public sale with or without notice ... 3102
to be assigned to purchasers ... 3102
faith and credit of state pledged to return of, etc. ... 3106
Insurance companies, deposit of, by, as protection to policy-holders ... 2584
foreign company as to guarantee fund, etc. 2587
exchange and withdrawal of securities of ... 2599
with whom deposit of, made ... 2599

SECURITY.

Collateral securities. Pledges, *see* ... 946–950

SECURITY FOR COSTS.

Appeals, on, generally ... 439
in contests of election ... 1703
from decrees or judgments of probate or circuit court ... 464
assessment of damages in ad quod damnum proceedings ... 1720
married women, when, relieved from giving ... 446
mill-dams, etc., from judgment on application to erect ... 1748
receivers, from orders appointing or refusing ... 445
usurpation of office or franchise, from judgment in action for. 3437, 3438
Attachment suits, how given in ... 534
Attorney, in proceedings by relator to remove ... 607
bringing suit liable for, when ... 1349
Chancery courts, in ... 1347
Condemnation of land, on application for ... 1713
Corporations, in actions to vacate charters of ... 3418
Election, in contests of ... 1688
of certain county officers ... 1697
chancellor ... 1693
circuit judge ... 1695
judge of probate ... 1696
members of general assembly ... 1689
state officers ... 1672
Justices of the peace, in suits before ... 1352
Money may be deposited as ... 1348
Non-residents must give ... 1347
Plaintiff, required of, on removal from state ... 1350
Probate court, in, or before justice ... 1352
Road-hands, not required in proceedings against defaulting ... 2482
Surety for costs, judgment against, when ... 1351
Usurpation of office or franchise, in actions for ... 3421

SEDUCTION.

An unmarried woman may sue for her own seduction ... 23
Father or mother may sue for seduction of daughter ... 24
suit by daughter a bar to action by ... 24
Limitation of actions for ... 2801

SEIZURE.

Detinue, writ of, in ... 1474
Equity, writ of, in aid of suit in; proceedings ... 773–779
appeal bond for restoration of writ of, in ... Ch. R. 87, p. 1221.
No writ of, to issue without probable cause, supported by oath—
Const., Art. I., §6, p. 61.
Surety, writ of, in proceedings by, on replevy bond ... 3877–3879
Unreasonable seizures prohibited ... Const., Art. I., §6, p. 61.

SECTION

SELL.
Use of term "sell" in deed; when a warranty 1035

SENATE.
Agricultural and Mechanical College, election of trustees of, by—
Const., Art. XIII., §9, p. 98; 3691
Alabama Bryce Insane Hospital, election of trustees of, by 2545
Judicial power, in part, vested in, when sitting as a court of impeachment—
Const., Art. VI., §1, p. 82.
Railroad commissioners, election of, by 3481, 3483
University of Alabama, election of trustees of, by—
Const. Art. XIII., §9, p. 98; 3675
See, also, GENERAL ASSEMBLY 2213–2240

SENATORIAL DISTRICTS.
Duty of general assembly to divide state into ..... Const., Art. IX., §4, p. 89.
Each, entitled to one senator and no more ..... Ib.
No county to be divided between two ..... Ib.
district to be made of two or more counties not contiguous to each other. Ib.
Number of, and counties composing 2214
To be as nearly equal, as to number of inhabitants, as may be—
Const., Art. IX., §4, p. 89.
When change of, prohibited ..... Ib.
Until state again divided ..... Const., Art. IX., §7, p. 90.

SENATORS.
In congress; resignation of, to whom transmitted 3148
general assembly; election of ..... Const., Art. IV., §3, p. 71; 1573–1575
number of, not to be less than one-fourth or more than one-third of number of representatives—
Const., Art. IX., §1, p. 89.
qualifications and residence of—
Const., Art. IV., §4, p. 72.
shall not, during term for which elected, be appointed to any civil office, etc.; exception—
Const., Art. IV., §17, p. 73.

SEPARATE ESTATE.
Husband and wife, *see* 2520–2537

SEQUESTRATION.
Chancery, decrees, orders and rules in, may be enforced by 852
no notice required for order for ..... Ch. R. 5, p. 1203.
Register in chancery to issue process of 657
To issue, on affidavit, against defendant, eluding service of attachment—
Ch. R. 25, p. 1207.
When writ of, may issue 856
issued to compel answer to bill in equity after demurrer overruled ..... Ch. R. 30, p. 1208.
further answer on allowance of exceptions thereto ..... Ib. 36, p. 1209.

SERVANTS.
Employed by doorkeepers of two houses of general assembly; compensation ... 2238
Employment of, and pay to servants for executive and judicial offices 1966
See, also, EMPLOYER AND EMPLOYE 1749–1751

SERVITUDE.
Involuntary, prohibited, except for punishment of crime after conviction—
Const., Art. I., §33, p. 67.

SET-OFF.

SECTION

Debts and demands which may be set off 3728
Effect of, if found for defendant 3728
Form of plea of ..... No. 37, p. 950; 3353
If sustained, costs of, recovered by defendant 1329
Judgment in favor of defendant for excess and costs, when 3729
Judgments may be set off on motion 3730
Negotiable paper not subject to set-off, when 3733
Not barred by statute of limitations, when 3732
On plea of, not necessary to prove execution or assignment of instrument, unless denied by sworn replication 1802
Rules as to, in suits before justices 2674
Settlement of decedent's estate, on, when indebtedness of distributee set off against his share; defense 239
no judgment allowed for excess in such case, but collectible by suit 240
Wages or hire of head of family; when cannot be defeated or abated by 3728
What contracts subject to, before notice of assignment 879
When surety may set off debt due principal 3731

SETTLEMENTS.

Of debts, in writing, operate according to intention of parties 1806

SEWING-MACHINE COMPANY.

License required of ..... Subd. 38, 4122

SHARES.

In private corporations—
personal property; how transferred 1261
when required to be transferred on books; transfer not valid without notice, when 1262
must require register of transfer on books; transfer not registered void ... 1263
transfers, mortgages, etc., not registered on books void, etc., when 1263
may be made by personal representative 1264
dividends on, may be paid to personal representative 1264
subject to levy and sale on execution or attachment; proceedings 1265
for payment of taxes; procedure 4017
statement of, must be furnished officer making levy, when 1266
lien of corporation on shares of stockholders 1268
stock record-books showing stockholders, transfers, mortgages, etc., must be kept by all corporations 1267
taxation of ..... Subds. 8, 9, 3911
withdrawal value of, in building and loan associations 1136

SHAREHOLDERS.

Banks and banking associations must furnish list, etc., to assessor ..... Subd. 8, 3911
how shares in, assessed and taxed ..... Subd. 8, 3911
Corporations must furnish list, etc., to assessor ..... Subd. 9, 3911
how shares in, assessed and taxed ..... Subd. 9, 3911
railroad, must furnish list of, to commissioners, when 3497
Creditor, judgment or simple, of corporation, may garnish 2182
of corporation, may file bill against one or more 823
Garnishment against, by creditor of corporation 2182
In corporations, individually liable only for unpaid stock—
Const., Art. XIV., §8, p. 101.

SHEEP.

Dog killing or worrying, provision as to 421
no action lies for killing such 421

SHELLEY'S CASE.

Rule in, abolished 1025

SHERIFF. SECTION

A member of the executive department.....Const., Art. V., §1, p. 78.
Additional bond; when must be required of, by judge of probate..... 3112
requisition to be in writing; contents; copy served..... 3113
when to be given; failure to give vacates office..... 3114
penalty, condition, etc., same as first bond..... 3115
effect of such bond and remedies thereon..... 3116
first bond not discharged; suit upon either or all..... 3117
rights of sureties among themselves..... 3118
when required of, as administrator; effect of failure to give.. 103
guardian; effect of failure to give..... 2277
Administration of estate of decedent committed to, when.....72, 73
bond for expenses of, required of applicant, when..... 74
summary decree on, when..... 75
when additional bond required; effect of failure to file..... 103
Ad quod damnum—
serves notice to commissioners of their appointment; compensation..... 1718
duty to summon jury under writ for erection of dam..... 1732
administers oath and charge to jury..... 1733
must return inquest of jury..... 1735
duties may be performed by deputy..... 1746
Arbitration; may execute subpœnas for witnesses in cases of..... 517
Attachment; executed by sheriff of county where property or garnishee found 544
duty as to property levied on under..... 544
sale of perishable property levied on under; proceeds, bond, etc.549–553
when bond of indemnity may be required..... 554
replevy of property, forfeiture of bond, execution, etc.....555–557
Beginning and duration of term of office..... 3055
Bond; penalty; by whom approved, and where filed and recorded...3735, 3736, 3079
to whom payable, and condition of..... 3070
date of approval to be indorsed..... 3071
filing to be indorsed..... 3074
qualifications and sufficiency of sureties..... 3075
officers not sufficient sureties..... 3076
attorneys and solicitors not sufficient sureties..... 3077
a lien on property of principal..... 3078
time of filing..... 3082
must be recorded..... 3084
failure to file, vacates office..... 3085,
when declared insufficient and new bond required; proceedings....3119–3123
proceeding by surety to be discharged; new bond required.....3124–3132
Chancery court; must attend sessions of, obey lawful orders, etc.....Subd. 2, 3739
furnish lights and fuel at county's expense..... 1422
if chancellor absent, must adjourn court from day to day.... 645
certify fact to auditor..... 647
penalty for failure to certify absence of chancellor..... 648
Circuit court; must attend sessions, obey lawful orders, etc.....Subd. 2, 3739
furnish lights and fuel at county's expense..... 1422
summons three constables or deputies to attend..... 925
obtain from judge of probate acts, digests and decisions and keep in court-room during sittings; failure a contempt..... 927
render account to county treasurer three days before each term.....Subd. 3, 3739
Commissioned, must be..... 3058
Commissions of; when must be collected by clerk..... 937
entitled only after actual levy, then on amount collected.... 1357
to half commissions, when..... 1358
none on costs..... 1360

SHERIFF—*Continued.*

SECTION

Constable; sheriff may perform duties of; fees and liabilities 979, 3741
Coroner; when to act in place of sheriff 1077–1079, 3746
official acts valid though process directed to sheriff 1080
liability for neglect of duty 1082
special, when sheriff and coroner both interested, etc 1083, 1084
not eligible to office of deputy 3738
Costs, when ordered not to collect items of, on motion to retax 1345
Court-house, has charge of; duties as to 1404
when, with others, may provide for holding courts, etc., elsewhere 1406
Courts; duty to attend sessions, obey orders, etc ..... Subd. 2, 3739
furnish lights and fuel at county's expense 1422
Deputies; must have one deputy, may have as many as he thinks proper 3738
coroner not to be appointed deputy 3738
oath of deputy; how taken and filed 3067
Dueling oath, must take 3062
Duties of, generally 3739
Election and term of office ..... Const., Art. V., §26, p. 82; 1573, 1574, 1576
Elections, duties as to—
must post notices of change of precinct or voting-place 1586
with judge of probate and clerk, must provide ballot-boxes 1587
appoint inspectors and returning-officers 1588
must notify inspectors and returning-officers of their appointment 1588
is returning-officer for the county 1589
general election, must give notice of, by publication 1590
special election, writ for, to be directed to 1600
must give notice of, by proclamation 1602
notify judge of probate and clerk of 1603
voting-booths to be provided by 1616
cards of instructions to be furnished by 1617
permitted in polling-place in person or by deputy 1621
duty of, or deputy, when voter challenged 1629
must attend in person or by deputy at all elections and preserve order 1633
may summon assistance and raise posse comitatus if necessary 1633
arrest elector for breach of the peace or violating election law 1634
intoxicated person without process, etc 1635
person selling or giving away liquor 1636
statements and poll-lists to be delivered to, as returning-officer of county 1639
one of board of supervisors; duties as such 1644–1646, 1648, 1649
tie vote, when decided by 1652
penalty against, for failing to make returns to secretary of state 1665
serves process in contested elections of state officers; compensation 1684
Executions—
time of receipt to be indorsed on 1896
when more than one, order of receipt to be indorsed 1896
to be executed with diligence and returned 1897
return-term of writ, what is 1898
reason for not executing must be stated 1899
return of, from another county by mail; how money sent 1900
duty when levy is on live stock 1901
description of property to be indorsed on 1902
notice to defendant of levy on land 1902
bond of indemnity; when may be required 1903
in case of several executions 1904
time and place of sale 1905
notice of sale of property; how given 1906

SHERIFF—*Continued.* SECTION

Executions—*Continued.*
when property of principal first levied on 1907
indorsement on, and receipt for, collection 1908
substitution of other property for that levied on 1909
notice of collections to be given plaintiff or attorney 1910
excess of sale or money collected paid to defendant 1911
description of land sold and price to be indorsed on writ 1912
return as to goods levied on and not sold; writ for sale 1913
must make deed to real estate sold 1914
when must make deed to lands sold by predecessor 1915
ordered not to collect items of costs on motion to retax 1345
Execution-docket, must keep; contents 3742
detailed statement of receipts to be entered on 3743
open to inspection of public free of charge 3745
on expiration of office, deposited and kept in office of circuit clerk 3745
Exempt property, when not liable for levying on 2066
Ex-sheriff pays money to successor, when 3748
Fees allowed generally 1377
when due 1356
entitled to commissions only after actual levy, then on amount collected 1357
half commissions, when 1358
not entitled to commissions on costs 1360
when clerk must collect costs and commissions of 937
account for ex officio services to be itemized and sworn to 1363
must keep fee-book showing every fee charged 1364
no fee to be charged unless entered in fee-book 1365
quadruple damages against, for charging unlawful fees 1367
in contested-election cases 1684, 1692
garnishments for collection of taxes 4016
proceedings to sell lands for taxes 4071
for services as constable 3741, 1380
in arbitration cases 520
proceedings to partition crops 3203
forcible entry and unlawful detainer 2143
duty of judge of probate as to fees in his court due to 3365

Fire investigation—
when made by, jury summoned 2608
must keep a record of fires, etc 2608
may swear witnesses, take testimony, make arrests, etc 2609
has power of justice of peace, etc 2609
fire and police departments of city must assist 2610
expenses of investigation; how paid 2611
appeal to, from order relative to removal of combustibles, etc 2610

Forcible entry and unlawful detainer—
writ of restitution directed to and executed by 2133
penalty for failure to execute process in 2140
Guardian, may be appointed, of minor, when 2254
person of unsound mind, when 2270
additional bond, when required while acting as; effect of failure to file 2277
Health laws, may execute warrant to remove nuisance under 2393, 2394
Impeachment, grounds of ..... Const., Art. VII., §3, p. 88.
Ineligible as his own successor ..... Const., Art. V., §26, p. 82.
Jail, must keep record descriptive of prisoners in 3740
duties of judge of probate and clerk in respect to—
Subd. 15, 3365; Subd. 18, 934; 1415

SHERIFF—*Continued.* SECTION

Jail, duty as to heating, etc. 1414
sick indigent prisoners in 3239
Justification under process regular on its face 1807
Law, sheriff and deputies prohibited from practicing 591
Legal notices, duty as to publication of 3040
Limitation of actions against for official nonfeasance, etc. Subd. 3, 2795
sureties on bond of Subd. 7, 2796
Oath of office Const., Art. XV., p. 103; 3062
where filed 3066
Office, must keep at court-house 3737
Partition of crops, duties in respect to; costs 3192–3203
Penalties against—
for failure to certify absence of chancellor from his court 648
make returns of elections 1665
execute process in forcible entry or unlawful detainer 2140
or return process from probate court 3379
return execution or to pay over money collected 3769
make money on execution 3770
making false and fraudulent returns 3771
failure to give notice of collection of money 3772
indorse on execution true date of delivery 3773
execute summons or other process 3774
pay over excess received on sales 3776
return execution satisfied 3777
refund money when collection has been enjoined 3778
discharge certain duties as to executions from supreme court 3779, 3780
accepting substitute for juror 3781
failure to pay over county money 3803
discharge certain duties as to process from justice's court 3816–3820
Public roads, duty to serve notices on apportioners and overseers of 2463
Sale-book, must keep; what must show 3744
open to inspection of public, free of charge 3745
on expiration of office must be deposited with circuit clerk 3745
Stationery, etc., to be furnished by county 3747
Trial of right of property, may administer oath to claimant in, when 4141
must return papers to court 4142
indorse claim bond forfeited, when 4144
when process issued from another county 4146–4149
damages against sheriff released by claim 4151
Vacancy filled by appointment of the governor Const., Art. V., §26, p. 82; 3061

SHIPS.

Navigation, *see* 2974–3020

SHOOTING-GALLERY.

License required for; price of Subd. 24, 4122

SIDE-SHOW.

License required for; price of Subd. 20, 4122

SIGNATURE.

Includes mark when person cannot write, etc. 1

SIGN-BOARDS.

On public roads, duties of overseers as to Subds. 3, 4, 2470; 2474
Railroad companies, where, to be put up by 3442

SIXTEENTH-SECTION LANDS.

See SCHOOLS, subtitle School lands 3625–3666

SECTION

SKATING-RINK.
License required for; price of.....Subd. 25, 4122

SLANDER.
Defamation, *see*.....1437-1443
Libel and slander, *see*.....1437-1443

SLAVERY.
No form of, shall exist in the state.....Const., Art. I., §33, p. 67.

SLEEPING-CAR.
License required to retail spirituous liquors on; price of.....Subd. 2, 4122

SLEEPING-CAR COMPANY.
Privilege tax, required to pay; amount of; penalty, etc..... 3915
Real estate, fixtures and other property of, subject to taxation..... 3915

SLEIGHT OF HAND.
License required for exhibitions of; price of.....Subd. 21, 4122

SOCIAL AND LITERARY SOCIETIES.
Charter forfeited for permitting games for wager..... 1312
may alter and amend..... 1314
declaration must be verified..... 1315
duties of probate judge or secretary of state.... 1315
Membership may be increased, how..... 1313
Mode of incorporation..... 1310
Property of, what, exempt from taxation..... 1311

SOLDIERS.
Confederate soldiers and sailors, indigent, may peddle without payment of license.....Note, p. 1139.
county may appropriate money for 3236
May make nuncupative wills, when..... 4269
See, also, ALABAMA NATIONAL GUARD.....2852-2896

SOLICITOR.
Attorneys, proceedings to remove, to be conducted by, when..... 606
Circuit clerk, summary judgments against, in name of solicitor, when....3795, 3796
Corporations, directed to commence action to vacate charters of, when..... 3418
Defaulters of revenue, duty to make motions for summary judgments against.. 3801
Dueling oath, required to take..... 3062
Elected by general assembly for each circuit; term and residence—
Const., Art. VI., §25, p. 86.
Equity, must represent state in suits in..... 671
Foreign corporations, duty of, as to enforcing penalties against..... 1320
General assembly may provide for election or appointment of county solicitors.....Const., Art. VI., §25, p. 86.
Impeachment of, grounds of.....Const., Art. VII., §2, p. 87.
Insurance law, must bring suit for penalties for violation of..... 2613
Juror, may recover penalty against officer for accepting substitute for..... 3781
Notice of failure to file official bonds to be given to..... 3086
of returning-officer to deliver election returns to be given to 1666
Oath of office.....Const., Art. XV., p. 103; 3062
filed with secretary of state..... 3064
Official bonds, notice of failure to file, to be given to..... 3086
Penalty, may recover, against officer for accepting substitute for juror..... 3781
must bring suit for, for violating insurance law..... 2613
when collected; to whom paid; commissions..... 2613
Registers in chancery, must inquire whether, keep reverse indexes, and prosecute motions for failure..... 3799

SOLICITOR—*Continued.* SECTION
Returning-officer, notice of failure of, to deliver election returns to be given to 1666
Revenue, duty to make motions for summary judgments against defaulters of.. 3801
State, must represent, in suit in equity..... 671
Summary judgments, duty to make motions for, against defaulters of revenue 3801
in name of solicitor authorized against circuit clerk for defaults, etc.....3795, 3796

SOVEREIGNTY AND JURISDICTION OF STATE.
Extent of..... 3749
Governor, duty of, and all subordinate officers to maintain..... 3750
Flag of state, design of..... 3751
when, to be displayed..... 3752

SPEAKER OF HOUSE OF REPRESENTATIVES.
Election of; term of office.....Const., Art. IV., §8, p. 72.
returns for state officers directed to.....Ib. §4, p. 79.
must be opened and published by, in presence of both houses, when.....Ib.
Pay and mileage of..... 2226
Signing of bills and joint resolutions by.....Const., Art. IV., §27, p. 75.
When may act as governor; compensation.....Const., Art. V., §§15, 16, p. 81.
See, also, GENERAL ASSEMBLY.....2213–2240

SPIRITUOUS LIQUORS.
Brewers required to obtain license; price of.....Subd. 7, 4122
Compounders, rectifiers and distillers of, required to obtain license; prices of.....Subds. 5, 6, 4122
Dealers in, required to obtain license; prices of.....Subds. 2–4, 4122

STALLIONS.
Lien in favor of owners of, for season; enforcement of.....2776–2779
Provisions for taking up, when running at large.....1790, 1791

STATE.
Agricultural and Mechanical College, faith and credit of, pledged to payment of interest on fund of... 3688
All grants and commissions to be issued in name of, and by authority of—
Const., Art. V., §22, p. 82.
Arms, citizens have right to bear, in defense of.....Const., Art. I., §27, p. 66.
Bond, securities, etc., of, custody of..... 2012
Boundaries of.....Const., Art. II., §1, p. 68; 623–625
Cessions to United States.....626–629
Chancery divisions, division of, into.....Const., Art. VI., §7, p. 84; 630
may bring suit in..... 671
Change of seat of government, what necessary to....Const., Art. IV., §39, p. 76.
Citizens of, who are.....Const., Art. I., §2, p. 60.
have right to bear arms in defense of.....Ib. §27, p. 66.
Claims in favor of, compromise of..... 3753
Commissions and grants to be issued in name of, and by authority of—
Const., Art. V., §22, p. 82.
Compromise of claims in favor of..... 3753
Congressional districts, division of, into..... 969
Costs, provisions as to, applicable to state when plaintiff..... 1325
Counties, division of, into.....Const., Art. II., §2, p. 68; 1396
Credit, shall not lend its, in aid of internal improvements—
Const., Art. IV., §54, p. 78.
pledged to payment of interest on University fund..... 3670
Agricultural and Mechanical College fund 3688
public-school fund..... 3658

STATE—*Continued.* SECTION

Custody of bonds, securities, etc., of 2012
Definition or meaning of word "state" 6
Distribution of powers of government ..... Const., Art. III., p. 68.
Escheats, when property, to state; provisions as to 1752-1760
Faith and credit of, pledged to payment of interest on University fund 3670
Agricultural and Mechanical College fund 3688
public-school fund 3658
Flag of, design of 3751
when, to be displayed 3752
Foreigners, rights of, residents of, protected ..... Const., Art. I., §36, p. 67.
Form of government, right of people to change, declared—
Const., Art. I., §3, p. 60.
Governor, supreme executive power of, vested in ..... Const., Art. V., §2, p. 78.
controls property of, unless otherwise provided 1955
Grants, all, and commissions to be issued in name of, and by authority of—
Const., Art. V., §22, p. 82.
by, to be made by patents; issue and record of 1003, 2699-2701
Great seal of; by whom used and what called ..... Const., Art. V., §20, p. 81.
description of 3727
secretary of state custodian of ..... Const., Art. V., §21, p. 82.
official acts of governor to be authenticated by ..... Ib.
grants and commissions to be sealed with ..... Ib. §22, p. 82.
fee for annexing 1977
Internal improvement, shall not engage in works of, nor lend money or its credit in aid of such ..... Const., Art. IV., §54, p. 78.
Judicial circuits, division of, into ..... Const., Art. VI., §4, p. 83; 897
power of; in what tribunals vested ..... Ib. §1, p. 82; 2636
Lands bid in for taxes by, suit to recover possession may be brought in name of 4081
when, recovered, subject to sale, or may be rented if governor directs 4081
description of, with taxes due, etc., prepared by auditor 4100
failure to redeem, effect of 4105
Laws of, style of ..... Const., Art. IV., §2, p. 71.
Legislative power of, vested in general assembly ..... Const., Art. IV., §1, p. 69.
May bring suit in equity 671
Meaning of the word "state" 6
Patents, grants by, to be made by; issue and record of 1003, 2699-2701
Private or corporate enterprise, shall not be interested in any—
Const., Art. IV., §54, p. 78.
Process, style of; prosecutions carried on in name and by authority of; conclusion ..... Const., Art. VI., §28, p. 87.
Property of, not to be taxed ..... Const., Art. IV., §52, p. 78; Subd. 2, 3907
governor controls, unless otherwise provided 1955
when, escheats to; provisions as to 1752-1760
Right of people to change form of government declared .. Const., Art. I., §3, p. 60.
foreigners, residents of, protected ..... Ib. §36, p. 67.
Salt springs and lands, provisions relating to 2695-2698
Seat of government, change of, what necessary to ... Const., Art. IV., §39, p. 76.
Secession from the federal union, there can be no, of any—
Const., Art. I., §35, p. 67.
Senatorial districts, division of, into ..... Const., Art. IX., §§4, 7, pp. 89, 90; 2214
Shall never be made a defendant in any court of law or equity—
Const., Art. I., §15, p. 64.
Sole object of government declared; what usurpation and oppression—
Ib. §37, p. 67.
Sovereignty and jurisdiction of; extent of 374 9

STATE—*Continued.* SECTION

Sovereignty and jurisdiction of; duty of governor and other officers to maintain 3750
Style of laws of ..... Const., Art. IV., §2, p. 71.
process; prosecutions carried on in name and by authority of; conclusion ..... Const., Art. VI., §28, p. 87.
Suits by, without bond or affidavit 12
written directions of governor sufficient authority for bringing 12
who may sue on official bonds, etc 14
by, for recovery of public moneys, etc 3755
money wrongfully used, etc 3756
in equity 671, 3757–3761
foreign jurisdiction 3762
against personal representative in respect to escheats 1759
duty of auditor to proceed against defaulters ..... Subd. 13, 1995
superintendent of education to proceed against defaulters to school fund ..... Subd. 12, 3546
in name of, for usurpation of office or franchise 3420
Supreme-court divisions, divided into 3829
Supreme executive power of, vested in governor ..... Const., Art. V., §2, p. 78.
Title, when, derived from, to be defended by governor 1972
Treason against; of what consists ..... Const., Art. I., §19, p. 64.
University of Alabama, faith and credit of, pledged to payment of interest on fund of 3670

STATE AUDITOR. See AUDITOR.

STATE TREASURER.

Constitutional provisions.

Compensation to be fixed by law, and not changed during term— Const., Art. V., §7, p. 79.
Duties, constitutional provisions as to ..... Ib. §24, p. 82.
Election of, constitutional provisions as to ..... Ib. §§3, 4, p. 79.
Executive department, one of ..... Ib. §1, p. 78.
Fees, not to receive any, other than salary ..... Ib. §25, p. 82.
of office to be paid in advance into state treasury ..... Ib. §25, p. 82.
Impeachment, grounds of ..... Const., Art. VII., §1, p. 87.
Increase of salary; what vote required ..... Const., Art. XI., §8, p. 96.
Qualifications for office ..... Const., Art. V., §19, p. 81.
Receipts and disbursements, to make annual reports of, to governor; other reports ..... Ib. §24, p. 82.
Residence of ..... Const., Art. V., §7, p. 79.
Term of office ..... Ib. §5, p. 79.
Vacancy filled by governor ..... Ib. §23, p. 82.

Statutory provisions.

Approves contracts made by secretary of state under section 30, article four, of constitution 1978
Additional bond, when, may be required of, by governor 3110
Auditor, when, to state accounts of, and deliver books, etc., to successor 2015
Beginning and duration of term of office 3052
Bond of; penalty, approval, filing and record of 2013
when to be filed 3080
additional, may be required of 3110
Books, accounts, etc., subject to examination of examiner of public accounts .. 1876
Commissioned, must be 3058
Charter fees for special act of incorporation to be paid to; how refunded 1289

SECTION

STATE TREASURER—*Continued.*

Statutory provisions—*Continued.*

Coupons, must record paid and canceled.... 2025
Department of education, must set aside contingent fund for.... 3622
Dueling oath, must take.... 3062
Duplicate of lost or destroyed registered bond may be issued, when.... 2026
warrants issued by auditor, authorized to pay.... 2010
Duties of, generally.... Const., Art. V., §24, p. 82; 2018
Escheats, receipts from, to be paid to.... 1758
Fertilizer-tags, to be present at destruction of, and, with others, certify to same.... 383
Fiscal agent in New York, must designate, for payment of interest on state bonds.... 2019
money for payment of interest, how drawn, paid, etc.... 2020
sent to.... 2021
duty of, as to payment of interest, etc.... 2022
Governor exercises general superintendence over office of.... 2016
Insurance companies, to hold securities deposited by; exchange and withdrawal of, when.... 2599
Oath of office.... Const., Art. XV., p. 103; 3062
where filed.... 3064
Office of, to be examined by joint committee of general assembly.... 2218-2220
On removal or resignation of, to settle accounts and deliver books, etc., to successor.... 2014
Publication of general and public laws in newspaper, to approve contracts for 3401
Public-school fund, duties of, as to disbursement of, etc.... 3603, 3611, 3614
contingent fund for department of education, must set aside.... 3622
printing, must approve contracts for.... 3392
Revenue laws, duties as to.... 4100, 4106, 4108
Room in capitol to be assigned to.... 1956
Salary of.... 2017
State board of assessment, member of.... 3966
bonds redeemed, custodian of; duties in reference to.... 2024
interest on, must designate fiscal agent in New York for payment of.... 2019
money for; how drawn, paid, etc.... 2020
sent to fiscal agent.... 2021
when not liable for loss in providing for payment of... 2023

STATIONERY.

Alabama National Guard, for, furnished by adjutant-general at expense of state.... 2854
Clerk of circuit court, for.... 940
supreme court.... 3863
County officers, for; where bought; when payment for to be refused.... 963
treasurer, books of, to be supplied by county.... 1431
Preferred claim against county.... 1423
Probate court, for.... 3384
Register in chancery, for.... 661, 662
Secretary of state, duty of, as to making contract for, under section 30, article four, of constitution.... 1978
to supply general assembly and certain officers with— Subd. 8, 1974
Sheriff, for.... 3747
State, for, to be furnished under contract by lowest responsible bidder— Const., Art. IV., §30, p. 75.
Tax assessor and collector authorized to contract for.... 4120

STATUTES.

SECTION

As to constitutional provisions relating to passage of. See GENERAL ASSEMBLY, subtitle Constitutional provisions.
Code as printed received as the law in all courts, etc.....Sec. 6, p. 3.
Distribution of acts and resolutions by secretary of state.....1984–1987
Evidence of statutes of other states..... 1821
Local laws of a county may be codified, when..... 1425
Private acts may be given in evidence without being specially pleaded..... 1820
Publication of, in newspaper, provisions as to.....3399–3401
acts and joint resolutions of general assembly.....3402–3408
Revenue laws to be also printed separately..... 3409
Secretary of state may certify, of other states, as deposited in his office or in supreme-court library; evidence..... 1821
Special and local, giving greater fees to officers than prescribed by Code, repealed..... 1370
What repealed and what not repealed by Code..... 10

STEAMBOATS.

Bridge-signals by railroads..... 3447
Lien on ship, steamboat, or other water-craft, for building, repairs, etc., declared..... 2758
asserted in any court of competent jurisdiction..... 2758
limitation of actions for enforcement of..... 2759
Penalty for attempting to go through draw of bridge without signals..... 3445
Signals to be given by, on approaching railroad bridge..... 3445
on giving, draw to be opened..... 3446
Vessels, and other water-craft subject to taxation.....Subd. 3, 3911
license required for retailing on; price of—
Subd. 2, 4122
selling merchandise upon; price of.....Subd. 35, 4122
where issued; extent of license..... 4127

STOCK.

See ANIMALS; CORPORATIONS; SHARES.

STOCKHOLDERS.

Banks and banking associations must furnish list of, etc., to assessor..Subd. 8, 3911
how shares in, assessed and taxed.....Subd. 8, 3911
Corporations must furnish list of, etc., to assessor.....Subd. 9, 3911
how shares in, assessed and taxed.....Subd. 9, 3911
railroad, must furnish list of, to commissioners, when..... 3497
Creditor, judgment, or simple, of corporation, may garnish..... 2182
of corporation may file bill against one or more..... 823
Garnishment against, by creditor of corporation..... 2182
In corporations, individually liable only for unpaid stock—
Const., Art. XIV., §8, p. 101.

STOVE COMPANY.

License required for; price of.....Subd. 38, 4122

STREET-RAILWAY COMPANIES.

Board of directors; election; powers..... 1195
Books of subscription, commission for opening..... 1190
Capital stock, increase of; proceedings for..... 1197
Certificate of incorporation; by whom issued..... 1192
Consolidation of, with electric-light or gas companies..... 1202
agreement to consolidate; recommendation of directors..... 1203
name, rights and obligations of consolidated corporation..... 1204

STREET-RAILWAY COMPANIES—*Continued.* SECTION

Construction of, within any city or town without consent of authorities, prohibited ..... Const., Art. XIV., §24, p. 103.
Contract with municipal and county authorities; compensation 1194
Corporation for, how formed 1188
Declaration filed in office of judge of probate 1189
Organization of subscribers 1191
Powers of corporation 1193
Purchasers of, may organize as a corporation 1199
mode of organization 1200
under power in a mortgage or deed of trust; rights of 1201
Right of way; how may acquire 1198
Stockholders meet annually; place; notice 1196

SUBPŒNAS.

Arbitrators, before; authority to issue 516
by whom executed 517
Chancery, in; duty of register to keep subpœna-docket ..... Subd. 4, 657
before commissioner, register or examiner 735
executed, by whom 736
by sheriff or constable; proof of default 736
Circuit court, in; clerk to sign and issue ..... Subd. 1, 934
keep a subpœna-docket ..... Subd. 6, 934
issue at request of either party; contents of 1824
when affidavit required for 1825
how and by whom executed 1826
issued to each term 1827
commissioner to take deposition; authority to issue 1837
default proved by certificate of 1837
in proceedings to remove attorneys 607
on change of venue 4212
Courts martial, before; authority to issue 2886
Insurance commissioner may issue, for directors and others, when 2578
Justices, before; duty to issue on application of parties; contents of 2682
by whom executed 2682, 2683
in forcible entry or unlawful detainer 2139
Probate court, in; duty of probate judge to issue ..... Subd. 1, 3365
Railroad commissioners, before; authority to issue 3501
Sheriff, in fire investigation, may issue, as justice 2609

SUBROGATION.

Of purchaser of partial interest at execution sale ..... Subd. 3, 1890

SUBSCRIBING WITNESS.

Conveyances required to be attested by, when 982
acknowledgment of, dispenses with necessity of 984
Homestead exemption, waiver of, to be attested by, when—
Const., Art. X., §7, p. 94; 2106
Wills required to be attested by 4263
When maker may prove execution of instrument without accounting for 1797

SUBSCRIPTION.

Includes mark when party cannot write, etc 1

SUBSTITUTION.

Appeal from order granting or refusing; bill of exceptions 2652
Attorney to pay cost of, if paper is lost by him 2646
Books of record, of, of any county, etc 964

SUBSTITUTION—*Continued.* SECTION
Circuit court may order copy of lost pleading to be filed 3310
Compelling production of written evidence in aid of .....G. R. 6, p. 1186.
Costs of; by whom paid 2645, 2646, 2651
attorney to pay, if paper lost by him 2646
Court records and papers, of, etc., lost or destroyed 2647
proceedings when cause is pending 2648
if cause is determined 2649
of supreme court, of 2653
Deeds, etc., record of, when first record destroyed 2650
proceedings if original lost 2650
Lost, of, or destroyed court records and papers; proceedings 2647–2649, 2653
Motion for, when, considered pending .....G. R. 7, p. 1186.
notice of, necessary, when .....G. R. 8, p. 1186.
Record of pleadings, etc., by copy from 2644
when, used on trial 2645
Supreme court, of lost or destroyed records of 2653

SUBTENANT.
Attachment, when, may be levied on crop of; vacation of such levy 2713
may require, against tenant in chief, when; effect of failure to attach 2714
Provisions of article apply to tenant in chief and subtenant 2715
See, also, LANDLORD AND TENANT 2703–2722

SUFFERANCE.
Action against tenant at sufferance for use and occupation, when .....Subd. 3, 2722

SUFFRAGE.
Who entitled to ..... Const., Art. VIII., §1, p. 88; 1556
not entitled to .....Ib. §3, p. 88; 1557

SUPPLY-CAR.
License required for sale of merchandise upon; price of .....Subd. 36, 4122

SUMMARY JUDGMENTS.

General rules.

Limitation of motions and actions in .....Subd. 3, 2795; Subds. 7, 8, 2796
Motion by party aggrieved against officer and sureties 3764
Notice, motion on docket in term time, to officers and sureties 3765
given that motion will be made 3763
Trial by court unless jury demanded 3766
Venue 3767
when proceedings by or for use of state 3792, 4208

For and against certain officers.

Attorneys, against, in favor of person entitled, for money collected, or property recovered; proceedings 3810, 3811
Circuit clerk and sureties, against—
on three days' notice 3784
plaintiff, for, for failing to enter return of execution 3785
pay over money received 3786
give plaintiff notice of money collected 3787
issue execution 3788
pay over money deposited in interpleader suit. 3789
county treasurer, in favor of, for failing to pay over county funds 3790
render statement of fines, etc.. 3791

SUMMARY JUDGMENTS—*Continued.* SECTION

For and against certain officers—*Continued.*

Circuit clerk and sureties, against—*Continued.*
auditor, in favor of, on ten days' notice; venue ... 3792
for failing to issue execution for forfeiture to state ... 3793
pay over fines, etc ... 3794
solicitor, in favor of, for failure to certify indictment against convict ... 3795
send up transcript in criminal case ... 3796
when certificate of clerk of supreme court as evidence 3797
fine also imposed against clerk and sureties ... 3798
against register for failure to keep reverse indexes ... 3799
court, notice and judgment ... 3799
in favor of clerk against sheriff, etc., in certain cases as to costs ... 1361
Constables and sheriffs, against, on motion and five days' notice, in favor of party aggrieved ... 3812
for failure to make money on execution ... 3379, 3816
pay over money; motion barred in six months ... 3379, 3817, 3823
execute summons ... 3818
levy attachment ... 3819
make return, or making false ... 3820
in favor of, against obligors on indemnifying bond ... 3821
against, for acting after vacating office ... 3815
venue of motion; judgment against sureties notified ... 3822
motion made in circuit court, when ... 3824
Coroner, against, for default while acting as sheriff ... 1082
in favor of, against obligors on indemnifying bond ... Subd. 1, 3782
deputy and sureties ... Subd. 2, 3782
County officers, against, for failure to pay over moneys of county; court and notice ... 3803
County superintendent, in favor of, against defaulters of public-school moneys; proceedings ... 3804
may employ counsel ... 3805
notice, contents of; by whom served ... 3806
transcript of superintendent of education as evidence 3807
time and manner of trial ... 3808
against, in favor of teacher for money due; proceedings 3809
and sureties for any balance in his hands, etc. . 3804
County treasurer, against, for failure to pay allowed claim, if in funds ... 3802
over excess of purchase-money, etc ... Subd. 4, 3800
in favor of, against circuit clerk, etc., for failing to pay over county funds ... 3790
circuit clerk, etc., for failing to render statement of fines, etc ... 3791
county officer failing to pay over county collections ... 3803
court and notice ... 3803
Courts martial, summary; how constituted; jurisdiction of ... 2886
Judge of probate, against—
for balance due on settlement as custodian of funds of minor before circuit clerk ... 2391
state, in favor of, for failing to make out and forward abstracts, etc., required by revenue law ... Subd. 5, 3800
issuing license to retail or wholesale liquors contrary to law ... Subd. 6, 3800
penalty for failing to pay over money collected under revenue law ... 4121

SUMMARY JUDGMENTS—*Continued.*

SECTION

For and against certain officers—*Continued.*

Judge of probate, against—*Continued.*
for violation of revenue law forfeits half compensation, when; court and notice ... 3801
Justices, against, on motion and five days' notice, in favor of party aggrieved ... 3812
for acting after vacating office ... 3813
failure to pay over money; motion barred in six months ... 3814, 3823
venue of motion; judgments against sureties notified ... 3822
motion made in circuit court, when ... 3824
Register in chancery, against, and sureties on three days' notice, etc ... 3784
for plaintiff for failing to enter return of execution 3785
pay over money received 3786
give notice of money collected ... 3787
issue execution ... 3788
failure to keep reverse indexes; court, notice and judgment ... 3799
Sheriff, coroner, etc., against—
plaintiff, in favor of, on three days' notice, for penalty ... 3768
for failure to return execution, or pay over money collected ... 3379, 3769
from probate court ... 3379
make money on execution at law ... 3770
in chancery ... 863
probate court 3379
false and fraudulent return ... 3771
failure to give notice to, of collection of money ... 3772
indorse on execution true date of its delivery; damages ... 3773
execute mesne process; other remedies reserved ... 3774
defendant, in favor of, on three days' notice, for penalty ... 3775
for failure to pay over excess received on sales ... 3776
return execution satisfied ... 3777
pay over on demand money after injunction, etc ... 3778
clerk or probate judge, in favor of, in certain cases as to costs against plaintiff ... 1361
of supreme court, in favor of, in certain cases; notice and grounds ... 3779
copy of execution and certificate of facts by, presumptive evidence ... 3780
penalty for accepting substitute for juror; motion by solicitor ... 3781
failure to make election returns ... 1665
notice of, to be given solicitor; by whom ... 1666
against coroner for default while acting as sheriff ... 1082
in favor of sheriff or coroner against obligors on indemnifying bond ... Subd. 1, 3782
deputy of, and sureties ... Subd. 2, 3782
against probate judge for fees ... 3783
Sureties—
summary judgments for, against principal, and between each other; motion and notice ... 3880
surety against principal debtor; grounds and amounts of ... 3881
between sureties; grounds and amounts of ... 3882
in what court motion to be made ... 3887

SUMMARY JUDGMENTS—*Continued.* SECTION

For and against certain officers—*Continued.*

Tax-assessor, against, and sureties on ten days' notice; court and grounds of motion 3800
state, in favor of, for failing to comply with requirements of sections 3950 and 3957 ..... Subd. 1, 3800
making up false or fraudulent assessment ..... Subd. 2, 3800
willful neglect, etc., of duty required in section 3931. Subd. 3, 3800
Tax-collector, against, and sureties on ten days' notice; court and grounds of motion 3800
state, in favor of, for failing to comply with section 4003 ..... Subd. 7, 3800
make statement required by section 4019 ..... Subd. 9, 3800
knowingly collecting more taxes, etc., than authorized, etc ..... Subd. 8, 3800
not paying over surplus of sale of property, etc .... Subd. 10, 3800
any violation of section 4027— Subd. 11, 3800
Teachers, in favor of, against county superintendent for money due them; proceedings 3809

SUMMONS.
Branch summons when defendants in different counties 3271
Chancery, in; issue of 681
service of 682
corporations, foreign or domestic, for; service on whom— Ch. R. 21, p. 1206.
executed in another county; returned by mail, when 683, 684
infants, service on; how made ..... Ch. R. 20, p. 1205.
guardian ad litem for, appointment of. Ch. R. 23, p. 1207.
non-residents, summons for, and service on, when 687
persons of unsound mind, service on 685
guardian ad litem for, appointment of 685
Civil actions commenced by summons 3268
Clerk must issue summons 3269
Complaint must accompany summons 3269
Coroner or special coroner, when summons directed to and executed by 3281
County, summons to, executed on judge of probate 3280
Corporations, how served 3274–3277
Execution and return of summons 3272
Foreign corporations suable in any county where do business— Const., Art. XIV., §4, p. 99; 4207
served through designated agent; proof of agency 3277
3270
Form of summons 3094, 3099
Guarantee companies, foreign; how served ..... Subd. 3, 2584
Insurance companies, foreign; how served 2667–2672
Justices of the peace; before 3276
Publication, when service by, against domestic corporation other than railroad 3278
defendant in real action secretes himself 3278
Real action, defendant in, secrets himself, served by publication 804
Receiver, foreign or domestic, holding property in state; how served .....

SUMMONS—*Continued.*

SECTION

Return-day of summons; what is....3283, 3284
summons must be executed three days before.... 3282
Service on corporations generally.... 3274
person or corporation operating railroad of domestic corporation... 3275
designated agent of foreign corporation; proof of agency.... 3277
one representative sufficient.... 3273
when had in adjoining county or anywhere in state.... 3279
by publication against domestic corporation having no agent in state.. 3276
defendant in real action, when.... 3278
must be three days before return-day.... 3282

SUNDAY.

Attachments may be issued and levied on, when.... 538
Contracts made on, void, when.... 2170
Excluded in computing time, when.... 11
Is a holiday; when negotiable paper due on, is payable.... 872

SUPERINTENDENT OF EDUCATION.

Agricultural and Mechanical College, ex officio member of board of trustees of....Const., Art. XIII., §9, p. 98; 3686
Alabama Institute for the Deaf, member of board of trustees of.... 3699
Alcoholic drinks, etc., shall make provision for instructing pupils as to effect of, upon human system....Subd. 3, 3546
Beginning and duration of term of office.... 3052
Biennial reports to be made by, to governor; contents of.... 3547
printed and distributed.... 3548
Bond of; by whom approved, etc.; where filed.... 3543
time within which to be filed.... 3080
Bond of; failure to file vacates office; to be certified and vacancy filled.... 3085
Books, etc., subject to examination by examiner of public accounts.... 1876
of county superintendent subject to examination by superintendent 3558
Branch experiment stations and schools, ex officio member of board of control 405
Clerks, authorized to employ two; salaries of.... 3545
Constitutions, state and federal, shall make provision for instructing pupils in— Subd. 4, 3546
Costs, when must pay, taxed against townships.... 1346
may request auditor to draw warrant for, when.... 1346
County superintendent, may remove, when.... 3551
require new or additional bond of; effect of notice to give.... 3554
fixes and approves bond of....3552, 3553
shall fill vacancy in office of; term of appointee.... 3559
books and accounts of, subject to examination by.... 3558
Dueling oath, required to take.... 3062
Duties of, generally.... 3546
as to apportionment and disbursement of school funds....3601–3623
and powers of, as to sale and lease of school indemnity lands....3661–3666
Election of....Const., Art. XIII., §7, p. 98; 1573–1575
Enumeration, new, of children, when may order; expense of; how paid.... 3574
Executive department, one of the....Const., Art. V., §1, p. 78.
Experiment stations, branch, and schools, ex officio member of board of control 405
Fixes amount of, and approves bond of county superintendent....3552, 3553
Hygiene and physiology, shall make provision for instructing pupils in, etc.— Subd. 3, 3546
Impeachment of, grounds of....Const., Art. VII., §1, p. 87.
May remove county superintendent, when.... 3551
require new or additional bond of county superintendent.... 3554
effect of notice to give.... 3554

SUPERINTENDENT OF EDUCATION—*Continued.* SECTION

Oath of office....Const., Art. XV., p. 103; 3543
Office, books, papers and records....1956, 3544
Patent, when certificate by, necessary to issue of, for school lands 3654
Poll-tax, monthly reports of, to be made to, by tax-collector.... 4033
annual consolidated report of, to be made by tax-collector.... 4034
Powers, duties, term of office, and compensation to be fixed by law—
Const., Art. XIII., §7, p. 98.
Public schools, supervision of, vested in....Ib.
Salary of.... 3542
School fund, duties as to apportionment and disbursement of....3601-3623
indemnity lands, duty and power as to sale and lease of....3661-3666
Shall fill vacancies in office of county superintendent.... 3559
Supervision of public schools vested in....Const., Art. XIII., §7, p. 98.
Tax-collector to make monthly and annual reports to, of poll-tax....4033, 4034
Term of office of.... 3542
Township, must pay costs taxed against, when.... 1346
may request auditor to draw warrant for 1346
University of Alabama, ex officio member of board of trustees of—
Const., Art. XIII., §9, p. 98; 3667
Vacancy in office of, filled by governor; term of appointee—
Const., Art. V., §23, p. 82; 3549
county superintendent filled by superintendent.... 3559

SUPERSEDEAS.
Bond for, before ordered on petition for new trial.... 3345
refunding, required on dismissal of, before execution issues.... 3347
Circuit judges, authority of, to issue....Subd. 1, 921
Dismissed on sworn denial in proceeding for new trial, when.... 3346
Justices of the supreme court, authority of, to issue.... 3827
peace, on appeal from....482, 483
Lien of execution destroyed by execution of supersedeas as bond for appeal... 1894
Ordered on petition for new trial, when; power to impose terms.... 3344

SUPREME COURT.
Adjournment when justices absent.... 3835
Appeals, *see*....426-480
Attorneys; may license, to practice law....Note, p. 257; 580-584
examination and admission of applicants—
S. C. R. 21-24, p. 1190; Note, p. 257; 582-586

Clerk—
appointed by the justices; term; removal..Const., Art. VI., §§22, 24, p. 86; 3856
bond; penalty; by whom approved and where filed.... 3857
additional, when required; effect of failure to give.... 3858
books, blanks and stationery, how furnished.... 3863
certificate of affirmance or reversal, when sent; contents....Subd. 5, 3860
recalled, when and how....Subd. 5, 3860
commission, must obtain.... 3058
duties of, generally.... 3860
fees of, generally.... 1374
oath of office....Const., Art. XV., p. 103; 3062
filed with secretary of state.... 3064
office and office hours.... 3859
opinion, certified copy of, to be sent to court below, when....Subd. 6, 3860
to be delivered to reporter, with record, when...Subd. 8, 3860
bound with record at end of term....Subd. 7, 3860
record, duty as to binding....Subd. 7, 3860

SUPREME COURT—*Continued.*

SECTION

Clerk—*Continued.*

what constitutes, in each case 3861
expense of binding paid by state 3862
Concurrence in opinion of three justices necessary to a decision; exception 3836
Contempts, power to punish for ..... Subd. 6, 3826
Court—
consists of one chief justice and such number of associate justices as may be prescribed by law ..... Const., Art. VI., §11, p. 84.
powers of, vested in a chief justice and four associate justices 3825
regular terms 3828
special terms 3834
where held; when may be adjourned to different place—
Const., Art. VI., §3, p. 83.
Criminal cases submitted at any time by consent; when submitted without consent of state 3831
Divisions; state divided into eight 3829
when called 3830
Injunction cases submitted at any time by consent or advanced on motion 3833
Judicial power in part vested in ..... Const., Art. VI., §1, p. 82; 2636
Jurisdiction appellate only, unless otherwise provided—
Const., Art. VI., §2, p. 83.
declared 3826
Justices—
absence of; provision for adjourning court 3835
acknowledgments and proofs of conveyances, may take 993
beginning and duration of official term 3054
certiorari, each justice may issue writs of 3827
commission, must obtain 3058
compensation not to be diminished during official term—
Const., Art. VI., §10, p. 84.
conservators of the peace throughout state ..... Const., Art. VI., §16, p. 85.
dueling oath, required to take 3062
election of ..... Const., Art. VI., §12, p. 85; 1573, 1574, 1578
incompetent to sit in cause, when 2637
impeachment, grounds of ..... Const., Art. VII., §1, p. 87.
injunction, may grant writs of 784, 3827
when application for, not to be made to 791
marriages, may solemnize 2841
oath of office ..... Const., Art. XV., p. 103; 3062
filed with secretary of state 3064
powers of supreme court vested in one chief and four associate 3825
prohibited from receiving fees or perquisites ... Const., Art. VI., §10, p. 84.
holding any office except judicial, during term ..... Ib.
practicing law ..... Const., Art. VI., §20, p. 86.
qualifications of ..... Const., Art. VI., §14, p. 85.
salary of 3841
special justices appointed by governor, when 3837–3839
supersedeas, each justice may issue writs of 3827
term of office, six years and until successors qualified—
Const., Art. VI., §15, p. 85.
begins third of November next after election 3054
vacancy filled by appointment of governor for unexpired term—
Const., Art. VI., §17, p. 85.
vacate office by accepting another 3141
Library—
justices make rules for 3849

SUPREME COURT—*Continued.* SECTION

Library—*Continued.*
marshal is librarian; duties as such ... 3848
secretary of state may certify transcripts of statutes of other states deposited in ... 1821
appropriations for ... 3853
tax in civil cases for maintenance of ... 3854
fund expended under direction of the justices ... 3853, 3854
when and what part of, used to buy books for attorney-general ... 3855

Marshal—
appointment; term; duties ... 3845
must be entered on minutes of court ... 3850
assistant, may appoint and remove ... 3846
compensation of; how payable ... 3847
attorney-general; when books for, purchased from library fund ... 3855
bond of; amount, condition, etc.; by whom approved ... 3851
is librarian of state and supreme-court libraries; duties as such ... 3848
may adjourn court in absence of justices, when and to what time ... 3835
salary of ... 3852

Opinion, concurrence in, of three justices necessary to a decision; exception ... 3836
on former appeal in same case not conclusive; qualification ... 3840
when justices not required to write ... 3868

Preferred cases—
criminal cases, appeals in ... 3831
injunction cases, appeals in ... 428, 3833
interlocutory decrees, appeals from ... 427
judgments, appeals from ... 430
office, cases involving right to public or corporate ... 3833
receivership cases, appeals in ... 429, 3833
remedial writs, cases involving granting or refusing ... 431, 2827, 3832
revenue of state, cases involving ... 3833

Power to issue writs of injunction, habeas corpus, quo warranto and other writs necessary to give superintendence of inferior jurisdictions—
Const., Art. VI., §2, p. 83.

Provisions for adjourning court when justices absent ... 3835
Receivership, cases involving, submitted by consent, or advanced, when ... 3833
Remedial writs, applications for, submitted on any motion-day ... 3832
Revenue, cases involving public, submitted by consent, or advanced, when ... 3833

Reporter—
appointed by justices; receives records, etc ... 3864
assistant reporters appointed, when ... 3865
compensation of reporter ... 3866
assistant reporters ... 3865
time within which reports must be published ... 3867
what reports must contain ... 3868

Reports—
copyright and proprietorship retained by state ... 3869
delivered to secretary of state; copies set apart ... 3870
distributed, to what officers, etc ... 3871
other states ... 3872
printing and binding done under direction and control of court ... 3396
specifications as to ... 3396
to be approved by court before acceptance ... 3396
publisher must file affidavit that all copies printed have been delivered ... 3396
sale of remaining copies ... Note, p. 1062; 3873
Smith's condensed ... 3874
time within which reports shall be published ... 3867
what reports shall contain ... 3868

SUPREME COURT—*Continued.*

SECTION

Rules of practice; power to establish ..... Subd. 4, 3826; 864
Secretary—
appointment; removal, vacancy, how filled 3842
duties of 3843
salary of 3844
Special term, when, must be held 3834
justices, when, appointed 3837–3839
See, also, APPEALS 426–480

SURETIES.

Confess judgment, when, not to 3883
Constable, liability of sureties of 980
Coroner discharging duties of sheriff, sureties of, liable as sheriff's sureties 3741
acting as administrator, sureties of, liable for his acts 72
Equitable attachment, when surety in written contract entitled to, against principal; proceedings 780–783
Limitation of actions against sureties of officers, representatives and guardians— Subd. 7, 2796
on writ of error, appeal, replevy, or forthcoming bond 2798
Discharge of surety on making application that new bond be given; proceedings 3124–3126
old sureties discharged as to future breach 3129–3131
but previous liability of, not affected 3131
when new bond goes into effect 3130
sureties' rights among themselves 3132
May set off debt due principal, when 3731
require creditor to sue principal or other sureties; discharged on failure to sue 3884
to what bonds and contracts not applicable 3885
Official bond, on; qualifications and sufficiency 3075
bonded officers cannot be 3076
attorneys not sufficient sureties, in certain cases 3077
legal effect of 3087
not discharged by a single recovery 3088
liable under irregular bond under which officer acts 3089
conditional execution no defense 3090
provisions of articles applicable to future officers, etc 3091
additional bonds subject to same rules and have same force as originals 3113–3116
original bond not discharged by additional 3117
rights and remedies of sureties on both bonds 3118
discharge of surety on making application that new bond be given; proceedings 3124–3126
old sureties discharged as to future breach 3129–3131
but previous liability not affected 3131
when new bond goes into effect 3130
sureties' rights among themselves 3132
sureties of coroner discharging duties of sheriff liable as sheriff's sureties 1082
sheriff discharging constable's duties liable for his acts 3741
constable, liability of 980
sheriff or coroner acting as administrator liable for his acts 72

SURETIES—*Continued.* SECTION

On payment by surety, judgment must be assigned to him; rights and remedies 3888
Personal representatives, provisions of chapter enure to and against 3886
Property of principal to be first levied on, when 1907
Provisions of chapter, in whose favor and against whom, enure 3886
Replevy bond, on; when may demand indemnity 3875
affidavit may be made of refusal to give indemnity 3876
writ of seizure may then issue 3877
bond of indemnity, if given, filed with original 3878
not given, perishable property may be sold by sheriff 3879
Sheriff or coroner acting as administrator, sureties of, liable for his acts 72
Summary judgments for sureties against principal, and between each other; motion and notice 3880
surety against principal debtor; grounds and amounts of 3881
between sureties; grounds and amounts of 3882
in what court motion to be made for 3887
Wife cannot become surety for husband 2529

SURGEONS.

Brigade, of; appointment; rank of; duties of 2856, 2857
Medical supplies, purchase of, by 2888
Penalty for false or fictitious claims by 2888
Regiment, of; appointment; rank of 2858
assistant surgeon of; appointment; rank of 2858

SURGEON-GENERAL.

Appointment; qualifications; rank of; duties of 2853, 2854

SURVEYORS AND SURVEYS.

Appointment of two county surveyors by court of county commissioners 3889
for term of three years; qualifications .. 3889
Bonds of surveyors approved, filed and recorded by judge of probate 3891
Compensation of surveyors and assistants fixed by commissioners' court 3897
Duties of surveyors 3892, 3893
must swear chain-bearers; form of oath 3893
Fees of surveyors, chain-bearers and markers fixed by commissioners' court .. 3897
when, taxed as costs in pending suit 3894
Liability of the surveyors for damages caused by wrong survey or plat 3896
Oaths of surveyors; filed in office of judge of probate 3062, 3891
Plat evidence of survey when made upon notice to opposite party 3895
Removal of surveyors by court of county commissioners 3890
Survey changing lines does not affect right to fences or buildings 3898
Surveyor of adjoining counties eligible to appointment 3889
Town lots—
survey and plat of; what plat must show 3899
plat to be certified, signed by owner, acknowledged and recorded as deeds 3900
record and certified copies of plat evidence 3900
acknowledgment and record of plat operates as a conveyance, etc 3901
how plat or map vacated or annulled in whole 3902
part 3903
lost map or plat may be substituted 3904
when plat or map vacated judge of probate must write "vacated," etc 3905

SWAMP AND OVERFLOWED LANDS.

Governor may issue patents to purchasers of, when 2702

TAXATION. SECTION

Constitutional and general provisions.

Agent, liability of, for taxes against principal on receipts..... 4118
All bills for raising revenue shall originate in house of representatives, but senate may amend.....Const., Art. IV., §31, p. 75.
taxes levied to be assessed in exact proportion to value of property—
Const., Art. XI., §1, p. 94.
Auditor and treasurer to make to governor annual reports of taxes collected—
Const., Art. V., §24, p. 82.
copies of papers, records, etc., in office of, as evidence.. 4119
to have revenue laws printed separately, etc.....Subd. 10, 1995
County prohibited from levying in any one year, a larger rate on property than one-half of one per centum; exceptions...Const., Art. XI., §5, p. 95.
may levy tax for building or repairing jail..... 1408
special tax for building or repairing court-house 1409
how levied..... 1410
Definition of words and phrases in revenue law..... 3906
Eminent domain, right of, not to be so construed as to authorize taxation for benefit of corporations, except municipal, or of any individual or association.....Const., Art. I., §24, p. 66.
Estates of decedents, taxes assessed on, prior to death; provision as to..Subd. 4, 126
Exemptions from.....Note, p. 1071; 1311, 3907-3909
General assembly has no power to tax property of state, county, or city, or cemeteries, etc.....Const., Art. IV., §52, p. 78.
may levy a poll-tax—
Const., Art. XI., §1, p. 94; Art. XIII., §4, p. 97.
prohibited from levying, in any one year, greater rate than three-fourths of one per centum on property—
Const., Art. XI., §4, p. 95.
General revenue bills excepted from provisions as to law containing but one subject, etc.....Const., Art. IV., §2, p. 71.
Governor to submit, at each session of general assembly, estimates of money required to be raised by taxation.....Const., Art. V., §11, p. 79.
Municipal corporations, limit of rate of taxation by...Const., Art. XI., §7, p. 96.
special taxes of, to be kept separate, etc..... 2973
Navigable waters free, as public highways, without tax, impost or toll—
Const., Art. I., §25, p. 66.
no tax, toll, impost, or wharfage to be demanded or received for use of shores, etc., of navigable streams, unless expressly authorized by law.....Ib.
Officers selling property under decree or process to first pay taxes..... 4117
penalty against, for failing to pay over money collected..... 4121
Place of worship, no one shall be compelled to pay taxes for building or repairing any, or for maintaining any minister or ministry—
Const., Art. I., §4, p. 60.
Poll-tax, general assembly may levy—
Const., Art. XI., §1, p. 94; Art. XIII., §4, p. 97.
to what applied..... 3910
Printing, stationery, etc., assessor and collector may contract for..... 4120
Private corporations, property of, associations and individuals to be forever taxed at same rate; exceptions—
Const., Art. XI., §6, p. 95.
no power to levy taxes shall be delegated to individuals or.....Ib. §2, p. 94.
Property brought into state after first of October; when taxable..... 3920
Revenue, all bills for raising, shall originate in house of representatives, but senate may propose amendments.....Const., Art. IV., §31, p. 75.
laws passed at each session of general assembly to be printed separately, etc.....Subd. 10, 1995

TAXATION—*Continued.* SECTION

Constitutional and general provisions—*Continued.*

Subjects and rates of 3911, 3912
Summary proceedings against officers for defaults relative to state and county revenue 3800–3803
Taxes a preferred claim in case of assignment or insolvency 4116
state and county have a prior lien for 3921
when, become due and when delinquent 3919
Towns incorporated, powers of, under general laws, as to 2954–2964

Statutory provisions.

Abstract—
judge of probate, duty of, to make, for auditor and collector 3987
forms for, furnished by auditor 3987
of poll-tax, duty of probate judge to furnish, to superintendent of education 3988
forms for, furnished by superintendent of education 3988
abstract-book furnished collector by judge of probate, when 3989
of mortgages to be filed in office of assessor by probate judge, when 3990
the record, or certified copy of, prima facie evidence, etc., in courts 3990
Actions by and against purchasers at tax sale, etc 4078–4088
limitation of 4089
Administrators must list property of estate for 3942
Advertisement—
assessor's appointments, notice of, by 3931
book of assessments, lists, etc., time for correction of errors in, notice of, by 3978
collector's appointments, notice of, by 4003
corporations, private, levy on shares in, for taxes, notice of, by 4017
notice, in proceedings to sell land for taxes, given by, when 4051, 4054
when lands assessed to "owner unknown," given by 4052
rate of, by what provisions governed, etc 4053
sale of lands for taxes, notice of, given by; rate for 4057
abbreviations, initial letters and figures may be used in 4058
cost of, what part of, paid by state; how paid 4065
collector 4066
Agent liable for taxes on gross or net receipts, when 4118
Agricultural and horticultural associations, public—
property of, real or personal, not exceeding twenty-five thousand dollars in value, exempt from ..... Subd. 2, 3907
Appeal from judgment of commissioners' court fixing values, etc 3979
bond for; amount, conditions, etc 3979
decree of sale of lands for taxes, bond, etc., for 4069
Assessments—
blanks for 3929
commencement and completion of 3930
supplemental, to be entered in original book of 3930
taxpayer, oath administered to 3933
list of property returned by 3932
interrogated by assessor as to items and details of property 3934
failing to attend appointment, demand on, by assessor 3935
full statement of subjects of taxation required of 3936
sworn list, when may be returned by another person 3937
when made on information 3938
property, value of each item of, fixed by assessor 3939
how estimated 3940
by whom should be listed 3942
minerals and timber assessed separately, when 3940
real estate, how may be described 3941

TAXATION—*Continued.*

SECTION

Statutory provisions—*Continued.*

Assessments—*Continued.*

telephone companies, of property and receipts of ... 3943
failure of, on, to make returns, penalty added ... 3943
receipts of person, company, or corporation, of, made on information, when 3944
delinquents, of, made on information, when; penalty ... 3945
"owner unknown," to, how made; penalty ... 3946
lands in one body assessed to, not to be split up to multiply fees ... 3946
escaped taxes, of ... 3947
lists of, form and contents of ... 3948
delivered to county commissioners, when ... 3949
condensed statement of, and polls entered in books ... 3950
of property of railroad, telegraph, telephone, sleeping-car and express companies ... 3976
of lands bid in by the state, how made ... 4077
lands sold by state must be entered on list of, by assessor, when ... 4103

Assessor—

election and term of office of ... 3922
bond of; amount; where filed and recorded ... 3923
oath of office, where filed ... 3924
office of, when to be kept open in certain counties ... 3931
commissions of ... 3925
no, on erroneous assessments by ... 3926
fees of ... 3927
deputies of; appointment; liability for acts of ... 3928
assessment-blanks; duty of, to have printed ... 3929
furnished taxpayer on request ... 3929
appointments of, notice of; how given ... 3931
failure to give notice of, or attend; penalty ... 3931
taxpayer to attend and return list of property ... 3932
oath to be administered to, by; form of ... 3933
to be interrogated as to items and details of property by ... 3934
failing to meet; demand on, by ... 3935
full statement of subjects of taxation required of ... 3936
when sworn list of, may be sent in by another person ... 3937
subscribing to false list knowingly, guilty of perjury ... 3937
assessment, when made by, on information ... 3938
property, value of each item of, fixed by ... 3939
how estimated; minerals and timber assessed separately, when ... 3940
real estate, how may be described ... 3941
plat-book of, made by; compensation of ... 3948
property, by whom should be listed ... 3942
telephone companies, property and receipts of, returns of, for ... 3943
failure of, to make returns, penalty added by ... 3943
receipts, premiums or commissions, etc., assessed by, on information, when 3944
assessments made by, on information, when ... 3945
"owner unknown," to, how made ... 3946
lands assessed to, not to be split up ... 3946
penalty to be added by, not remitted; exception ... 3946
escaped taxes, assessed by ... 3947

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Assessor—*Continued.*
assessment-lists, form and contents of ... 3948
delivered to commissioners' court by ... 3949
condensed statement of, and polls entered in books by ... 3950
books and lists delivered to judge of probate by, when ... 3951
examined by judge of probate and duplicate receipts given to, when 3952
one of same forwarded to auditor by ... 3952
neglect of duty by, when suspended for; how and by whom restored ... 3953
commissioner, tax, appointed to perform duties of, when ... 3953
township and range, or school district, to be noted by, on lists and poll-tax book ... 3954
number of each race in, liable to poll-tax, must be noted in poll-tax book ... 3954
taxpayer about to leave county, duty of, as to; penalty, etc ... 3955
county taxes, duty of, to compute and enter in book of assessments ... 3956
book of assessments, duty of, to complete, etc ... 3956
land-book to be prepared by ... 3957
form of, and entries to be made by ... 3958
delivered to judge of probate by, when ... 3960
failure of, to make, liable to suspension ... 3961
judge of probate to receipt for, and certify fact to auditor ... 3962
compensation of, for making ... 3963
lands to be listed each year by; comparing list, etc ... 3959
railroads, assessments of, by state board, duty of, as to ... 3973
telegraph companies, assessments of, by state board, duty of, as to ... 3975
duty of, as to assessment of other property of railroads, telegraph, telephone, sleeping-car and express companies ... 3976
commissioners' court, term of, for correction of errors, etc., duty of, to attend ... 3979, 3980
witnesses subpœnaed and evidence introduced by ... 3979
errors adjudged by, must be corrected by ... 3979
escaped taxes, assessment of, reported to commissioners' court by ... 3981
must be entered in book of assessments by ... 3981
books and papers, production of, may be required by commissioners' court 3984
insurance agents, list of, furnished, by judge of probate, when ... 3992
forbidden to purchase lands at tax sale; penalty, etc ... 4068
lands bid in by the state, duty of, as to assessment of, etc ... 4077
failure of title attributable to negligence of, liability for ... 4080
lands sold not liable for taxes, if by negligence, etc., of, liability for ... 4079
liability of, for failure of title attributable to their negligence ... 4080
suit by purchaser at tax sale, failure of, if by failure of duty of, liability for ... 4082
redemption of land sold for taxes, duty of, to list ... 4098
lands sold by state, duty of, to enter on assessment-list, when ... 4103
stationery, printing, etc., may be contracted for by, when ... 4120
Assignment, general, in case of, or insolvency, taxes preferred claim ... 4116
Attorney-general—
state board of assessment, meetings of, duty of, to attend ... 3970
tie vote decided by ... 3971
dissent by, from majority of board, reasons for spread upon record ... 3971
certificates of purchase and deeds to purchasers, forms of, furnished auditor by ... 4076
duty to construe revenue law for auditor ... 4109

TAXATION—*Continued.*

SECTION

Statutory provisions—*Continued.*

Auctioneer, license required of.....Subd. 34, 4122
gross amount of sales by, subject to.....Subd. 1, 3912
Auditor—
duty of, on failure of railroads to make returns of property for..... 3965
member of state board of assessment..... 3966
telegraph companies, property of, items and value of, ascertained by, when 3974
report of, made to state board by, when. 3975
abstract of assessments, failure of judge of probate to make, reported to governor, by..... 3987
forms for, furnished by..... 3987
mortgages, abstract of, blanks or blank books for, furnished by..... 3991
errors and insolvents and litigated taxes, list of, duty of, as to..... 4021
insolvencies and taxes in litigation, new accounts of, opened against collector by..... 4022
credit for uncollected balances of, allowed by.....4025, 4026
escaped taxes assessed and collected by collector must be charged to him by 4031
collector, failure of, to make monthly reports and payments reported to governor by..... 4036
commissions, fees, expenses, etc., due to, allowed by, when..... 4037
lands bid in by state for taxes, certificates of purchase for, record, etc., kept by..... 4064
collector allowed credit for, by, when.... 4064
advertising, accounts for, audited by; warrant for, by..... 4065
deeds and certificates of purchase, blank forms of, furnished by..... 4076
lands bid in by state, list of, certified to assessor by, when..... 4077
taxes must be added by, to amount for which they sold..... 4077
legal proceeding to recover same may be brought, etc., by, when..... 4081
on redemption of, certificate of release given by..... 4095
description of, with taxes due, etc., prepared by..... 4100
subject to sale, when; may be sold at private sale by, when..... 4100
on application to purchase, owner of, notified by..... 4101
owner of, allowed to redeem, when, time fixed by... 4101
purchaser of, deed to, made by; rights thereunder.. 4102
sale of, must be certified to judge of probate by..... 4103
description of lands sold furnished assessor by 4103
on sale of, county taxes, fees, etc., warrant for, drawn by..... 4104
erroneous sales, cancellation of, when state is purchaser, duty of, as to.... 4106
purchase-money of, paid to county, certified to judge of probate by..... 4107
cancellation of, when purchaser is private person, duty of 4108
revenue laws enforcement of, duty of, as to..... 4109
attorney-general, opinion of, may be taken by..... 4109
assessment-lists, printed form of, etc., furnished assessors by..... 4110
questions for use by assessors, printed forms of, prepared by..... 4111
revenue laws printed in pamphlet form for distribution by..... 4112
who entitled to copy of..... 4112
suits relative to revenue, etc., institution of, powers and duty of, as to.... 4113
collector, commissions of, failure to give credit for; how corrected..... 4114
overpayments, warrant for, by, when..... 4115
books, records and papers in office of, copies of, as evidence, etc..... 4119

TAXATION—*Continued.*

Statutory provisions—*Continued.*

SECTION

Auditor—*Continued.*
licenses, revenue, with stubs attached; blanks furnished by 4129
forms of, prepared by 4129
failure of probate judge to report certified list of, duty of, to report to governor 4132
reports of, copies of, furnished solicitors by, when 4133

Banks—
property of, and shares in, how taxed; where assessed and collected— Subd. 8, 3911

Blanks; assessment-lists, by whom provided and how paid for 3929
certificates of purchase and deeds to purchasers, by whom furnished .. 4076
assessment-lists, printed form of, furnished by auditor 4110
licenses, revenue, with stubs attached, furnished by auditor 4129

Blind persons and their property to value of one thousand dollars exempt from— Subd. 5, 3907

Board of revenue. Commissioners' court, *see, infra* 3977-3992

Bonds, United States, of, exempt from ..... Subd. 2, 3907
state, of, exempt from ..... Subd. 2, 3907
assessor, official, of; where filed and recorded 3923
collector, official, of 3994

Books, religious, for sale by ministers and colporteurs, exempt from .. Subd. 4, 3907
of tax-collector and judge of probate as evidence 4055, 4088
records and papers in auditor's office, copies of, as evidence 4119

Book of assessments—
assessor to prepare; what must contain 3950
deliver to judge of probate, when 3951
certificate to, to be made by presiding officer of commissioners' court, when 3986
warrant to collector to collect, etc 3986
abstract of, made by judge of probate for auditor and collector, when 3987

Building and loan associations, privilege and property tax paid by, when 3916

Canals subject to ..... Subds. 10, 12, 3911

Cemeteries exempt from ..... Subd. 2, 3907

Certificate of purchase assignable 4067

Churches, property of, exempt from, when ..... Subd. 2, 3907

Circuit court—
proceedings and judgment of, on appeal from commissioners' court fixing value, etc 3979
decree of probate court ordering sale of land for taxes 4069
judgment of, lien, etc 4069
disposition of money collected on 4070

Cities, authorities of, may exempt cotton-factories from 3908
application for such exemption; how made and granted 3909

Clerk of circuit court, fees of, in garnishments for collection of taxes 4016
proceedings to sell lands for taxes 4071

Collector—
books and papers of, production of, may be required by commissioners' court 3984
election and term of office of 3993
bond of; conditions; where filed 3994
bond, lien of 3995
oath of office of 3996
commissions of, on general and special taxes 3997
poll and escaped taxes assessed and collected by 3998
mileage to and from seat of government; making returns, settlement, etc. 3999
transmitting money, cost of, allowed to 4000
fees of 4001
deputies, appointment of, by; liability for acts of 4002

TAXATION—*Continued.*

SECTION

Statutory provisions—*Continued.*

Collector—*Continued.*
appointments of, notice of; how given 4003
failing to attend, new appointments made by; forfeit, etc. 4004
time in which, must be completed by 4005
court-house, attendance at, by 4005
delinquent taxpayers, personal demand, in writing, made on, by 4006
failure to make shall not invalidate title to property sold 4006
taxpayers, duty of, to attend appointments and pay taxes to 4007
failing to do so, liable for costs, fees and charges, when 4007
interest on delinquent taxes, how collected and reported 4008
receipt of, to taxpayer; form and contents of 4009
stub-book, or book of receipts, must be kept by 4010
at end of tax year must be delivered to probate judge, by 4010
production of, may be compelled by commissioners' court 4010
personal property, sale of; time and place; notice of; no redemption of ... 4011
payment of taxes and charges may be made before sale 4011
proceeds of, application of; other levies and sales authorized 4012
sale, no property exempt from, for taxes 4013
garnishment, collection by; persons indebted to taxpayer ascertained by 4014
proceedings on 4015
costs in 4016
private corporations, shares in, subject to levy and sale; procedure 4017
real estate may be sold for taxes, when 4018
errors and insolvents and litigated taxes, list of, when reported by 4019
credit for, allowed, when 4020
by auditor on final settlement of 4021
insolvencies and taxes in litigation, new accounts of, opened against 4022
insolvent lists delivered to, when 4023
duty of, to collect and make reports and payments of, to whom 4024
insolvent and litigated taxes, uncollected balances of, must be reported by, when 4025
credits for, when and by whom allowed 4025, 4026
report of, by, on retiring from office 4026
taxpayer about to remove from county, duty of 4027
failure to act when notified of, liability of 4028
person who has removed from county, collection of taxes from; proceedings; duty of, as to 4029
escaped taxes assessed and collected by; powers and duties of, as to 4030
reported to judge of probate by, when 4031
poll-taxes reported and paid into state treasury monthly by 4033
separate account of, paid by each race kept by 4032
report of, made to state and county superintendents of education by 4033
annual consolidated report of, made to state and county superintendents of education by, when 4034
reports and payments, monthly, of taxes collected made by, to whom 4035
receipt in duplicate for report, one of which forwarded to auditor by 4035
accounts to auditor in January and April; allowance for commissions, expenses, etc., due to 4037

TAXATION—*Continued.*

Statutory provisions—*Continued.*

SECTION

Collector—*Continued.*
settlement, final, to be made with auditor by, when ... 4038
county treasurer by, when ... 4039
suspension of, grounds for, to be decided by governor ... 4040
general assembly may restore, to office ... 4040
personal representative of, must make settlement in case of death of ... 4041
special taxes, receipts for; what must specify ... 4042
how kept and paid over ... 4043
land, docket of, must be prepared by; what must contain ... 4047
preparation of; time of delivery; effect of failure to deliver 4048
notices to persons assessed, in proceedings to sell land for taxes, executed by ... 4050
publication of; newspaper may be selected by ... 4053
probate court, terms of, must be attended by, with books, etc ... 4055
lands, sale of, for taxes, under decree of, made by whom ... 4057
notice of, by publication, given by ... 4057
how offered; minimum price ... 4060
second sale on failure of bidder to pay, when ... 4061
certificate of purchase; contents; made by; when ... 4063
delivered to state by, when ... 4064
advertising, cost of, what part of, paid by ... 4066
forbidden to purchase lands at tax sale; penalty ... 4068
money collected on judgment on appeal, disposition of, by ... 4070
fees for serving notices in proceedings to sell lands for taxes ... 4071
purchase-money, excess of, from sale of lands, how disposed of by ... 4072
lands sold not liable for taxes, if by negligence, etc., of, liability for ... 4079
failure of title attributable to negligence of, liability for ... 4080
suit by purchaser at tax sale, failure of, if by failure of duty of, liability for 4082
books of, effect of, as evidence ... 4055, 4088
stationery, printing, etc., may be contracted for by, when ... 4120

Commissioners' court or board of revenue—
cotton-factories may be exempted by, from county ... 3908
application for exemption of, how made and granted ... 3909
assessment-lists to be delivered to, when ... 3949
terms of ... 3977
book of assessments, poll-tax book, etc., examined by, when ... 3978
notice given when errors, etc., will be corrected in ... 3978
correction of errors in, by; proceedings; appeal ... 3979
assessor, duty of, to attend terms of ... 3979, 3980
escaped taxes, assessment of, must be reported to, by assessor ... 3981
errors in, proceedings for correction of, by ... 3981
revenue law must be liberally construed by ... 3982
prohibited, expressly, from reducing valuation of property below fair cash market value ... 3982
assessment, changes in, when collector to be notified of, by ... 3983
books and papers, production of, may be required of assessor and collector, by ... 3984
county tax, levy of, by ... 3985
books of assessments, certificate to, made by presiding officer of, when ... 3986
warrant to collector to proceed to collect, etc ... 3986
errors and insolvents and litigated taxes, lists of, reported to, when ... 4019
duty of, as to ... 4020
presiding officer of, to certify lists to auditor, when ... 4021
insolvencies and taxes in litigation, new accounts of, opened against collector by ... 4022

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Commissioners' court or board of revenue—*Continued.*
insolvent lists delivered to collector, when ... 4023
and litigated taxes, uncollected balances of, final report of, to, when ... 4025
uncollected balances of, credits allowed for, by, when ... 4025, 4026
uncollected balances of, presiding officer of, to certify same to auditor ... 4025, 4026
uncollected balances of, report of, by collector on retiring from office ... 4026
presiding officer of, forbidden to purchase lands at tax sale; penalty, etc.. 4068
purchase-money, excess of, from tax sales; orders relative to, by ... 4012, 4072
may be paid to owner within five years upon order of ... 4073
lands bid in by the state, duty of, relative thereto; facts certified to auditor by ... 4077
purchase-money of erroneous sales; amount due state, warrant for, ordered by, when ... 4107
due state preferred claim against county ... 4107
erroneous tax sales, cancellation of, when purchaser private person; duty of, as to ... 4108
licenses for county purposes, price of, fixed by ... 4123
Commissions and fees—
assessor, of ... 3925, 3927
none allowed, on erroneous assessments ... 3926
collector, of ... 3997–4001
judge of probate, of, on redemption of lands sold for taxes ... 4097
money received for revenue license, when ... 4132
Compensation of assessors for making land-book ... 3963
judge of probate for making abstract-book ... 3989
Confederate soldiers and sailors—
indigent, entitled to peddle without payment for license, when and what—Note, sec. 1, p. 1139.
application and proof; to and before whom made ... Note, sec. 2, p. 1139.
Corporations—
president or chief officer of, must list property of, for ... 3942
property of, how taxed; where assessed and collected ... Subds. 8, 9, 3911
undivided dividends declared or earned taxable ... Subd. 13, 3911
private, shares in, subject to levy and sale for taxes, when; procedure ... 4017
agent of, when, liable for taxes on gross or net receipts of ... 4118
charter fees required of domestic corporations; amount of ... 1287–1290
Costs in garnishment proceedings for collection of taxes ... 4016
proceedings for sale of land for taxes ... 4071
officers liable for, by reason of failure of duty, etc., when ... 4082
plaintiff entitled to judgment for, though cast in suit for land, when ... 4083
defendant entitled to judgment for, though cast in suit for land, when .. 4084
in cases where tender of redemption-money has been made ... 4085, 4086
amount of, etc., deposited on application to redeem lands sold for taxes 4093
Cotton-factories—
exempt from county and municipal, when ... 3908
application for such exemption, how made and granted ... 3909
state, county and municipal, when, etc.. Note, pp. 1071, 1072.
Counties, property of, exempt from ... Subd. 2, 3907
prior lien of, on property for taxes ... 3921
tax of, levied by commissioners' court ... 3985

TAXATION—*Continued.*

SECTION

Statutory provisions—*Continued.*

Counties, tax of, on sale of lands by state; how disposed of 4104
may levy special tax for building or repairing court-house or jail; how levied 1408–1410

County treasurer—
reports and payments, monthly, of taxes collected, made by collector to.. 4035
collector to make final settlement with 4039
receipt in duplicate for report must be given collector by 4035
report, monthly, as to contents of collector's reports, made to auditor by. 4036
special taxes, how kept and disbursed by 4044
how account of, closed by 4045
purchase-money, excess of, from tax sales, how disposed of by 4012, 4072
may be paid to owner within five years, how... 4073
certificate of redemption for lands sold for taxes must be countersigned by 4095
purchase-money of erroneous sales, and due state, warrant for, paid by... 4107
preferred claim against county 4107

Court-house—
attendance of collector at, when 4005
assessor must keep office open at, when 3931
special tax for building or repairing, or jail, county may levy 1408, 1409
how levied 1410

"Credit," the term, meaning of ..... Subd. 4. 3906
not allowed insurance companies for costs of reinsurance, etc..... 3917

Deaf mutes and their property to value of one thousand dollars exempt from— Subd. 5, 3907

Deductions, insurance companies, not allowed, for cost of reinsurance, etc.... 3917

Deeds to purchaser at tax sale, when and by whom made; what conveys..... 4074
to be acknowledged; effect as evidence 4075
blank forms of, and certificates of purchase, by whom furnished..... 4076

Definition of terms 3906

Delinquent, taxes become, when 3919
taxpayer, fees to be paid by 3927
when relieved from payment of fee to collector, etc.... 4004
personal demand, in writing, upon, by collector..... 4006

Descriptions of lands, how must be made 3941

Erroneous sales—
cancellation of, when state is purchaser; purchase-money refunded, how.. 4106
application for, when, must be made 4106
purchase-money of, paid to county, refunded to state, how 4107
cancellation of, when purchaser is private person; money refunded, how.. 4108
application for, when, must be made 4108

"Errors" and "insolvents" and litigated taxes—
lists of, reported by collector to commissioners' court, when 4019
commissioners' court, duty of, as to 4020, 4021
insolvencies and taxes in litigation, new accounts of, opened against collector 4022
insolvent lists delivered to collector, when 4023

Errors in assessments, correction of; when and by whom 3977–3984

Escaped taxes—
assessment of, by assessor 3947
must be reported to commissioners' court 3981
entered on book of assessments 3981

rate of taxation on 3981
assessed and collected by collector; powers and duties of, relative to..... 4030
must be reported to probate judge.... 4031
entered in book of assessments by probate judge 4031
charged to collector by auditor..... 4031

TAXATION—*Continued.*

SECTION

Statutory provisions—*Continued.*

Evidence, abstract of mortgages or certified copy, effect of, as 3990
books of tax-collector, effect of, as 4055
judge of probate and tax-collector, effect of, as 4088
records and papers in office of auditor, copies of, as 4119
Executors must list property of estate for 3942
Exemption from, of property and persons 3907
of cotton-factories from county and municipal 3908
application for, how made and granted 3909
from state, county and municipal, when, etc.—
Note, pp. 1071, 1072.
Express companies, privilege tax, to pay, when 3914
assessment of property of; returns, to whom made 3976
Fees of tax-assessor 3927
tax-collector 4001
judge of probate for making abstract of mortgages 3991
tax-collector for sale of personal property 4011
in proceedings to sell lands for taxes 4071
clerk of circuit court in garnishments for collection of taxes 4016
proceedings to sell lands for taxes 4071
justices of peace in garnishments for collection of taxes 4016
sheriffs in garnishments for collection of taxes 4016
proceedings to sell lands for taxes 4071
judge of probate in proceedings to sell lands for taxes 4071
for deed to purchaser at tax sale 4074
redemption of lands sold for taxes 4091
issuing revenue license 4125
charter, required to be paid by domestic corporations; amount 1287–1290
Foreign insurance companies considered as doing business, when, and subject to 3918
Garnishment, collection of taxes by process of 4014
proceedings on 4015
costs in 4016
Gas company, license required of; price of ..... Subd. 48, 4122
Gas-works, gross income of, subject to ..... Subd. 3, 3912
General assignment, in case of, taxes preferred claim 4116
Governor—
assessor may be suspended by, when 3953
tax-commissioner may be appointed by, when 3953
member of state board of assessment 3966
abstract of assessments, failure of probate judge to make, official report of
cause of, required by 3987
poll-tax, failure of probate judge to furnish to superintendent
of education, official report of cause of, required by, when ... 3988
tax-collector may be suspended from office by, when 4040
in case of suspension of, tax-commissioner appointed by 4040
lands bid in for taxes may be rented out by direction of 4081
sold at private sale on approval of, when 4100
erroneous sales, cancellation of, approval of, by, when 4106
probate judge, for failure of, to report licenses, etc., may be cited by, to
show cause, etc 4132
show sufficient cause for such failure, im-
peachment proceedings ordered by 4132
Grand jury, duty of, to compare reports of licenses with license-record, etc 4133
Guardian, property of ward must be listed by, for 3942
Household and kitchen furniture, articles and amount of, exempt from..Subd. 8, 3907
Impeachment, proceedings of, instituted against judge of probate, when 4132
Inhabitant, male, poll-tax collected from, when 3910

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Insane person and property to value of one thousand dollars exempt from— Subd. 5, 3907
Insolvent taxes. Errors and insolvent and litigated taxes, *see, supra.*
Insolvency, in case of, taxes preferred claim ... 4116
Insurance companies, gross premium, tax on, paid by, when ... 3917
failure to make returns of, and pay tax; penalty ... 3917
credit or deduction not allowed, for cost of reinsurance, etc ... 3917
foreign, when considered doing business, etc., subject to. 3918
Interest on taxes after becoming delinquent, how collected and reported ... 4008
rate of, in recovery against officer for failure of duty in proceedings to sell lands for taxes ... 4082
when plaintiff recovers purchase-money, taxes, etc., though cast in suit for land ... 4083
defendant recovers purchase-money, taxes, etc., though cast in suit for land ... 4084
on redemption of lands sold for taxes ... 4091
Judge of probate—
books and lists of assessment delivered to, when ... 3951
examined by; receipts for, when ... 3952
land-book delivered to, when ... 3960
receipt for, and fact certified to auditor by, when ... 3962
book of assessments, lists and poll-tax book delivered to commissioners' court by, when ... 3978
duty of, to see that notice is given of time for correction of errors in ... 3978
abstract of assessments, duty of, to make, for auditor and collector, when 3987
poll-tax, furnished superintendent of education and collector, by, when ... 3988
abstract-book to be prepared and furnished collector by, when ... 3989
compensation for; forfeited, when ... 3989
mortgages, abstract of, to be kept by ... 3990
to be certified and filed in office of assessor by, when ... 3990
the record or certified copy of, prima facie evidence, etc., in courts ... 3990
blanks, or blank books, for, furnished by auditor ... 3991
insurance agents, list of, furnished assessor by, when ... 3992
corporations, private, sale of shares in, for taxes, duty of, as to ... 4017
taxpayer about to remove from county, collection of taxes from, duty of, as to ... 4027
person who has removed from county, collection of taxes from, duty of, as to 4029
escaped taxes assessed and collected by collector reported to, when ... 4031
must be entered in book of assessments by ... 4031
abstract of must be furnished auditor by ... 4031
report, monthly, as to collections by collector, made to auditor by, when.. 4036
notice to person assessed, in proceedings to sell lands for taxes, issued by 4049
docket of lands, when to be prepared by ... 4048
lands, sale of, for taxes, attendance of, and record thereof, made by ... 4059
bid in for state by, when ... 4062
certificate of purchase for; contents; made to state by, when ... 4064
forbidden to purchase lands at tax sale; penalty, etc ... 4068
solicitor of circuit or county notified of appeal, etc., by, when ... 4069
fees for issuing notices, granting decrees for sale of lands for taxes, etc... 4071

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Judge of probate—*Continued.*
deeds to purchasers of lands at tax sale, duty of, to make and acknowledge; fee for 4074, 4075
lands bid in by state, assessment of taxes on, entered on record by 4077
suit by purchaser at tax sale, failure of, if by failure of duty of, liability for 4082
books of, relative to taxes, evidence of what 4088
redemption of lands, fee for, paid to 4091
application for, submitted to auditor by, when 4094
certificate of, issued by; contents; duty of, as to 4095
money paid for; where deposited, etc.; duty of, as to 4096
must be paid to state treasurer by, when 4097
commissions on, forfeiture of, when .. 4097
quarterly reports of, must be made by 4097
assessor and collector notified of, by; fees and costs due to assessor and collector paid on demand 4098
rents, purchaser not liable for, on; exception, when .. 4099
by former owner must be reported by 4101
sale of lands bid in by state must be entered in book of land sales by 4103
county taxes, fees, etc., how distributed by 4104
erroneous tax sale, cancellation of, when state purchaser, duty of, as to ... 4107
when purchaser is private person, duty of, as to 4108
application for, when made 4108
licenses, revenue, contents of, etc.; issued by, when 4125
fee for issuing 4125
stubs to, to be filled and signed by, before detaching, etc. 4130
record of, kept by; return of unused licenses and stubs by 4131
may be examined by auditor or agent at any time 4131
money received for, paid over promptly by, else no commissions .. 4132
commissions on 4132
quarterly reports of, to be made by; penalty 4132
impeachment proceedings may be ordered, when 4132
list of, issued furnished solicitor by, when 4134
Confederate soldiers and sailors, license to peddle may be issued to, without payment of money, when; proceedings ..... Note, p. 1139.
Judgment a lien on lands sold for taxes, when 4083, 4084
for cost in case of tender of redemption-money, etc., when 4087
Jury impaneled to ascertain amount of taxes, etc., for which land sold, when 4083, 4084
penalty against officer purchasing at tax sale, fixed by 4068
Justice of the peace, fees of, in garnishment for collection of taxes 4016
Land-book, assessor to prepare; compensation 3957, 3963
form of, and entries to be made 3958
assessor to deliver, to judge of probate, when 3960
Lands, assessor to list each year 3959
may be sold for taxes, when 4018
See, also, Sale of lands for taxes, *infra* 4018
Libraries of ministers of the gospel exempt from ..... Subd. 4, 3907
other than those of professional character ..... Subd. 4, 3907

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Licenses—
persons required to take out, and prices to be paid for 4122
price of; where population controls, what report governs ..... Subd. 58, 4122
for county purposes; how determined 4123
unlawful to engage in certain businesses without 4124
payment for; issue and contents of 4125
expiration of; time for which issued; exceptions 4126
steamboats, for selling liquor on; where issued 4127
retailers must post; penalty for failure 4128
forms of, prepared by auditor; blanks furnished probate judges 4129
stubs to be filled up and signed before detaching 4130
record of, kept by judge of probate; report and return of unused stubs and 4131
may be examined by auditor or agent at any time 4131
money for, to be promptly paid over, when, else no commissions 4132
quarterly reports of, by judge of probate; penalty for failure .. 4133
copies of, furnished solicitors by auditor, when 4134
list of, issued furnished solicitor by judge of probate, when 4134
money for, when refunded 4135
application for; how money refunded 4136
domestic corporations required to pay charter fees; amount 1287–1290
Lien, state and county, of, for taxes 3921
judgment on appeal is a, on lands, etc.; must be expressed in, etc 4069
of state and county passes when tax sale invalid 4078
when judgment is, on lands, though plaintiff cast in suit for 4083
defendant cast in suit for 4084
party redeeming lands sold for taxes has, on, when 4091
Literary and scientific institutions, property of, when, exempt from ... Subd. 3, 3907
Literary societies, property of, when, exempt from ..... Subd. 3, 3907
Meaning of words and phrases 3906
"Money" or "moneys," the term, meaning of ..... Subd. 3, 3906
Minors, insane or idiotic persons—
property of, listed by guardian for 3942
time in which, may bring suit for lands sold for taxes 4089
redeem lands sold for taxes 4090
not affected by sale, etc ... 4103
rents, entitled to, on redemption of lands, etc., when 4099
Misdemeanor—
judge of probate guilty of, for failure to keep, etc., abstract of mortgages .. 3990
Mistakes, correction of, by commissioners' court, etc., when 3979
Mortgages, abstract of, to be kept by probate judge; penalty 3990
certified and filed in office of assessor, when 3990
the record, or certified copy of, as evidence, etc 3990
blanks, or blank books for, furnished by auditor 3991
Municipal corporations, all property of, exempt from ..... Subd. 2, 3907
National banks, of property and shares of; return, how made, etc ..... Subd. 8, 3911
National Guard, Alabama, members of, exempt from poll-tax 2889
Non-residents, levy and sale of shares in private corporations, notice to; how given 4017
Notice of assessor's appointments; how given 3931
time for correction of errors in book of assessments, etc 3978
collector's appointments 4003
levy and sale of shares in private corporations 4017
proceedings to sell lands for taxes 4051, 4054
when land assessed to "owner unknown" 4052
sale of land for taxes 4057
personal property 4011

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Oath, assessor, of office of 3924
administered to taxpayer 3933
collector, of office of 3996
Penalties—
insurance companies, for failure of, to make returns and pay tax 3917
telephone companies, for failure of, to make returns, etc 3943
receipts, premiums or commissions, for failure to report 3944
against delinquent for failure to return list, etc 3945
railroad failing to make return, etc 3968
telegraph companies for failure to make returns, etc 3975
probate judge for failure to keep abstract, etc., of mortgages, etc.. 3990
officers, certain, for purchasing lands at tax sale 4068
failing to pay over money collected 4121
retailers of liquors, etc., for failure to post license 4128
judge of probate for failure to make quarterly reports of revenue licenses issued 4132
"Person," or "party," the word, meaning of ..... Subd. 5, 3906
"Personal property," the term, meaning of ..... Subd. 2, 3906
sale of, by collector; not subject to redemption 4011
proceeds of, application of 4012
none exempt from sale for taxes 4013
Pleadings; statement of claim under tax title, what necessary 4086
Poll-tax—
general assembly may levy..Const., Art. XI., §1, p. 94; Art. XIII., §4, p. 97.
persons permanently disabled, whose taxable property does not exceed five hundred dollars, exempt from ..... Subd. 6, 3907
who liable for 3910
collector must report and pay into state treasury monthly 4033
make report to state and county superintendents of education 4033
keep separate account of, paid by each race, etc 4032
make annual consolidated report to state and county superintendents of education 4034
Poll-tax book—
assessor to prepare; what must contain 3950
deliver to judge of probate, when 3951
certificate to, to be made by presiding officer of commissioners' court, when 3986
warrant to collector to collect, etc 3986
abstract of, made by judge of probate for auditor and collector, when 3987
Portraits, all family, exempt from ..... Subd. 7, 3907
Privilege tax, telegraph companies to pay, when 3913
express companies to pay, when 3914
sleeping-car companies to pay, when 3915
building and loan associations to pay, when 3916
Probate court—
lands, sale of, for taxes, jurisdiction of, to order, when 4046
notices to persons assessed, form of; by whom issued 4049
service of, how made and returned 4050
by publication or posting, when given 4051, 4054
when lands assessed to "owner unknown," form of; how given 4052
new, when to issue 4054
publication of, rate, etc.; governed by what provisions 4053
trial-term; when notice not served in time; continuances 4053
collector to attend with his books 4055
books of, effect of, as evidence 4055

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Probate court—*Continued.*
decree of sale, form of; rendered, when 4056
sales under, notice of, etc 4057
appeal from, proceedings thereon 4069
judgment on, disposition of money collected on 4070
fees for issuing notices, granting decrees, etc 4071
Property, what, exempt from 3907
brought into state, when subject to 3920
lien of state and county on, for taxes 3921
by whom, should be listed 3942
valuation of, intent and purpose of provisions relative to 3982
none exempt from sale for taxes 4013
Purchase-money, excess of, from tax sales, how disposed of 4012, 4072
may be paid to owner within five years, how 4073
Purchasers of lands at tax sale, rights and remedies of—
lien of state and county, when sale invalid, passes to 4078
lands sold not liable for taxes, officer and sureties liable for neglect, etc., to 4079
assessor and collector, liability of, to, for failure of title attributable to negligence, etc 4080
liability of, to collector, when 4080
ejectment or unlawful detainer may be brought by state or, when 4081
on recovery by, lands held subject to redemption, etc 4081
officers, liability of, when suit by, defeated by reason of failure of duty on their part 4082
plaintiff recovers purchase-money, etc., when, though cast in suit for lands 4083
defendant entitled to judgment for taxes, etc., when, though cast in suit for lands 4084
tender by party claiming adversely to tax title, effect of 4085
claim under tax title, statement of, made in pleadings 4086
redemption or tender in suit by party claiming under tax title, effect of ... 4087
books, etc., of judge of probate and tax-collector, effect of, as evidence 4088
statute of limitations as to actions for recovery of lands sold for taxes; what exceptions 4089
rents, purchasers not liable for, on redemption of lands, etc.; exception 4099
Railroads, property of, subject to ..... Subd. 12, 3911
principles of valuation of 3972
returns of, made to auditor, when 3964
failure to make; duty of auditor 3965
penalty for 3968
Rate of, and subjects of 3911
other subjects of 3912
Real estate—
how may be described 3941
may be sold for taxes, when 4018
collector, failure of, to exhaust personal property shall not invalidate sale of 4018
how offered for sale; minimum price 4060
when bid in for state 4062
may be redeemed 4090
See, also, Sale of lands for taxes, *infra* 4018
"Real property," the term, meaning of ..... Subd. 1, 3906
Receipts, gross or net, agent liable for taxes on, when 4118
failure of person, company or corporation to return; penalty 3944
Receivers must list property in their custody for 3942

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Redemption of lands sold for taxes—
persons entitled to, and time allowed for 4090
mode and terms of 4091
of distinct lot or parcel separately, when; by whom 4092
application for, contents of; with whom filed 4093
of separate lot or parcel, submitted to auditor, when 4094
certificate of, and of release; by whom and when issued 4095
money paid for; where deposited; how paid over 4096
rents, purchaser not liable for, on, when; exception 4099
lands bid in by state, former owner of, notified and allowed to redeem, when 4101
purchaser of, deed to, made by auditor; rights under 4102
sale of, certified by auditor to judge of probate 4103
description of lands sold furnished assessor 4103
failure to redeem, effect of 4105
Rent—
purchaser not liable for, on redemption of lands sold for taxes; exception .. 4099
lands bid in by state for taxes may be let to, when 4081
Retailers of liquors, license of, posted near bar, etc.; penalty for failure 4128
Sale of lands for taxes—
when may be had 4018
probate court, jurisdiction of, to order 4046
docket of lands made by collector; what must contain 4047
preparation of; time of delivery; effect of failure to deliver 4048
notices to persons assessed; form of; by whom issued 4049
service of, how made and returned 4050
by publication or posting, when 4051
when lands assessed to "owner unknown," form of; how given 4052
new, when to issue 4054
trial-term; when notice not served in time; continuances 4054
time and place of, judge of probate must attend and make record of, etc .. 4059
how offered; minimum price 4060
second sale of, on failure of bidder to pay, when 4061
bid in for state by judge of probate, when 4062
certificate of purchase; contents; by and to whom issued 4063
made to state; by whom; when 4064
assignable by indorsement, etc 4067
officers, what, forbidden to purchase at; penalty; sale void, etc 4068
purchase-money, disposition of 4072
when excess of, paid to owner; how 4073
Schools, public, property of, exempt from ..... Subd. 2, 3907
poll-tax applied in aid of 3910
Secretary of state member of state board of assessment 3966
Sheriffs, fees of, in garnishments for collection of taxes 4016
proceedings to sell lands for taxes 4071
selling property under decree or process to first pay taxes 4117
Sleeping-car companies—
privilege tax, to pay, when; penalty 3915
real estate, fixtures and other property subject to 3915
Solicitor of circuit or county, state represented by, when 4069
revenue license, report of, laid before grand jury by, when 4133, 4134
Special taxes, receipts for; what must specify 4042
how kept and paid over by collector 4043
disbursed by county treasurer 4044
account of, closed by county treasurer 4045
county may levy, for building or repairing court-house or jail; how paid 1408–1410

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

State—
bonds, and all property of, exempt from.....Subd. 2, 3907
prior lien, has, on property for taxes..... 3921
lien of, passes to purchaser at tax sale, when, etc..... 4078
not lost by reason of appeal, etc..... 4069
lands bid in for taxes by, suit to recover possession of, may be brought in name of..... 4081
when recovered stand subject to sale or may be rented if governor directs..... 4081
description of, with taxes due, etc., prepared by auditor..... 4100
failure to redeem, effect of..... 4105
State board of assessment—
who compose..... 3966
meetings of..... 3967
duties of; may add penalty..... 3968
adjournment of; powers relative to obtaining data, etc..... 3969
attorney-general, duty of, to attend meetings of..... 3970
record of proceedings kept by..... 3971
railroad property, principles of valuation of..... 3972
assessment of, when, completed by, auditor to notify assessors, etc..... 3973
copy of, sent to railroad company..... 3973
telegraph property, assessment of, by..... 3975
when, completed by, auditor to notify assessors, etc..... 3975
copy of, sent to telegraph company..... 3975
State taxes, exemptions from.....3907–3909
cotton-factories exempt from, when.....Note, pp. 1071, 1072.
State treasurer—
member of state board of assessment..... 3966
sale of lands bid in by state for taxes, price of, ascertained by, when..... 4100
collector to pay taxes to.....4035, 4038
erroneous tax sales, cancellation of, when state purchaser; warrant paid by 4106
purchaser private person; warrant paid by..... 4108
Stationery, printing, etc., assessor and collector may contract for, when..... 4120
Statute of limitations—
when actions for recovery of lands sold for taxes must be brought..... 4089
against officers for failure of duty in proceedings to sell lands for taxes..... 4082
Steamboats, vessels and water-craft subject to.....Subd. 3, 3911
tax on, where assessed and collected.....Subd. 3, 3911
license to sell liquor on, where issued..... 4127
Stub-book or book of receipts must be kept by collector..... 4010
production of, may be compelled by commissioners' court..... 4010
receipts given to taxpayers must be taken from 4010
Suits, time in which, must be brought against officer for failure of duty in proceedings to sell lands for taxes..... 4082
to recover lands sold for taxes, within what time brought..... 4089
by and against purchasers at tax sale, etc.....4078–4088
limitation of..... 4089
Superintendent of education—
abstract of poll-tax, failure of probate judge to furnish, reported by..... 3988

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Taxes—
poll-tax, general assembly may levy—
Const., Art. XI., §1, p. 94; Art. XIII., §4, p. 97; 3910
subjects, and rate of ... 3911
other subjects, and rate of ... 3912
privilege, paid by telegraph companies, when ... 3913
express companies, when ... 3914
sleeping-car companies, when ... 3915
building and loan associations, when ... 3916
gross premiums, on, paid by insurance companies, when ... 3917
foreign insurance companies doing business in, etc., subject to ... 3918
become due, when; delinquent, when ... 3919
property brought into state, when subject to ... 3920
prior lien of state and county for ... 3921
of county levied by commissioners' court ... 3985
payment of, by taxpayer ... 4007
escaped, assessed by assessor, when ... 3947
collector, when ... 4030
are a preferred claim in case of general assignment, insolvency of estate, etc. 4116
officer selling property under decree or process to first pay ... 4117
Tax certificate assignable ... 4067
Tax commissioner appointed by governor in case of suspension of collector ... 4040
Tax fieri facias—
in proceedings to subject shares in private corporations to levy and sale ... 4017
when taxpayer about to remove from county, how obtained ... 4027
has removed from county, how obtained ... 4029
Taxpayer, duty of, to attend appointment and return list of property ... 3932
oath administered to ... 3933
interrogated as to items and details of property ... 3934
failing to meet assessor, demand on ... 3935
to furnish full statement of subjects of taxation ... 3936
sworn list may be sent in by another person, when ... 3937
fee to collector, when, relieved from payment of ... 4004
duty of, as to payment of taxes ... 4007
entitled to receipt from collector ... 4009
about to remove from county, duty of collector and probate judge as to 4027
general assignment by, taxes preferred claim in ... 4116
Telegraph companies, privilege tax, to pay, when ... 3913
property of, returns of, made to auditor, when ... 3974
Telephone companies—
president, secretary, or manager of, must make returns of property and receipt for ... 3943
failure to make; penalty added, etc. 3943
Tender by party claiming adversely to tax title, effect of ... 4085
entitled to redeem lands sold for taxes, effect of ... 4087
Time of paying taxes ... 4007
in which suits must be brought against officers for failure of duty in tax matters ... 4082
application filed to cancel tax sale when state is purchaser ... 4106
when purchaser is private person ... 4108
when revenue licenses expire ... 4126
United States, all property of, exempt from ... Subd. 1, 3907
bonds, all, of, exempt from ... Subd. 2, 3907
Valuation of property, assessor must fix ... 3939
how estimated by ... 3940
intent and purpose of provisions relative to ... 3982
may be lowered or raised by commissioners' court, when 3979

TAXATION—*Continued.* SECTION

Statutory provisions—*Continued.*

Wife, property of, must be listed by husband for 3942
Water companies subject to ..... Subd. 10, 3911
Words and phrases, meaning of 3906

TAX-ASSESSOR.

See TAXATION, subtitle Assessor.

TAX-COLLECTOR.

See TAXATION, subtitle Collector.

TEACHERS.

Alcoholic drinks and narcotics, must instruct as to effects of, upon human system 3578
Applicants for license; examination of, by board; how conducted 3585
upon what branches and subjects examined 3577
must answer correctly at least seventy per cent. of questions 3577
examined as to nature and effects of alcoholic drinks, etc 3577
upon constitutions, state and federal 3577
must be of good moral character 3585
fee for examination, when required of 3585
Attendance, daily, register of, to be kept by 3572, 3580
Cancellation of license by board; causes for 3588
Certificates of qualification; three grades 3576
how long valid 3579
Constitutions, state and federal, to be taught in schools ..... Subd. 4, 3546; 3577
Contracts with, not to be for less than three months 3568
to be executed in duplicate 3569
not valid until approved in writing by county superintendent 3569
trustees may terminate, when 3571
Diploma, effect of, from chartered institution of learning in this state 3585
from normal school, effect of 3586
Employing, to what regard must be had in 3567
rules in reference to 3568
Examination, license and registry prerequisites to employment 3589
Institutes, duty of board of education to organize 3590
officers and members of; no fee imposed without consent 3591
meetings; address; attendance 3592
devoted mainly to consideration of methods, discipline, etc 3593
License may be canceled by board for intemperance or disgraceful conduct 3588
Normal-school graduates holding state certificates exempt from examination, fee, etc 3586
Paid, to be, quarterly 3582
monthly, when; duty of county superintendent 3614
Pay-roll, must receipt both copies of 3612
Physiology and hygiene to be taught in schools ..... Subd. 3, 3546; 3578
Pupils, transferred, contract for 3569
must keep register of daily attendance of 3572, 3580
minimum and maximum numbers of, to each teacher 3568
Removal of, by trustees; payment for time taught 3571
Reports, must make quarterly to county superintendent; contents 3581
failure to make, forfeits compensation 3581

TELEGRAPH COMPANIES.

Cannot consolidate with or hold controlling interest in stock or bonds of other competing telegraph company ..... Const., Art. XIV., §11, p. 101.

TELEGRAPH COMPANIES—*Continued.* SECTION

Cannot acquire by purchase or otherwise any other competing line.....Ib.
Foreign companies may acquire easement in this state for extending lines..... 1723
Power to contract for easement; right of way.....1245, 1246
Private or public roads, duty as to, and liability for wires falling on.....2488, 2489
Right of way along railroads and public highways granted.....1244, 2490
to construct lines, and to connect same with other lines—
Const., Art. XIV., §11, p. 101.
Taxation, return and assessment of property for.....3966–3976
privilege tax, to pay to state treasurer..... 3913

TELEPHONE COMPANIES.

Taxes on gross receipts of.....Subd. 3, 3912

TENANT.

Attornment of, not essential to validity of conveyance by landlord..... 1019
But no tenant who has paid his rent without notice is liable therefor..... 1019
Damages for detention by, after expiration of term..... 2137
Ejectment against; landlord made party defendant on motion..... 1534
liable only for rent in arrear..... 1535
In chief, when subtenant may require attachment against; effect of failure to attach..... 2714
possession under lease or license from another; liability for rent..... 1535
Notice to, by redemptioner dispenses with attornment and vests right to possession..... 3506
Protection of, having crop planted on lands decreed to be sold in equity..... 850
Provisions of article apply to, and subtenant..... 2715
Subtenant, when attachment may be levied on crop of; vacation of such levy.. 2713
may require attachment against tenant in chief, when; effect of failure to attach..... 2714
Unlawful detainer; proceedings in.....2124–2149
See, also, LANDLORD AND TENANT.....2703–2722

TENANT FOR LIFE.

Conveyances of greater estate by, or years, passes his estate..... 1038
General and beneficial power to devise given to, or years, deemed absolute.... 1049
Warranties by, void against remainder-men, etc..... 1034
Tax sale and conveyance against, does not convey interest of remainder-man.. 4090

TENANTS IN COMMON.

Crops, partition of. See PARTITION.....3188–3206
Heirs take as..... 1461
Lease of mineral lands of ward held in common with adults..... 2295
Lien of one, on the other's part of crop; proceedings to enforce.....2760, 2761
Partition or sale for division of property generally of. See PARTITION.....3161–3187
Survivorship abolished; interest descends as if severed..... 1033
When estate of minors holding as, may be kept together..... 2300

TENDER.

Action for defamation, effect of recantation and tender in..... 1442
tender received in..... 1443
By party claiming adversely to tax title, and effect thereof.....4085, 4087
On redemption of lands sold under decree, etc.....3507–3513
Plea of, what essential to..... 3298
form of.....No. 36, p. 949; 3353
Property destroyed, when tender of, may be made by obligors in replevy bond; remedy when refused.....557, 1919

TENNESSEE.

Boundary line between, and Alabama..... 623

SECTION

TENPINS.
License required for alley; price of.....Subd. 8, 4122

TIE VOTE.
Alabama National Guard, in election of field-officers of, brigadier-general gives casting vote..... 2871
Decided by general assembly, when..... 1651
governor, when..... 1656
secretary of state, when..... 1652
sheriff, when..... 1652
In contested election, fact of, to whom certified..... 1700

TESTIMONY.
Evidence, *see*..... 1792–1875
See, also, CHANCERY, subtitle Evidence.

THEATRE.
License required for; price of.....Subd. 15, 4122
Owner or manager holding license must assign particular seat to each person admitted.....Subd. 15, 4122

TIMBER.
Booms and bulkheads, lien on timber for use of; how enforced; fees, etc..2784–2787
Court in which suit to be brought for damages for cutting down, etc..... 4140
Cypress and other trees of another, damages for cutting down, etc..... 4137
Fruit or ornamental trees, etc., of another, damages for cutting down, etc.... 4139
Lien for stumpage; how enforced.....2780–2783
on timber for use of booms and bulkheads; how enforced.....2784–2787
Limitation of action for damages for cutting down, etc.; to what no bar..... 4140
Owner of trees owner of land within meaning of section..... 4138
School lands, timber lots reserved on..... 3626
how used..... 3631
penalty for injury to timber on.....3632, 3633
Stumpage, lien for; how enforced.....2780–2783
Taxation of interest in, when owned by person other than owner of soil..Subd. 1, 3911

TIME.
Chancery, how computed under rules of practice in.....Ch. R. 119, p. 1228.
Fiscal year ends on thirtieth of September..... 2011
How computed when act required to be done in given time..... 11
Meaning of "month" and "year"..... 8
Scholastic periods..... 3598
Within which actions to be brought. See LIMITATION OF ACTIONS.....2793–2824

TITLE.
Abstract of, right to demand, in ejectment; effect of..... 1531
County, deeds to officer or person for use of, vests title in..... 1401
Deceased partner, interest of, in lands vested by conveyance of personal representative..... 198
Forcible entry or unlawful detainer, not in issue in..... 2135
how put in issue and tried in.....2147–2149
Mortgage debt, payment of, revests..... 1067
Of nobility prohibited.....Const., Art. I., §30, p. 67.
lands purchased for ward by guardian to be conveyed to ward..... 2306
Partition in probate court, title vested on..... 3171
final decree of, in equity vests title..... 860
School lands sold, when title to revests..... 3649
Tender, on redemption, revests title in debtor, when..... 3507
vests title in judgment creditor, when..... 3510
Vendor, on death of, how perfected.....1069–1072

TOLLS.

SECTION

Bridges, public, ferries, etc., to keepers of....2501, 2509
Macadamized, turnpike and other toll-road companies, to keepers of..1222–1225, 1231
Millers, to....1747, 2897
Navigable waters free to citizens without toll....Const., Art. I., §25, p. 66.
when not to be demanded for use of wharf on or shores of..Ib.
Riparian owner, to.... 2514
Toll-road companies, to....1222–1225, 1231

TOLL-BRIDGES.

See HIGHWAYS, subtitle Bridges, causeways and ferries....2498–2514

TOLL-ROAD COMPANIES.

See CORPORATIONS, subtitle Macadamized, turnpike, etc., companies....1205–1243

TOOLS.

Farming, to value of twenty-five dollars, exempt from taxation....Subd. 8, 3907
Mechanics', to value of twenty-five dollars, exempt from taxation....Subd. 8, 3907

TORTS.

Liability of husband and wife for those of wife.... 2525
Rule for recovery of costs in actions for, when verdict is for less than twenty dollars.... 1326

TOWNS.

Municipal corporations, *see*....2937–2973

TOWNSHIP.

See SCHOOLS, subtitle Township corporations.... 3624

TOWNSHIP TRUSTEES.

See SCHOOLS, subtitle Township trustees....3560–3575

TRACT-BOOK.

Duty of secretary of state in reference to....Subds. 13–15, 1974

TRADE AND COMMERCE.

As between individuals; choses in action....869–896
collateral securities and pledges....946–950
fraudulent and void contracts....2150–2170
interest....2626–2632
limited partnership....3207–3231
pawnbrokers....3242–3247
Public regulations; change-bills and banking....866–868
insurance....2575–2625
notaries....3021–3033
railroads....3440–3480
storage and sale of cotton....1389–1395
warehousemen and common carriers....4218–4229
weights and measures....4230–4240

TRANSCRIPT.

Abridgment of, on appeal....S. C. R. 31, p. 1192.
Acts of congress, of, or statutes of any other state or territory, certified by secretary of state as evidence.... 1821
Books or papers in office of any public officer as evidence.... 1816
no objection to such, that book from which taken is copy of books belonging to United States.... 1816
of, and records of superintendent of education prima facie evidence, etc. 3807
Clerk of supreme court furnishes samples of paper for....S. C. R. 34, p. 1192.
circuit court, liability of, for defects in, and delay in furnishing..... 453

SECTION

TRANSCRIPT—*Continued.*
Conveyances, of record of, as evidence, when 992
Forthcoming bond, of record of, given on partial distribution of estate, etc., as evidence 273
evidence of value of property received in action on 275
Judge of probate, liability of, for defects in, and delay in furnishing 453
Mode of preparing, on appeal ..... S. C. R. 29, p. 1191.
Not received unless conforms to rules ..... Ib. 34, p. 1192.
Paper for ..... S. C. R. 26, p. 1191.
Papers to be omitted from ..... Ib. 30, p. 1192.
Personal representative, of letters and bonds of, as evidence 79
Register in chancery, liability of, for defects in, and delay in furnishing 453
Seal to, how placed; papers otherwise attached not part of .. S. C. R. 32, p. 1192.
Superintendent of education, of books and records of, prima facie evidence, etc. 3807
What must contain ..... S. C. R. 33, p. 1192; Ch. R. 85, p. 1220.

TREASON.
Consists in what; testimony necessary to conviction .. Const., Art. I., §19, p. 64.
No person shall be attainted of, by general assembly ..... Ib.

TREASURER.
County treasurer, *see* 1426–1436
State treasurer, *see* 2013–2026

TREES.
Court in which suit to be brought for damages for cutting down, etc 4140
Cypress and other trees of another, damages for cutting down, etc 4137
Fruit or ornamental trees, etc., of another, damages for cutting down, etc 4139
Limitation of action for damages for cutting down, etc.; to what no bar 4140
Owner of trees owner of land within meaning of section 4138
School lands, timber lots reserved on 3626
how used 3631
penalty for injury to timber on 3632, 3633
Stumpage, lien for; how enforced 2780–2783
Taxation of interest in, when owned by person other than owner of soil— Subd. 1, 3911

TRESPASS.
County superintendent must bring suits against trespassers on school lands ... 3556
Damages for stock trespassing within lawful inclosure 2115
viewers of fence appointed; effect of report as evidence 2116
assessment of, by viewers 2117
Form of complaint in action for trespass in taking goods ..... No. 23, p. 947; 3352
to land ..... No. 26, p. 948; 3352
4205
Lands, venue of action for trespass to 4205
school, duty of county superintendent to bring suits against trespassers on 3556
Limitation of actions for ..... Subd. 2, 2796
Owner of trespassing animal not liable for injury done, when 2113
tender of damages by; effect as to costs 1327
Trover, trespass and case may be joined, when 3293

TRIAL.
Pleading and practice, *see* 3307–3334

TRIAL OF RIGHT OF PROPERTY.
Affidavit and bond by claimant 4141
contents of 4141
may be taken by levying officer 4141

TRIAL OF RIGHT OF PROPERTY—*Continued.* SECTION

Attachment, personalty levied on under, or execution, stranger authorized to interpose claim to 4141
forfeiture of claim bond in attachment cases, and execution thereon 4144
judgment in, suspended until trial of collateral issues 567
when property condemned in, restored to claimant 568
Bond for; amount, penalty, condition, approval, etc 4141
on appeal by claimant 444
damages and judgment against, on affirmance 479
Chancery court, return and proceedings when execution issued from, or probate court 4146
of execution on bond, when original execution issued from, or probate court 4147
Claimant, property delivered to, on making affidavit and executing bond 4141
Claim bond, forfeiture of; indorsement and execution thereon 4144
proceedings on forfeiture of, when property levied on under execution from another county 4149
Damages for delay; value of property assessed 4143
against sheriff released by claim 4151
on appeal when judgment by claimant is affirmed 479
Equitable title or lien will sustain claim 4141
Execution, personalty levied on under, or attachment, stranger authorized to interpose claim to 4141
return and proceedings when, issued from probate or chancery court 4146
of execution on bond, when original execution issued from probate or chancery court 4147
proceedings when property levied on under execution from another county 4148
Issue made up between parties; burden of proof 4142
Judgment in attachment suspended until trial of collateral issues 567
Justices, before; how instituted 4141
equitable title or lien will support 4141
bond and affidavit returned; issue and burden of proof 4142
assessment of value of property, and damages for delay 4143
forfeiture of claim bond, and proceedings thereon 4144
pay of jurors 1382
Levy on other property not prevented by interposition of claim 4150
Mortgagee, or lien-holder, claim by; affidavit must state nature of right claimed 4145
plaintiff may pay secured debt, etc 4145
Probate court, return and proceedings when execution issued from, or chancery court 4146
of execution on bond, when original execution issued from, or chancery court 4147
Return of papers; issue made up between parties; burden of proof 4142
Sheriff, damages against, released by claim 4151
Value of property assessed; damages for delay 4143

TROVER.

Form of complaint in ..... No. 24, p. 947; 3352
Limitation of actions of ..... Subd. 3, 2796
May be joined with trespass and case, when 3293

TRUSTS AND TRUSTEES.

General provisions.

Attached, money in hands of trustee may be 2181
By whom trust property listed for taxation 3942

TRUSTS AND TRUSTEES—*Continued.* SECTION

General provisions—*Continued.*

Certain trusts may be created vesting legal title in trustee 1028
Claim by trustee against county; how verified 1418
insolvent estate; how verified 306
Conveyance of personal property in trust for grantor void as to creditors 2151
Creditor's bill in equity 814–823
Distribution or apportionment by trustee cannot be impeached on ground that it is unsubstantial, etc 1055
Division of fund on death of trustee having a discretion 1056
Entries made by deceased trustee as evidence 1809
Insolvent estate, claim by trustee against; how verified 306
Intemperate persons, appointment of and duties of trustee on proceedings to protect estates of 837–843
Money in hands of trustee may be attached 2181
On death of trustee, estate not to pass to his heirs or personal representative .. 1044
Powers, *see* 1040–1063
Record of declaration of trust; notice 1043
Responsibility of payer for money paid to trustee 1039
Trusts for accumulation merely; limitation upon extent 1031
in lands, requisites to 1041
void as to parties without notice, when 1042
certain, may be created vesting legal title in trustee 1028
Use, no, or trust to be declared in land for mere benefit of third persons; legal estate vested in trustee 1027

Express trusts for payment or security of debts.

Account by trustee—
trustee must render in three months, and every six months after 4167
day appointed for settlement; notice, how given 4168
hearing and passing upon debits and credits 4169
stated and passed and distribution made as in insolvent estates 4169
allowance to trustee for expenses and commissions 4169
counsel preparing deed of assignment 4169
discharge of liens and prior claims 4169
provision for contested and undecided claims 4169
decree by register for each creditor's share; execution 4169
Administered, on petition, in chancery when over one thousand dollars in value 4158
Advertisement by register of time fixed for filing claims 4160
trustee of sale of real estate 4172
Appeal lies from decision of register to chancellor 4170
heard in term time or vacation on ten days' notice 4170
without any presumption in favor of register's decision 4170
lies from decision of chancellor to supreme court in thirty days 4170
Application to require trustee to give bond; contents; notice 4153
hearing of; when bond required; order by register 4154
Appraisers, appointment of; qualification; duties 4157
report of, to register; fees of, taxed as costs 4157
Bond; when required of trustee; proceedings 4152–4154
failure to give as required; successor appointed 4155
execution against sureties on, when may issue 4169
Claims, docket of, to be kept by register; form and contents 4162
register must give notice to creditors of time fixed for filing 4160
how notice given; form 4160
must be presented within time prescribed 4161
verified as required by section 133 4161
duly filed, and not objected to, stand allowed 4163

TRUSTS AND TRUSTEES—*Continued.* SECTION

Express trusts for payment or security of debts—*Continued.*

Claims not presented in time postponed until allowed claims paid 4161
objection to; when and by whom may be filed 4164
register must fix time for hearing and give notice 4165
heard before register; testimony; order 4166
Commissions to trustee or assignee 4169
Compromise or sale of bad and doubtful debts 4171
Deed of assignment must be filed and recorded in office of judge of probate 1004
operates from date of delivery to judge 1004
reasonable charge for preparation of, allowed, when 4169
Dividends to be made and decreed, when 4169
Docket of claims to be kept by register; form and contents 4162
Evidence in proceedings before register to be noted 4170
Exception to action of register; review by chancellor 4170
General assignment; what instruments and acts amount to 2158
Inventory; two copies to be made by trustee and filed with register 4156
one copy to be attached to commission to appraisers 4157
preserved but not recorded 4157
and combined appraisement to be recorded 4157
Lands may be sold by trustee; notice to creditors 4172
Objections to creditor's claim—
when and by whom may be filed in writing 4164
register must fix time for hearing and give notice to creditor 4165
hear and note testimony and pass upon claim 4166
exception; review by chancellor; appeal to supreme court 4170
Petition to have trust administered in chancery; jurisdictional amount 4158
who may file; where filed; contents 4158
submitted to chancellor with inventory and appraisement 4159
time fixed by chancellor for filing claims 4159
Powers of sale in deed of assignment exercised by assignee 4172
Settlements, trustee to make, when 4167
compelled by citation 4173
removed for failure, when 4173
Taxes a preferred claim; to be paid from first money received 4116
Testimony on hearing before register to be noted 4170
Trustee required to give bond, when; removed for failure 4152–4155
to make and file duplicate inventory of trust property 4156
may file petition to have trust administered 4158
must render accounts to register, when 4167
sale of real estate by; notice 4172
settlements by; when and how compelled 4173

Investment, removal and liability of trust estates.

Investment by trustee without the state, when 4175
petition for authority for; contents of; where filed 4176
hearing of; notice of; how given 4177
decree on 4178
may be made by trustee in state or United States securities 4174
Liability of trust estate 4183
petition to enforce; who may file; where filed 4184
decree on; costs, etc 4185
if suit for admininistration pending, must be filed therein 4186
real estate to be charged, heirs or devisees must be made parties defendant to 4187
Removal of trust estate to another state 4179
petition for; contents of; who may file 4180
hearing of; notice; how given 4181
decree on 4182

TRUSTS AND TRUSTEES—*Continued.* SECTION

Resignation, appointment and removal of trustees.

Appointment of trustee to receive property, etc., and remove it to this state, when 4200
application for, by whom and where filed 4200
day appointed for hearing; notice given by register 4201
trustee appointed by register, when 4202
bond must be given by 4203
fees of register; by whom paid; how refunded 4204
Guardian ad litem must be appointed for minors in proceedings to appoint trustee 4195
On death of trustee, register appoints another; bond in such case; exception. 4193
notice of application; how given 4194
representative of deceased trustee to settle with succeeding trustee 4196
Refusal, on, of trustee to accept trust, register appoints another on application, etc 4199
notice of application; how given 4199
Removal of trustee by chancery court, when; causes of; petition for 4197
new trustee appointed by the court in such case 4198
Resignation of trustee of express trust by application to register 4188
notice of application by advertisement 4189
trustee must render a full account and pay over to parties entitled 4190
accounts not conclusive; payments valid 4191
if, granted register appoints new trustee; bond required of, when 4192

TURNIPS.
Weight, fifty-five pounds per bushel 4240

TURNPIKE.
Pay of jurors for condemning lands for 1384
Subject to taxation ..... Subd. 2, 3911

TURNPIKE COMPANIES.
Must not pay out change-bills 867
See, also, CORPORATIONS, subtitle Macadamized, turnpike and other toll-road companies 1205–1243

UNDERTAKING.
Without seal sufficient when bond required 9

UNITED STATES.
Cessions to 626–629
Constitution of 6–26
index to 27–59
Meaning of the words "United States" as used in Code 7

UNIVERSITY OF ALABAMA.

Constitutional provisions.

Governor is ex officio president, and superintendent of education ex officio member of board of trustees ..... Const., Art. XIII., §9, p. 98.
Trustees, to be under management and control of board of ..... Ib.
appointment, term and classification of ..... Ib.
prohibited from receiving any pay or emoluments other than actual expenses ..... Ib.
Vote required for change of location of ..... Const., Art. XIII., §10, p. 99.

UNIVERSITY OF ALABAMA—*Continued.* SECTION

Statutory provisions.

Board of trustees, powers of; no exclusion of any suitable person from benefits of "University fund," etc. 3673
quorum of; president pro tem. 3676
time and place of meetings of. 3677
proceedings of, to be recorded. 3678
employment of secretary; compensation of; how paid. 3678
pay of members and incidental expenses of; how paid. 3678
report by, to general assembly. 3679
Books and accounts of, subject to examination by examiner of public accounts, when. 1876
Classification of trustees; term and oath of office. 3674
Corporation, general powers, duties and liabilities of. 3668
power of holding and disposing of property. 3669
rights, etc., of former corporation vested in. 3672
Distribution of acts and resolutions, public documents and Code to..1984, 1988, 3684
Faith and credit of state pledged to payment of interest on "University fund" 3670
General assembly, right reserved to, to revise or amend, etc. 3682
report of board of trustees to. 3679
Gift or grant to, when not affected; what not a forfeiture. 3671
Incorporation of. 3667
Interest on "University fund"; how payable. 3681
faith and credit of state pledged for payment of 3670
Law department of, to receive second-hand law-books from state library. 3683
be furnished with three copies of Code. 3684
two copies of Acts. 1984
graduates of, entitled to license to practice law—
S. C. R. 23, p. 1190.
Police officers, president authorized to appoint or employ, for grounds of, etc.. 3685
powers and duties of. 3685
Public documents, distribution of, to. 1988
Pupils appointed free of charge for tuition, three from each county; by whom appointed. 3680
Rights, etc., of former corporation vested in. 3672
Trustees, powers of board of. 3673
no exclusion of any suitable person from benefit of "University fund," etc. 3673
classification of. 3674
term of office of. 3674
oath of office of; by whom administered. 3674
vacancy in office of trustee, how filled; term of appointee. 3675
"University fund" defined. 3670
faith and credit of state pledged for payment of interest on 3670
no exclusion of any suitable person from benefits of. 3673
interest on; how payable. 3681
Vacancy in office of trustee; how filled; term of appointee. 3675

UNIONTOWN.

Branch agricultural station at. 399

UNLAWFUL DETAINER.

Forcible entry and unlawful detainer, *see*. 2124-2149

UNSOUND MIND.

Appointment of guardians of persons of unsound mind. See GUARDIAN AND WARD. 2255-2271
Meaning of term "person of unsound mind". 2271
The terms "lunatic," "insane" or "non compos mentis" include all persons of.. 1

USES. SECTION
Conveyances of personal property in trust for use of grantor void as to creditors 2150
No use or trust to be declared in land for mere benefit of third persons..... 1027

USE AND OCCUPATION.
Action for, sustained, when..... 2722
Damages for, must be computed to time of verdict..... 1555
Form of complaint in actions for.....No. 31, p. 949; 3352
Limitation of actions for.....Subd. 6, 2796

USURPATION.
Actions for, of office or franchise. See QUO WARRANTO.....3420–3439

USURY.
Building and loan associations, provisions as to interest on loans, etc.....1133, 1134
Contracts, what are usurious, at law and in equity..... 2630
such, cannot be enforced except as to principal..... 2630
interest paid on, deducted from principal; judgment for balance only..... 2630
Costs, defendant proving usury recovers..... 1328
Form of plea of.....No. 38, p. 950; 3353
Proof of, by personal representative of borrower..... 1798
Recovery back of, by suit brought within twelve months after completed payment..... 2630

VACANCY IN OFFICE.
Alabama National Guard, of; how filled..... 2871
County treasurer, of, filled by court of county commissioners..... 1427
State and county officers filled by governor unless otherwise provided..... 3061

VENDITIONI EXPONAS.
Attachment cases, in..... 570
on levy on land of, returnable before justice..... 574
Clerk, when, must issue on return of execution..... 1913
Execution, on levy of, on land issued by justice of the peace..... 1950
when clerk must issue on return of..... 1913
Form of writ of..... 1913
Mechanics' liens, to enforce judgments establishing..... 2741

VENDOR'S LIEN.
Homestead exemption, not affected by..... 2035
Land, sale of, when garnishee answers indebtedness for purchase-money..... 2212
Purchase-money of land, lien passes on transfer of note given for..... 878
sale of land when garnishee answers indebtedness for 2212
Satisfaction of, entered on record by vendor, his representative, etc., when.... 1068
penalty for failure after request in writing..... 1068
entry of, operates release of lien..... 1068

VENUE.
Actions, of, generally..... 4205
Attachment bonds, of suits on..... 566
Chancery, of suits in, generally..... 676
divorce, of suits for..... 1493
infants, petitions to relieve, of disabilities of non-age..... 830
wills, contests of validity of..... 4298
change of, may be had in trial by jury of issue out of chancery..... 824
Change of; power vested in the courts to be exercised in manner provided by law.....Const., Art. IV., §36, p. 76.
allowed once to party; affidavits; to what county..... 4210
adverse party may take depositions of certain witnesses..... 4211

VENUE—*Continued.* SECTION

Change of; witnesses subpœnaed to attend at place of trial ... 4212
original papers and transcript of orders, etc., transmitted ... 4213
pay of messenger for carrying papers, etc ... 4214
new county, trial removed to, if defendant resides in it ... 4215
convict system, if, interested, cause transferred to Montgomery county, etc ... 4216
how papers prepared and transmitted ... C. C. R. 20, p. 1198.
in probate court ... 3383, 4295, 4296
chancery, on trial of issues out of ... 824
contest of will, appeal on change of venue in ... 460
Condemnation of lands, of applications for, for public uses ... 1712
Contractor, of suits against, for public printing, binding, etc ... 3394
Convict system, of suits in which, or the state for use of, is interested ... 4209
Corporations may be sued in any county in which they do business ... 4207
of suits to vacate charters of, etc ... 3419
Crops, of petitions to probate court for partition of ... 3188
Dams for mills, etc., of applications to erect ... 1728
Dower, of proceedings to set aside ... 1516, 1524
Forfeiture, of suits for, or usurpation of office or franchise ... 3422
Garnishment bond given in aid of pending suit, of suit ... 566, 2174
Justices of the peace, of suits before ... 2669–2671
Mechanics' liens, of suits to enforce ... 2733
New counties, of suits by and against residents of, not organized ... 4206
Official bonds, of suits by or for use of state on designated ... 4208
Partition, of petitions to probate court for ... 3162
of crops ... 3188
Personal representatives, in what county, may be sued ... 330
Probate court, change of venue in ... 3383, 4295, 4296
of application by guardian to sell lands of ward ... 2288
Public printing, of suits against contractor for, etc ... 3394
State, of suits by, or for use of, on designated official bonds ... 4208
against contractor for public printing ... 3394
in which convict system or the state for convict system is interested ... 4209
Summary proceedings, of ... 3767
Usurpation, of suits for, or forfeiture of office or franchise ... 3422
Wills, of applications to probate ... 4273

VERDICT.

Ad quod damnum proceedings, in ... 1719
Adverse possession, on suggestion of, in ejectment ... 1537
Detinue, in; value and damages assessed ... 1476
Ejectment, in; what should specify ... 1549
damages may be assessed severally, when there are two or more defendants ... 1550
on suggestion of adverse possession ... 1537
Equity, effect of verdict in suit in, by state for money wrongfully used, etc ... 3761
Insurance company, in suit against, belonging to tariff association ... 2620
Mechanics' liens, in suits to enforce ... 2739
Nonsuits, two, equivalent to verdict ... 3313
Real actions, in; damages assessed to time of verdict ... 1555

VESSELS.

Lien on for work on, materials, supplies, etc.; how enforced; limitation ... 2758, 2759
Navigation, as to—
anchor, coming to; regulations as to ... 2985
approaching, rules to be observed as to, by pilot ... 3005
arriving in harbor or loading; regulations as to ... 2979

VESSELS—*Continued.* SECTION

Navigation, as to—*Continued.*
attachment against, for penalty for violating harbor regulations..... 2986
ballast, must discharge, as prescribed by regulations; exception..... 2984
deserting sailor apprehended and committed until departure of..... 3018
penalty for harboring or concealing..... 3019
exempt from pilotage, when..... 3003
fees of pilot, when must be paid in advance..... 3004
half must be paid.....3007, 3008
lien against, for penalty for violating harbor regulations..... 2986
list of crew and passengers to be given, under oath, on arrival of..... 3014
by whom oath administered..... 3015
where to be filed..... 3016
penalty for failure to file..... 3017
may refuse pilot and employ tug-boat, when..... 3009
notice of time of sailing to be given pilot, when..... 3010
opening hatches; survey of stowage; record, etc..... 2981
outer-bar pilots deliver letters to, coming in..... 3006
penalty against person in charge of, resisting harbor-master..... 2980
for violating anchor regulations; enforcement..... 2986
for employing or receiving person belonging to another.....3020
survey of; opening ceiling, strips, sheathing, etc..... 2983
of stowage; opening hatches; expenses; record, etc..... 2981

Quarantine, as to—
authority of board as to regulations for quarantine of, persons, goods, etc. 2413
to come to anchor, when and where; rules for masters; how printed, etc.. 2414
rules for masters and pilots of tugs..... 2415
inspection fees; payment; lien on..... 2416
value of services and material to be paid by; quarantine fee..... 2417
removing, from quarantine without permission a misdemeanor..... 2420
master of, or person therein may be examined under oath, when and by whom..... 2421
regulations for quarantine of, may be prescribed by city or town..... 2399
extends to persons and goods arriving in, and going on board of..... 2400
health officer of town, city, or county may, etc., cause, to be removed to quarantine-ground, etc..... 2401

VIEWERS.
Appointed to mark out public road and assess damages..... 2447
Oath of; return of..... 2448
Same provisions as to, on petition for private road..... 2497

VOID CONTRACTS.
Contracts void unless in writing, when; statute of frauds.....2150–2155
See, also, CONTRACTS; FRAUDS AND PERJURIES.

VOLUNTEER FORCE.
Volunteer organizations of infantry, cavalry and artillery; how formed—
Const., Art. XII., §4, p. 97.
Volunteers known as Alabama National Guard; governor is commander-in-chief of.....Const., Art. XII., §6, p. 97; 2852
See, also, ALABAMA NATIONAL GUARD.....2852–2896
MILITARY.

VOTERS.
Answers of, in contested election, not admissible on prosecution of..... 1669
Blind, disabled or illiterate, how assisted in preparing ballot..... 1623
Must answer as to qualifications in contested election..... 1669
Qualifications of..... 1556

WAGES. SECTION
Agricultural laborers, superintendents, etc., lien of, for; how enforced....2762-2773
Employes erecting or repairing building, lien of, for; how enforced.....2723-2752
of railroad, lien of, for; how enforced.....2762-2773
Exempt from levy and sale to amount of twenty-five dollars per month..... 2038
Or salary to amount of one hundred dollars of deceased employe paid to widow 2074
Set-off, when cannot be defeated or abated by..... 3728
Ships, steamboats or other water-craft, lien on, for; how enforced.....2758, 2759

WAGERING CONTRACTS.
Answers of parties do not subject them to prosecution..... 2169
Any person may recover money paid on, for use of wife, etc., of loser..... 2164
Gambling contracts void, and money paid may be recovered..... 2163
Garnishment bars another suit..... 2167
a prior judgment bars..... 2168
One judgment bars other suits for the same cause..... 2165
The winner may be garnished by a creditor of losing party..... 2166
answers of the parties do not subject them to prosecution..... 2169

WAIVER.
Exemptions, of right of, from levy and sale..Const., Art. X., §7, p. 94; 2045, 2104-2109

WARD.
Guardian and ward, *see*.....2247-2391

WAREHOUSEMEN AND COMMON CARRIERS.
Absolved from liability as insurer on arrival of freight, how..... 4224
Bill of lading to be given for property received..... 4218
liability for failure to give..... 4218
must not be given for property not delivered..... 4219
Cotton, delivery of, to compress, when sufficient..... 4220
concealing or changing marks of..... 4229
Form of complaint on bill of lading.....No. 15, p. 946; 3352
Insurance, proceeds of, how applied..... 4227
Liability for false bill of lading or receipt..... 4223
second bill of lading or receipt without canceling first..... 4223
Sale or incumbrance of property received forbidden..... 4221
of perishable freight to pay charges..... 4225
other freight to pay charges..... 4226
Warehouse receipt, how far negotiable..... 4222

WARRANTY.
By tenant for life void against those in remainder or reversion..... 1034
Cotton, when and of what, implied on sale of, by planter or owner..... 1395
Form of complaint in action on.....No. 22, p. 947; 3352
Implied, when, from use of "grant," "bargain," or "sell" in deed to lands; extent of; assignment of breaches..... 1035
Wife, when, not bound by husband's warranty..... 1514

WATER COMPANIES.
License tax required of.....Subd. 48, 4122
Property of, subject to taxation.....Subd. 10, 3911

WATERCOURSES.
Damages for diverting waters of..... 2519
Jurisdiction of counties over..... 1400
Navigable streams are public highways.....Const., Art. I., §25, p. 66; 2515
may be divided into road precincts..... 2517
hands apportioned to work on, as road duty..... 2518
Railroads, right of, to cross..... 1164

SECTION

WATERCOURSES—*Continued.*
Removal of obstructions from, county commissioners authorized to contract for 2516
United States may acquire material for improvement of 626

WATER-CRAFT.
Damages for injuries to canoe, boat, or water-craft; limitation, etc 4217, 4140

WEIGHTS AND MEASURES.
Commodities, weight per bushel of certain 4240
Conform to standards established by congress 4230
Contracts construed in reference to 4231
Counties furnished standards by secretary of state 4232
in case of destruction, when 4233
Expense of obtaining and furnishing, to counties, how paid 4235
Judge of probate required to advertise receipt of 4236
seals other weights and measures after testing 4237
New counties to be furnished with 4234
Oysters, measure of 3160
Penalty for using false weights or measures 4238
Standard balances kept by secretary of state 4239
Standards furnished counties by secretary of state 4232, 4233

WHARFINGERS.
See COMMON CARRIERS, also WAREHOUSEMEN AND COMMON CARRIERS 4218–4229

WHARVES AND WHARF-BOATS.
Lien on ship, steamboat or other water-craft for wharfage and dockage; limitation 2758, 2759
Subject to taxation Subd. 2, 3911

WHEAT.
Weight, sixty pounds per bushel 4240

WIDOW.
Administration, preferred right to letters of, on estate of deceased husband 56
Dissent from will of deceased husband 4259–4262
Distributive share in personalty of deceased husband 1462
Dower, right of; how asserted 1504–1528
interest may be ordered sold by consent of; value of, how fixed 182, 183
Exemptions in favor of 2069–2103
Real estate of deceased husband descends to, when Subd. 6, 1453
Right to compel payment of legacy or distributive share in husband's estate 260, 266
Separate estate, effect of, on dower and distributive share 1506, 1507
Wages or salary to amount of one hundred dollars of deceased employe paid to, when 2074

WIFE.
Husband and wife, *see* 2520–2537
See, also, WIDOW.

WILLS.

General provisions.

Bequeath personalty, who may 4247
Birth of child revokes will made before marriage, when 4249
after will made; child inherits, when 4251
how child's portion set apart 4252
Bond, testator may exempt executor from giving 67
Character of estate pur autre vie 4246
Child born after will takes as in case of intestacy, when 4251
how portion set apart 4252

WILLS—*Continued.*

SECTION

General provisions—*Continued.*

Death, effect of, on devise or legacy to child or descendant 4257
of child born after will restores will 4253
Debtor, when not released by being appointed executor 4258
Devise of realty, who may make 4241
to whom may be made 4242
failing, realty descends to heirs at law 4243
general, passes lands owned by testator at death 4244
of realty passes entire estate of testator unless contrary appears 4245
when not revoked by contract for conveyance of property devised 4254
subsequent charge or incumbrance 4255
after-acquired interest passes under 4256
or legacy to child; effect on, of death of child 4257
Devisee, who may be 4242
when, incapable of taking, lands descend to heirs at law 4243
Dissent by widow; her rights on; when dissent unnecessary 4259
when and how to be made 4260
widow eighteen years of age has capacity to 4261
how made if widow insane, or under eighteen, or dead 4262
Marriage and issue revoke will of man, when 4249
of woman revokes will 4250
Married women may make wills ..... Const., Art. X., §6, p. 93; 2533
Perpetuity forbidden, except to wife and children or children only 1029, 1030
Posthumous children; when entitled to take under limitation to "heirs," etc.. 1024
Power of disposition to owner of particular estate; effect of 1046
one not owner of particular estate, effect of 1047
when donee of, takes fee 1048
absolute, defined 1049
conveyance under, good to extent of power 1051
by will executed as will 1053
by insufficient instrument may be executed by sufficient instrument 1054
when directed to be made among several 1055
on death of donee, execution decreed in equity.. 1056
consent of third person required, how expressed.. 1057
among children; grandchildren may take under 1058
to sell lands denied to executors, etc.; by whom exercised 1060
joint, executed by survivor in case of death 1061
Property not disposed of by will distributed as in intestacy 4248
Rule in Shelley's case abolished 1025
Remainder after estate for life in realty; when and as to whom void 1008
in personalty; when will creating, void 1012
Revocation; how made 4265
by marriage, etc 4249, 4250
former will not revived by; exception 4266
Trust for accumulation merely; limitation upon extent of 1031
Use, trust, etc., for mere benefit of third person; how operative 1027

Execution and probate.

Executed, how 4263
Foreign probate; when will may be withdrawn for 4283
probated will; when and how probated in this state 4282
In what county to be probated 4273
Jurisdiction of probate court to admit to probate 3363
Letters testamentary. See that subtitle under ADMINISTRATION OF ESTATES.
Notice of application to probate will 4284
how served on minors 4285
when given by publication 4286

WILLS—*Continued.* SECTION

Execution and probate—*Continued.*

Nuncupative wills; when valid 4267
under what circumstances may be made 4268
by soldiers, sailors and marines; when valid 4269
when and on what notice probated 4270
when must not be proved 4271
Probate; who may have will probated 4273
in what county to be 4273
mode of proving wills not nuncupative 4276
when by proof of handwriting 4277
if subscribing witness non-resident, deposition taken 4278
will to be indorsed with certificate of proof 4279
proved and indorsed as evidence; certified copy 4280
how will proved out of; proved in this state 4282
Probated will may be withdrawn for foreign probate, when 4283
Production of will compelled; proceedings 4274
when party discharged on affidavit 4275
Witnesses; will must be attested by at least two, in presence, etc 4263
subsequent incompetency of; effect of 4264
will must be proved by one or more, etc 4276
handwriting may be proved, when 4276, 4277
depositions may be taken, when 4278
testimony of, must be reduced to writing, signed and recorded 4279

Contesting validity of wills.

Chancery; contest in, within eighteen months; when and by whom 4298
infants and lunatics allowed longer time 4299
may be tried by jury 4300
evidence taken on probate of will admissible 4300
Contest; grounds; by whom instituted; how issue made up and tried 4287
costs of; how taxed and collected 4294
in chancery within eighteen months, etc 4298
Day fixed for trial; continuance; witnesses 4288
Defaulting witnesses, proceedings against 4291
Depositions; when may be taken; rules of procedure 4292
Judgment on contest 4293
Jury; how drawn, summoned etc 4289
fine for default by juror 4290
Venue, change of; proceedings and trial, when granted 4295
judgment on, certified back and executed 4296
costs certified and taxed 4297

WITNESSES.

Ad quod damnum proceedings; fees of, in 1388
Affidavit, when, required before issue of subpœna for 1825
Arbitrators, before; subpœnas for; depositions may be taken 516
subpœna for, before; how executed 517
witness defaulting before; fine and liability 518
when may refuse to attend 519
pay of, before 520
Attendance, personal, of; when may be compelled though deposition taken 1847
must be proved within five days after adjournment of court, etc .. 1338
shall charge for, but on one side of same cause 1339
Attesting witness, maker may prove execution of instrument without accounting for absence of 1797
Attorneys, in proceedings to remove; subpœnas, etc.; deposition may be taken 607

WITNESSES—*Continued.*

SECTION

Being subpœnaed fails to attend; penalty 1828
Certificate of attendance issued by clerk; contents 1337
Chancery, testimony in; evidence; how taken, etc.—
Ch. R. 49–65, pp. 1211–1216; 723–740
on trial of issues out of, order that witnesses be subpœnaed, etc.... 826
default of, before commissioner to take depositions in..739, 740, 1837–1840
Change of venue, on, witnesses subpœnaed to attend at place of trial 4212
adverse party may take depositions of witnesses, etc.... 4211
Commissioner subpœnas witnesses; default proved by his certificate 1837
penalty for failure to appear before; how recovered 1838
witness also liable for damages for failure to appear before..... 1838
defaulting, may be committed without bail, by whom.. 1839
if examination postponed, may give bail, etc 1840
provisions to compel attendance of, before, in foreign suits 1848
duty of, in executing commission 1841
certificate of, evidence; how returned 1842
in chancery court; powers and duties of—
Ch. R. 49–65, pp. 1211–1216; 723–740
Competency of parties as affected by interest 1794
witness as affected by conviction for crime 1795
rules as to, in chancery same as at law 726
Contempts, power of courts to punish for 2638
Contested election—
failure of, to appear before commission to take testimony; penalty 1679
pay of, in contested election of state office 1683
when examined orally; separate and apart 1690
pay of, in contested election other than for state office 1692
defaulting, proceedings against 1698
affidavit as to name, residence and nationality of; testimony of 1690
Contests of wills, subpœnas for trial of 4288
Conviction for crime, competency of, as affected by 1795
Counsel; only one, on each side, on trial, to examine witness—
C. C. R. 18, p. 1198.
Courts martial, issue and service of subpœna on 2886
penalty for failure to obey subpœna 2886
military board of examiners, power to compel attendance of.. 2883
Custody of children, on petition for, witnesses examined orally, or deposition taken, etc 2537
Defaulting witnesses—
arbitrators, before; proceedings 518
circuit court, before; penalty; excuse; imprisonment; discharge on bond 1828–1832
commissioners to take depositions, before; proceedings.....739, 740, 1837–1840
contested election, in; proceedings against 1698
examiner of public accounts, before; proceedings against 1877
insurance commissioner, failure to appear before, a misdemeanor, etc..... 2578
justices, before; fine against, etc 2684
in forcible entry and unlawful detainer proceedings before...2141, 2142
probate court, before; proceedings against 4291
Deposition of witness may be taken, when 1833
steps to be taken before issue of commission 1834
interrogatories may be filed; affidavit; notice; commission 1835
notice when party resides out of county 1836
commissioner subpœnas witness; default proved by his certificate.. 1837
may be read in evidence 1843
taken in proceedings to remove attorneys 607

SECTION

WITNESSES—*Continued.*

Deposition, objections to whole, to be taken before trial 1844
when cannot be used 1846
of witness in suits in other states 1848
on change of venue adverse party may take, of witnesses in county. 4211
in chancery court; proceedings to take—
Ch. R. 49–65, pp. 1211–1216; 723–740
Examination of parties by interrogatories at law 1850–1858
in equity 715–719
Examiner of public accounts; examination of; proceedings for default 1877
Execution of subpœna on; how and by whom made 1826
Fees of, in circuit court 1336
ad quod damnum proceedings 1388
chancery court same as in civil cases at law 738
contested election 1683
probate court 1386
before arbitrators 520
commissioners to take depositions 1849
county commissioners 1387
justices 2143, 2686
railroad commissioners 3501
on inquisition of lunacy 1385
certificate for, and taxation as costs 1337, 1339, 1340–1342
Fire investigation by sheriff under insurance law; summons, etc 2609
may be kept separate and apart on 2609
swearing falsely on, guilty of perjury 2609
Imprisoned, may be, for refusal to testify; discharged on bond, when 1831, 1832
Inquisition of lunacy, on, subpœnas for 2258
Insurance commissioner, failure to appear before, a misdemeanor 2578
Interpreters may be sworn; paid as witnesses in cause 1793
Interrogatories may be filed to; affidavit; notice; commission 1835
notice of, when party resides out of county 1836
Justices, issue of subpœna for, before; competency of; taking of deposition 2673, 2681, 2682
Military board of examiners, power of, to compel attendance of 2883
Parties to suit, competent to testify as; exceptions 1794
examination of, by interrogatories at law 1850–1858
in equity 715–719
Personal attendance of, compelled though deposition has been taken, when 1847
representative of borrower may prove usury on belief 1798
Probate court, rules in, as to evidence; depositions and compelling attendance of 3380
judge, duty of, to issue subpœnas for ..... Subd. 1, 3365
Railroad commissioners, witnesses may be summoned and examined by; compensation 3501
Re-examined, witness may be, on cross-interrogatories, when 1845
in chancery when ..... Ch. R. 52, p. 1212.
Refusal of party to pay fees of, excuses from attendance 1341
Sheriff making fire investigation may summon and swear witnesses 2609
keep witnesses separate and apart 2609
swearing falsely before, guilty of perjury 2609
Subpœnas to witnesses, duty of clerk to sign and issue ..... Subd. 1, 934
contents of 1824
to be issued to each term 1827
special and adjourned terms 915, 916
day cause set for trial 3309
affidavit required before issue of, when 1825
how and by whom executed 1826

WITNESSES—*Continued.*

SECTION

Subscribing witnesses to conveyances 982
acknowledgment of conveyance dispenses with 984
required to waiver of homestead 2106
wills 4263
Testimony, unless otherwise provided, to be given in open court on the oath of witnesses 1792
proceedings to perpetuate 1861–1875
Usury, proof of, by personal representative of borrower on belief 1798
Wills, contests of, subpœna for witnesses for trial of 4288

WOMEN.

Actions by and against female not abated by marriage 37
marriage being suggested upon records, suit proceeds, etc 37
revivor of, in equity upon marriage of female ..... Ch. R. 103, p. 1224.
Deposition, being a woman ground for taking ..... Subd. 1, 1833
Eligible to office of register in chancery 653
notary public 3022
Marriage of, under twenty-one and over eighteen relieves of disability of minority 2531
revokes her will 4250
under fourteen years of age, incapable of contracting 2839
Married, on reaching age of eighteen years relieved of disabilities of minority 2531
Men are preferred to women in grant of letters of administration 59
Midwifery, permitted to practice, without obtaining certificate of qualification 3267
Mines, shall not be employed to work or labor in 2933
Road duty, exempt from 2452
Streets, cannot be made to work on, by cities and towns, etc 2968
Unmarried woman may sue for her own seduction 23
Will of woman revoked by her marriage 4250

WOOD-WORKMEN.

Lien in favor of; how enforced 2753–2757

WORDS AND PHRASES.

Code, meaning of, as used in 1–8
Insurance law, meaning of, as used in 2575
"Owner or proprietor" defined, as used in mechanic's lien law 2751
"Person of unsound mind," meaning of 2271
"Railroad company," meaning of, as used in article 3474
Revenue law, meaning of, in 3906

WRITING.

Certain contracts to be in, else void 2152
Conditional sales of personalty to be in, and recorded when 1017
Conveyances of land must be in 982
Homestead, alienation of, to be in ..... Const., Art. X., §2, p. 91; 2034
Includes printing on paper 1
Mortgages of personalty not valid unless in writing 2151
Railroad, conditional sale of rolling-stock of, to be in, and recorded 1016
Teacher in public school, contract with, to be in, etc 3569
Waiver of right of exemptions must be in ..... Const., Art. X., §7, p. 94; 2104–2106
Wills must be in, except nuncupative wills 4263, 4267

WRITS.

Attachment, of 526, 573
Detinue, of seizure in actions of 1474, 1880
Distringas, delivery of property recovered in detinue, compelled by writ of 1483
Dower, writ of 1521

SECTION

WRITS—*Continued.*

Habeas corpus, of, power of supreme court to issue—
Const., Art. VI., §2, p. 83; Subd. 3, 3826
authority of circuit judge to grant.....Subd. 1, 921
judge of probate to grant.....Subd. 2, 3372
privilege of, shall not be suspended...Const., Art. I., §18, p. 64.
Injunction, of, power of justices of supreme court to grant—
Const., Art. VI., §2, p. 83; 784
circuit judge to grant.....Ib. §6, p. 84; 784
chancellor to grant..... 784
Mandamus, of, power of supreme court to issue—
Const., Art. VI., §2, p. 83; Subd. 2, 3826
authority of circuit judge to grant.....Subd. 1, 921
Possession and fieri facias, form of writ of..... 1880
Procedendo, of, on appeal from judgment of justice.....494, 495
Prohibition, of, power of supreme court to issue—
Const., Art. VI., §2, p. 83; Subd. 3, 3826
authority of circuit court to grant.....Subd. 1, 921
Quo warranto, of, power of supreme court to issue—
Const., Art. VI., §2, p. 83; Subd. 2, 3826
authority of circuit judge to grant.....Subd. 1, 921
Remedial, power of supreme court to issue..Const., Art. VI., §2, p. 83; Subd. 3, 3826
authority of circuit judge to grant.....Subd. 1, 921
common law as to, not repealed..... 2833
Seizure, of, in actions of detinue..... 1474
aid of suits in equity..... 773–779
not to issue without probable cause, etc...Const., Art. I., §6, p. 61.
unreasonable seizures prohibited.....Ib.
Special election, for, issued by governor..... 1600

YEAR.

Fiscal year ends on the thirtieth day of September..... 2011
Means calendar year, unless otherwise expressed..... 8
Scholastic year begins on first of October and ends on thirtieth of next September..... 3598

YELLOW FEVER.

Contagious or infectious diseases. See HEALTH AND QUARANTINE..... 2392–2442